Law 7/2024 of 20 December establishing a Top-Up Tax to ensure a global minimum level of taxation for multinational groups and large-scale domestic groups, a tax on the interest and commission income of certain financial institutions and a tax on liquids for electronic cigarettes and other tobacco-related products, and amending other tax rules.

FELIPE VI

KING OF SPAIN

To all who should see and hear this.

May it be known: That the General Courts have approved, and I come to pass the following law:

PREAMBLE

I

Regulatory developments in the international context in recent years have led to the adoption of measures to strengthen the fight against aggressive tax planning in a globalised market. In this area, the recommendations made by the Organisation for Economic Co-operation and Development (hereinafter OECD), based on the Base Erosion and Profit Shifting (BEPS) initiative, forged a path that has led to an evolution of domestic tax rules to achieve fairer and more equitable taxation.

In recent years, the European Union has adopted measures to strengthen the fight against aggressive tax planning in the internal market including the anti-tax avoidance directives, Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market and Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries, known as ATAD1 and ATAD2, respectively. These directives transposed into EU law the recommendations made by the OECD in the context of the Base Erosion and Profit Shifting initiative.

In a continuing effort to put an end to tax practices by multinational enterprises that allow them to shift profits to countries or territories where they are not taxed or are taxed at low rates, the OECD has continued to develop a set of international tax measures, including those aimed at limiting tax competition in relation to corporate income tax rates by establishing a global minimum level of taxation for multinational groups with consolidated net revenues of EUR 750 million or more. This legislative policy objective was translated into the document entitled “Tax Challenges Arising from the Digitalisation of the Economy - Global Anti-Base Erosion Model Rules (Pillar Two)”, hereinafter “OECD Model Rules”, adopted on 14 December 2021 by the OECD/G20 Inclusive Framework on BEPS to which the EU Member States signed on.

At the European Union level, in the report to the European Council on tax matters, approved by the Council on 7 December 2021, the Council reiterated its strong support for the reform of global minimum tax and committed itself to implementing it through EU law since, in closely integrated economies, it is essential that the global minimum level of taxation be applied consistently and in a coordinated fashion. Thus, it was concluded that, given the scale, detail and technicalities of these new international tax measures, only a common Union framework would prevent fragmentation of the internal market in their implementation.

In accordance with the above, Council Directive (EU) 2022/2523 of 15 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union, hereinafter referred to as Directive (EU) 2022/2523 or the Directive, was adopted. This EU Directive must be transposed by all Member States, in accordance with Article 56 of the Directive.

The Directive closely follows the content and structure of the "OECD Model Rules", but in order to ensure compatibility with primary EU law, in particular with the principle of freedom of establishment, some of its provisions, in particular those relating to its subjective scope, have been designed in such a way as to avoid any risk of discrimination between cross-border and domestic situations.

Directive (EU) 2022/2523 establishes a top-up tax through two interconnected rules, ensuring that income earned by large domestic groups located in EU Member States or by multinational groups whose parent company is located in an EU Member State—in the latter case whether the group companies are located in the EU or outside the EU—is effectively taxed at an overall minimum rate of 15 per cent. These interconnected rules are the income inclusion rule and the under-taxed profits rule, where the latter supports the former.

Thus, where the effective tax rate of the constituent entities of large domestic groups or multinational groups in a given jurisdiction is less than 15 per cent, an additional tax, the top-up tax, will be levied to achieve the overall minimum rate of 15 per cent, either through the income inclusion rule or, failing that, the under-taxed profits rule.

However, Directive (EU) 2022/2523 provides in Article 11 that Member States may choose to levy a qualified domestic top-up tax on constituent entities located in their territory that do not reach a minimum taxation level of 15 per cent, in the jurisdiction of that Member State. In the absence of the qualified domestic top-up tax, the top-up tax for such entities would be attributed to the jurisdiction of the entity owning the interests in the entities located in the jurisdiction that has not opted to implement the qualified domestic top-up tax, by applying the income inclusion rule, provided that such jurisdiction has included it in its domestic law or, alternatively, to those jurisdictions that have implemented the under-taxed profits rule in their domestic law.

This law is intended to comply with this transposition obligation.

Based on the above, this law establishes rules to ensure a minimum level of effective taxation for large multinational groups and large, exclusively domestic groups (those with consolidated net revenues of EUR 750 million or more in at least two of the last four immediately preceding financial years) operating in the single market. These rules shall be consistent with the Agreement reached by the Inclusive Framework in 2021, and closely follow the OECD Model Rules agreed to under the Inclusive Framework.

The Agreement reached by the Inclusive Framework provides for a minimum tax rate of 15 per cent at the jurisdictional level. The top-up tax rule that gives rise to a top-up tax is based on calculating a differential tax rate, the top-up tax rate, as the difference between a jurisdiction's effective tax rate and 15 per cent. Once the jurisdiction's tax rate has been calculated, it must be applied to the net profits in each jurisdiction, less an amount calculated on the basis of the group's substance in the jurisdiction, for the purpose of determining the amount of top-up tax generated at the jurisdictional level.

For the purpose of attributing the amount of top-up tax due to each constituent entity of the large multinational or domestic group, such jurisdictional top-up tax should be attributed to each constituent entity of the group in that jurisdiction, in the ratio of each constituent entity's qualifying profits to the qualifying profits of the jurisdiction.

It should again be emphasised that the extension of minimum taxation to domestic groups is intended to avoid any risk of discrimination in a Member State between an entity belonging to a group with an international presence and a group with a purely domestic presence.

As mentioned above, this law is adopted in an international context determined by the initiatives adopted within the framework of the OECD, especially the Model Rules, and in the European Union, by Directive (EU) 2022/2523, of which this law is a transposition.

In this context, the OECD Model Rules and the criteria derived from the Commentaries, Administrative Guides and other principles or criteria developed and publicly disclosed by the OECD or the European Union should be taken into account in particular as interpretative criteria within the framework of Article 3.1 of the Civil Code.

In addition, apart from the above, it is expressly stated for these purposes that, where appropriate, these criteria may be expressly recognised and publicised as such through the resolutions of the head of the Taxation General Directorate of the Treasury referred to in Article 12.3 of Law 58/2003, of 17 December, on General Taxation.

II

This law consists of fifteen titles, with fifty-five articles, three additional provisions, six transition provisions and twenty-two final provisions.

The preliminary title of the regulation contains general provisions regulating the nature and purpose of the Top-Up Tax, as well as its field of application. The Top-Up Tax is a direct tax of a personal nature, which is applied throughout Spanish territory, structured through interconnected, compulsory rules, such as the income inclusion rule and the undertaxed profits rule. The Top-Up Tax is structured through three components: the national top-up tax, the primary top-up tax and the secondary top-up tax. The first two correspond to the income inclusion rule and the third to the undertaxed profits rule.

Firstly, the national top-up tax is the result of applying the income inclusion rule to income obtained by the constituent entities of multinational groups and large domestic groups located in Spanish territory.

Secondly, the primary top-up tax is the result of applying the income inclusion rule to income obtained by the constituent entities of multinational groups that are not based in Spanish territory.

Finally, the secondary top-up tax, which is a consequence of applying the undertaxed profits rule, ensures minimum taxation of income earned by the multinational group that could not be taxed under a permissible income inclusion rule.

As indicated above, Directive (EU) 2022/2523 allows Member States to choose to apply a qualified domestic top-up tax. Thus, making use of this power, Spain establishes a domestic top-up tax whose main purpose is to guarantee, in any case, that the top-up tax corresponding to the entities constituting large multinational or national groups that are based in Spanish territory, and which do not reach a minimum taxation of 15 per cent in Spanish territory, is owed to the Spanish Tax Administration.

Therefore, this law outlines a national top-up tax system in order to ensure that the minimum effective taxation of the net profits of constituent entities located in Spanish territory yields, at least, a result equivalent to calculating the top-up tax in accordance with Directive (EU) 2022/2523 and the OECD Model Rules. Thus, the domestic top-up tax that is calculated and paid in Spanish territory will be considered a “qualified domestic tax” to the extent that it provides, at a minimum, a result that coincides with applying the income inclusion rule to the income obtained in Spanish territory by the constituent entities of a large multinational or national group, provided that in Spain such group is subject to an effective tax rate lower than the minimum tax rate of 15 per cent.

The domestic top-up tax provided for in this law has been configured in such a way as to produce an equivalent result in accordance with the above, without prejudice to its particularities. Therefore, if the taxpayer and the taxable income are identical, it is not necessary to create priority rules equivalent to those set out in the application of the primary Top-Up Tax or the rules of compensation set forth in Article 27 of this law. Thus, unlike the primary top-up tax, due to the very nature of this type of tax, for the purposes of calculating the amount of domestic top-up tax due by these entities, the percentage shareholding held in them is irrelevant, and therefore there is no need to take this percentage shareholding into account in order to determine their domestic top-up tax. Likewise, for the purposes of the domestic top-up tax, Article 25(3) regulates certain cases in which some of the rules of specific apportionment of the taxes borne by certain constituent entities provided for in Article 20 of this law do not apply.

Thus, under the domestic top-up tax, each constituent entity of a national or multinational group located in Spain will be subject to top-up tax on the income obtained by that entity when it has been taxed, at the jurisdictional level, at an effective rate lower than the minimum tax rate.

Under the primary top-up tax, the parent entity of a multinational group located in Spanish territory will calculate the part of the top-up tax corresponding to the revenue of the multinational group’s constituent entities that are not located in Spanish territory, when such income has been taxed, at the jurisdictional level, at a tax rate lower than the minimum tax rate (income inclusion rule).

Under the secondary top-up tax, by application of the undertaxed profit rule, a constituent entity of a multinational group located in Spanish territory must pay the amount of top-up tax due for profit obtained by the constituent entities of the multinational group which are not located in Spanish territory and which are not subject to a qualified income inclusion rule, where such income is taxed, at the jurisdictional level, at a tax rate lower than the minimum tax rate.

Thus, the undertaxed profits rule supports the income inclusion rule by reallocating any residual amount of top-up tax where the multinational group’s parent entity is unable to collect the full amount of top-up tax relating to undertaxed entities by applying the income inclusion rule.

Pursuant to Title I of the Law, the Top-Up Tax is levied not only on income received by the constituent entities of a multinational group or a large-scale domestic group where such income is taxed at an effective tax rate lower than the minimum tax rate at the jurisdictional level, but also on income attributed to them in accordance with the provisions of this Law.

Title II, Article 5 of the law provides general definitions of the different concepts that are developed and used throughout the regulation. A provision of this type was essential given the novelty of the tax and because it is a regulation subject to EU harmonisation that will have a very significant impact on other jurisdictions, not only in the European Union but also in the OECD. All this makes it essential for concepts that may be rare in the domestic legal system to be regulated or at least defined in this law, insofar as they may have an impact on other jurisdictions and require harmonised interpretation.

Without prejudice to the above, when in a certain title, or even in a certain article, the law contains specific terminology that may deal with particular situations or more specific cases, the definitions of such terminology are included in the title or article of the law itself in order to facilitate the reading and understanding of the regulation regarding specific regimes.

Title III of this law regulates the subjective scope of application of the Top-Up Tax. This tax is only applicable to entities based in Spanish territory that are members of multinational enterprise groups or large-scale domestic groups whose consolidated net revenue is at least EUR 750 million in at least two of the four tax periods immediately preceding the beginning of the tax period. The 750 million threshold set in this law is consistent with the threshold set in other existing international tax treaties. Thus, the figure is in line with that required of multinational groups for country-by-country reporting, which was introduced in our legal system in 2015.

The law then defines the taxpayers of the Top-Up Tax in its three modalities: domestic top-up tax, primary top-up tax and secondary top-up tax.

In general, the multinational or domestic group's constituent entities located in Spain will be considered to be taxpayers, although, by legal imperative and in place of the taxpayer, those constituent entities identified by the law as substitutes for the taxpayer must comply with the main tax obligation, as well as the formal obligation inherent to payment of the tax (filing the corresponding self-assessed tax return). Thus, in accordance with the provisions of this law, an entity may be a payer of the Top-Up Tax and a substitute for the rest of the taxpayers in the group, whether multinational or domestic, who are resident in Spanish territory.

For the purposes of this law, all member entities that are part of a large multinational or domestic group are referred to as "constituent entities". Given the wide variety of constituent entities that may make up a multinational or large-scale domestic group, depending on their different commercial, tax or substantive systems, and given that the multinational or large-scale domestic group may operate in a large number of jurisdictions, a location rule must be established for such entities, which is contained in Article 8 of the Law.

Furthermore, certain entities should be excluded from the scope of application of this law, in view of the purpose they pursue or their special nature. Thus, exempt entities are those which, in general, do not exercise a commercial or business activity or carry out activities of general interest.

In particular, this law does not apply to public entities, international organisations, pension funds and non-profit organisations. Similarly, investment funds and real estate investment vehicles are exempt entities when they are considered to be the ultimate parent entity of the multinational or large-scale domestic group; this last exemption is a technical one, insofar as the income obtained by such entities is taxed at the head office of their owners.

Titles IV, V and VI of this law then deal with the tax base, adjusted covered taxes and the effective tax rate, respectively.

The tax base for the Top-Up Tax, regulated in Title IV, is based on the accounting result of the constituent entity, which must be adjusted in accordance with the provisions of this law, in order to determine the so-called "qualifying income or loss". Therefore, the qualifying income or loss of a constituent entity is obtained by making a number of adjustments to the accounting result of that entity for the tax period, determined in accordance with the acceptable or authorised financial accounting standard used to prepare the ultimate parent entity's consolidated financial statements, before consolidation eliminations are made. If it is not possible to determine a constituent entity's accounting result in accordance with the above, the constituent entity's accounting result for the tax period may be determined using another acceptable financial accounting standard or an approved financial accounting standard as defined in Article 5(32) of this Law.

Without prejudice to the above, in the case of the domestic top-up tax, the rule states that the constituent entity's accounting result may be determined either on the basis of the accounting standard used to prepare the ultimate parent company's consolidated financial statements, prior to consolidation eliminations, or on the basis of the accounting standards generally accepted in Spanish territory used to prepare the constituent entity's financial accounts when it is not reasonably possible to determine the constituent entity's accounting result in accordance with the above.

The adjustments to be made in order to determine the qualifying profit or loss include, among others, the accounting tax expense on business profits; so-called excluded dividends, which are those resulting from a holding equal to or greater than 10 percent or from a holding of less than 10 percent with a holding period of at least one year; the negative or positive income resulting from transferring a holding in which a percentage equal to or greater than 10 percent is held; the expenses for fines of 50,000 euros or more. These adjustments, together with the other adjustments set out in Article 10 of this law, reflect the significant permanent differences that typically exist in most tax systems between accounting profit and the tax base for a tax on corporate profit.

In addition, there are a number of specific rules for adjusting the amount of certain transactions, some of which are mandatory and others optional, to be decided by the ultimate parent entity or the constituent entity, as the case may be. The former include costs arising from certain intra-group financing arrangements or transactions that must be valued at market value in compliance with the arm's length principle. The latter include personnel expenses corresponding to payments based on equity instruments or eliminations in the consolidated financial statements arising from transactions between constituent entities located in the same jurisdiction and included in a tax consolidation group. Similarly, under certain circumstances, income derived from international maritime transport and income incidental to such transport of a constituent entity shall be excluded from the calculation of its qualifying income or loss.

The law also regulates the special rules for allocating qualifying income or loss between the principal entity and a permanent establishment, provided that such entities are considered to be constituent entities under this law, as well as the special rules for allocating eligible income or loss obtained by tax transparent entities to their shareholders.

For the purpose of determining the tax base for the top-up tax in each of the undertaxed jurisdictions in which the large multinational or domestic group operates, the net qualifying profit (i.e., the difference between the qualifying profit and the qualifying loss of the constituent entities in the jurisdiction) should be reduced by the so-called substance-linked exclusion of income, i.e. by an amount determined on the basis of the costs associated with the employees and the value of the tangible assets of the constituent entities located in the jurisdiction, in order to ensure a proportionate outcome in situations where the risks of tax base erosion and profit shifting are low.

Accordingly, the tax base for the top-up tax in a jurisdiction with a low tax level, whether in the form of the domestic top-up tax or the primary top-up tax, shall be the positive amount resulting from subtracting the income exclusion linked to economic substance, in accordance with the provisions of this Act, from the net qualifying profit of the constituent entities in the jurisdiction for the tax period.

In addition, the top-up tax base for the taxpayers referred to in Article 6(2) and (3) of this Law, for a given jurisdiction and tax period, shall be the amount resulting from multiplying the top-up tax base of an undertaxed jurisdiction by the proportion of the taxpayer's qualifying income earned in the tax period represented by the aggregate qualifying income of each undertaxed jurisdiction.

Following the determination of the jurisdiction's net qualifying income, the effective tax rate of the jurisdiction must be determined.

To do this, first the jurisdiction's adjusted covered taxes must be determined, generally starting with the current tax expense on the entity's profits, which is recorded in the financial statements of each of the jurisdiction’s constituent entities, to which a number of adjustments must be made.

Thus, by way of illustration, the covered taxes should be increased by the amount of taxes that meet the definition of covered taxes and that have been recognised as an expense in determining profit before tax, i.e. that are not recorded as an accounting expense for current tax.

In parallel, deductions are made for amounts of current tax expense corresponding to income excluded from the calculation of qualifying income or loss, or current tax expense that is not expected to be effectively paid within three years after the end of the tax period, among others.

In addition, the total amount of the deferred tax adjustment under Article 18 of the Law must be taken into account by starting with the deferred tax expense or income recorded in a constituent entity’s financial statements and making a number of adjustments to it.

After determining the adjusted net qualifying income and adjusted covered taxes—both of which are calculated at the jurisdictional level—the jurisdiction’s effective tax rate for the tax period is the result of dividing the adjusted covered taxes of the constituent entities located in that jurisdiction, determined in accordance with the rules set out above, by the net qualifying income of the constituent entities located in that jurisdiction.

However, the calculation of the effective tax rate shall take into account the special features provided for in this law in relation to non-resident entities, investment entities, joint ventures or minority-owned entities.

Title VII of the Law, under the heading "Tax liability", regulates, in Chapters I and II, respectively, the tax rate and how to calculate the amount of Top-Up Tax due. For this purpose, the top-up tax rate for a given jurisdiction and tax period is the positive difference between the minimum tax rate of 15 per cent and the effective tax rate calculated at the jurisdictional level.

Therefore, where the effective tax rate for a given jurisdiction and tax period is lower than the minimum tax rate, the group's constituent entities must pay the top-up tax for that jurisdiction, in any form: domestic top-up tax, primary top-up tax or secondary top-up tax.

The top-up tax rate for each constituent entity located in the jurisdiction must coincide with the tax rate obtained for that jurisdiction, calculated as the difference between the minimum tax rate and the jurisdiction's effective tax rate; this tax rate must be applied to the tax base for the period of each constituent entity of the multinational or large-scale domestic group in the jurisdiction, calculated in the terms set out above, for the purpose of determining the amount of the entity's Top-Up Tax.

In accordance with the provisions of Chapter II of Title VII of this Law, the top-up tax liability of a constituent entity located in Spanish territory for the tax period will be the result of adding together the domestic top-up tax liability, the primary top-up tax liability and the secondary top-up tax liability.

The amount of the domestic top-up tax shall be the top-up tax payable by the taxpayers referred to in Article 6(2) of this law. It shall be calculated by applying the domestic top-up tax, regulated in Chapter III of this law, in accordance with Article 24 of this law.

The amount of the primary top-up tax shall be the top-up tax payable by the taxpayers referred to in Article 6(3) of this law. It shall be calculated by applying the income inclusion rule regulated in said Article, in accordance with Article 24 of this law.

The secondary top-up tax liability shall be that which is attributed to the taxpayers referred to in Article 6(4) of this law, in accordance with the provisions of Article 29 of this law.

Title VIII regulates the tax period and accrual of the Top-Up Tax.

In Title IX, the law contains a *de minimis* exclusion, in order to strike a balance between the objectives of reforming the global minimum tax and the administrative burden for tax administrations and taxpayers.

Thus, where the average qualifying income of the constituent entities located in a jurisdiction is less than EUR 10 million and the average qualifying income or loss of all constituent entities in that jurisdiction is less than EUR 1 million, the filing constituent entity may elect to have the top-up tax due from constituent entities located in that jurisdiction be zero.

In the same vein, and in order to reduce compliance and administrative costs, the implementation of safe harbours is provided for in Article 34 of the law.

Thus, primary top-up tax shall not be levied in the tax period for the taxpayers referred to in Article 6(3) of this law, in relation to their constituent entities located in another jurisdiction, where that jurisdiction requires a qualifying domestic top-up tax that has been determined in the relevant tax period in accordance with the acceptable financial accounting standard of the ultimate parent entity or international financial reporting standards (IFRS or IFRS as adopted by the Union in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards), or where that jurisdiction requires a qualifying domestic top-up tax that ensures that the effective tax level of the constituent entities subject to such tax meets the conditions of a qualifying international treaty on safe harbours.

Likewise, in order to guarantee the applicability of future safe harbours that may be approved at the international level, Article 34 of the law states that top-up tax will not be levied in the tax period for the taxpayers indicated in Article 6 of this law, in relation to those constituent entities located in a jurisdiction that fulfils the conditions of a qualifying international agreement on safe harbours, under the terms established in said international agreement.

Title X of the law regulates special regimes applicable to different situations where specific rules are necessary. Thus, Chapter I of Title X of the law regulates restructuring operations and joint ventures, while Chapters II and III of the same Title regulate, respectively, neutrality and distribution regimes, as well as the special features applicable to investment entities. Finally, Chapter IV of Title X regulates the specific features of minority-owned constituent entities.

In particular, Chapter I of Title X regulates corporate restructurings and joint ventures and establishes special quantitative and temporal criteria to determine when the threshold for applying this law is reached following certain corporate restructuring operations, or what the impact is on the configuration of multinational or large-scale domestic groups in cases of merger, spin-off, or the entry or exit of a group entity as a result of the acquisition or transfer of a direct or indirect interest in that entity, or in cases where an entity becomes the parent entity of a new group in the tax period in which the acquisition is carried out. Special rules are also provided to identify the ultimate parent entity in cases of joint ventures or multinational groups with multiple parent entities.

Chapter II of Title X of this law regulates neutrality and dividend distribution regimes. Where the ultimate parent entity of a multinational group or a large-scale domestic group is fiscally transparent, rules are required to modulate the qualifying income and loss where the parent entity is located, to guarantee that its income is taxed where its owners are located and such qualifying income or loss is imputed to its owners. In such cases, the covered taxes of such entities shall be reduced proportionately by the amount of the eligible income that has been imputed to their owners.

In the case of tax regimes which apply a single level of taxation to the income of an entity's shareholders, deducting or excluding the profits distributed to the shareholders from the entity's income, the rule also provides for the ultimate parent entities subject to such regimes to reduce their qualifying income when such income is taxed where the owners are located, in pursuit of the principle of neutrality.

Similarly, if taxation does not occur at the time the profits are earned but at the time of distribution, as is the case in some distribution tax regimes, there is an option to compute the tax that should have been levied on the profits in the tax period in which they were earned, provided that the profits are distributed in the following four years.

Finally, for investment entities that are not ultimate parent entities, a mechanism is provided for calculating the effective tax rate on an entity-by-entity basis, given the low taxation to which these entities are subject in their jurisdiction, in order to avoid affecting the computation of the effective rate of the rest of the group in the jurisdiction in which they are located. In addition, and as an alternative, it is possible to choose to consider these entities as fiscally transparent or to apply a tax distribution regime.

In accordance with the provisions of Titles XI and XII of this law, management of the Top-Up Tax rests on two main pillars.

First, Chapter I of Title XI outlines the formal obligations and establishes a reporting obligation for all entities that are part of a multinational or large-scale national group, in the form of an information return, although these entities may identify a single constituent entity as the entity designated to file the information return in the name and on their behalf of the multinational or large-scale national group. Detailed information is required, including the identification details of the constituent entities, the group structure and all the data necessary to calculate the effective tax rate, the top-up tax and the apportionment of the latter to each jurisdiction and each entity, as well as details of the options exercised by the group's entities. Moreover, a specific penalty system has been introduced in Chapter I of Title XI in relation to the filing obligations for the Top-Up Tax, pursuant to Article 46 of Directive (EU) 2022/2523. Chapter II of the aforementioned Title XI regulates the exercise of the options provided for in this law.

Title XII concerns the management of the Top-Up Tax. It establishes that its self-assessment and payment is generally the responsibility of the constituent entities of the multinational or national group located in Spain; however, in certain cases, under the law the formal and material obligations of some taxpayers arising from filing and paying the tax fall to the constituent entities identified by the law as substitutes for the taxpayer.

The self-assessment of the Top-Up Tax and payment of the self-assessed tax liability shall be carried out by the taxpayer or, where appropriate, by the entity designated by the law as a substitute for the taxpayer, in the place and in the manner determined by the head of the Treasury.

Title XIII regulates the Administration’s powers to determine the tax base and other elements of the Top-Up Tax, to which end it will apply the accounting rules set out in article 9 of the law and other regulations set out in the aforementioned legal text.

Title XIV provides for a possible equivalence assessment of national law applicable in other jurisdictions.

Finally, Title XV attributes the exclusive authority to settle disputes arising from this law to the contentious/administrative jurisdiction, after the economic/administrative route has been exhausted.

In addition, the law is supplemented by three additional provisions, six transition provisions and 22 final provisions.

The first additional provision establishes personal income tax deductions for energy efficiency improvement works.

The second additional provision refers to the rebate for hiring by non-profit non-professional sports organisations.

The third additional provision contains a series of exemptions from payment of personal income tax and inheritance and donations tax for the extraordinary amounts paid by employers to their employees and/or family members to cover personal injury and material damage suffered by them as a result of the 2024 DANA storm.

The first transition provision regulates the tax treatment of deferred tax assets and liabilities and of assets transferred during the transitional tax period.

The second transition provision contains transitional exclusion percentages for income linked to economic substance in order to achieve a smooth application of the new tax until 2032.

The third transition provision determines that the domestic top-up tax will not be levied on the ultimate parent entity and its constituent entities located in Spanish territory or on the intermediate parent entity and its constituent entities located in Spanish territory when the ultimate parent is an exempt entity, within the first five years of the initial phase of the multinational group's international activity or in the tax periods beginning within the first five years from the first day of the tax period in which the large-scale domestic group is subject to this law for the first time. In particular, a specific system of penalties shall be introduced for failure to submit the notifications provided for in the third transition provision of this law in due time.

Likewise, the fourth transition provision of this law regulates the non-applicability of the top-up tax in tax periods starting between 31 December 2023 and 31 December 2026, in which qualifying country-by-country information is submitted, by jurisdiction and period.

The fifth transition provision regulates a specific deadline for the submission of the information return and the self-assessment during the transitional tax period.

Finally, the sixth transition provision provides that the undertaxed profits rule will lead to a zero result in jurisdictions in which the ultimate parent entity is located for those multinational groups whose tax period begins before 31 December 2025 and ends before 31 December 2026 and whose ultimate parent entity would have been taxed by a corporate income tax at a nominal tax rate of at least 20 per cent.

The final provisions refer to the following points: one, modification of Law 37/1992, of 28 December, on Value Added Tax; two, modification of Law 38/1992, of 28 December, on Excise Taxes; three, modification of the VAT Regulation, approved by Royal Decree 1624/1992, of 29 December, regarding the VAT settlement period for operations related to bonded warehouses, gasoline, diesel, and other fuels; four, modification of Law 19/1994, of 6 July, modifying the Economic and Tax System of the Canary Islands; five, modification of the Excise Tax Regulation, approved by Royal Decree 1165/1995, of 7 July; six, modification of Law 58/2003, of 17 December, General Tax Law; seven, modification of Law 35/2006, of 28 November, on Personal Income Tax and partial modification of the laws on Corporation Tax, Non-Residents' Income Tax, and Wealth Tax; eight, modification of Law 27/2014, of 27 November, on Corporation Tax; nine, concerning the Tax on the interest income and commissions of certain financial institutions; ten, modification of Royal Decree 1514/2007, of 16 November, which approves the General Accounting Plan, to establish a temporary exception for the accounting and reporting of deferred taxes derived from the implementation of the law establishing a top-up tax to ensure a minimum global taxation level for multinational groups and large-scale national groups, and other national regulations approved to ensure a minimum global taxation level for multinational or large-scale national groups; eleven, modification of Royal Decree 1159/2010, of 17 September, which approves the Rules for the Formulation of Consolidated Annual Accounts and modifies the General

Accounting Plan approved by Royal Decree 1514/2007, of 16 November, and the General Accounting Plan for Small and Medium Enterprises approved by Royal Decree 1515/2007, of 16 November, to establish a temporary exception for the accounting and reporting of deferred taxes derived from the implementation of the law establishing a top-up tax and other national regulations for multinational or large-scale national groups; twelve, modification of Law 56/2007, of 28 December, on Measures to Promote the Information Society; thirteen, modification of Legislative Royal Decree 8/2015, of 30 October, approving the consolidated text of the General Social Security Law; fourteen, modification of Law 38/2022, of 27 December, establishing temporary energy taxes and taxes on credit institutions and financial establishments, creating a temporary solidarity tax for large fortunes, and modifying certain tax regulations; fifteen, safeguarding the status of regulatory provisions; sixteen, regarding the procedure to be followed by the Tax Agency to determine the eligibility and, if applicable, process refunds based on the jurisprudence established by the Supreme Court related to the second transition provision of Law 35/2006, of 28 November, on Personal Income Tax and partial modification of the laws on Corporation Tax, Non-Residents' Income Tax, and Wealth Tax, concerning the tax periods 2019 to 2022; seventeen, regarding VAT on short-term rental housing. The last final provisions refer to: eighteen, the authority by virtue of which this law is enacted; nineteen, the transposition of Directive (EU) 2022/2523; twenty, regarding the authorisation of the General State Budget Act to modify certain aspects of this law; twenty-one, regarding the regulatory authorisation to develop and implement the provisions of this law; and, finally, twenty-two, regarding entry into force and application, specifying that it will take effect for tax periods beginning on or after 31 December 2023, except, with regard to the rule of undertaxed profits, which will take effect for tax periods beginning on or after 31 December 2024.

III

In accordance with the provisions of Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations, this law has been drafted in compliance with the principles of necessity, effectiveness, proportionality, legal certainty, transparency and efficiency.

The principles of necessity and effectiveness are fulfilled, as a new law must be passed given that a new tax is being established in the Spanish legal system, and the power to establish it corresponds to the State, by means of a law, in accordance with Article 133(1) of the Spanish Constitution.

The principle of proportionality has also been complied with, insofar as solely the objectives of the Community legislation—which required the introduction of the measures set out in this legislation—have been observed.

With regard to the principle of legal certainty, the consistency of the text with the rest of the national legal system, as well as with that of the European Union, has been ensured. Indeed, it is meeting the need to transpose the aforementioned Directive (EU) 2022/2523 and incorporate it into Spanish law.

The principle of transparency has been guaranteed by publishing a document subject to prior public consultation on the Treasury’s website, so that comments and observations could be made by those potentially affected by the future regulation, as well as by publishing the regulation and its Regulatory Impact Analysis Report on the website, so that the text could be made known to all citizens during the public hearing and information process.

Finally, in relation to the principle of efficiency, although the new tax will require internal management systems to be modified in order for large-scale national and multinational groups to adapt to the new international taxation paradigms, efforts have been made to ensure that the regulation generates the least administrative burden for citizens, as well as the lowest indirect costs, promoting the rational use of public resources. In this sense, the information and documentation requirements for taxpayers are those that are strictly necessary to guarantee oversight of their activity by the Tax Administration.

In recent years, the marketing of so-called electronic cigarettes as tobacco substitutes has been increasing in Spain and other countries.

The proportion of adolescents and young adults who have tried or use e-cigarettes is remarkable and is increasing significantly, as shown by different surveys.

The liquids used in e-cigarettes are mainly composed of glycerine, propylene glycol and nicotine in varying amounts. In addition to this base, some liquids may contain flavourings to improve palatability.

Although some of the compounds are considered safe when consumed orally, as they are present in a large number of foodstuffs, their use by inhalation can lead to adverse health effects. The same applies to nicotine sachets or other nicotine products which are not part of the target scope of the Tax on Tobacco Products.

In this context, in order to facilitate the proper functioning of the EU internal market for tobacco-related products, the ingredients, marketing requirements and obligations of manufacturers and importers of these products were regulated by Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC.

The same regulation also seeks to ensure a high level of protection for human health, especially for young people, and to fulfil the Union's obligations under the WHO Framework Convention on Tobacco Control.

However, tax harmonisation of these products has not yet been achieved, as Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise tax applied on tobacco products—which is the legislative framework where the taxation of novel tobacco products as well as other tobacco substitutes such as e-cigarettes, nicotine pouches or other nicotine products should be addressed—has not yet been updated.

Until the aforementioned Directive is amended, many of our neighbouring countries have established taxes on the consumption of these products in their territories. Our country has seen fit to join this list by creating the Tax on Liquids for Electronic Cigarettes and other Tobacco-Related Products.

This is a tax on the consumption of liquids for electronic cigarettes, nicotine pouches and other nicotine products throughout Spain, except in Ceuta, Melilla and the Canary Islands, which are excluded from applying the Directive.

As it is considered a special manufacturing tax, it is regulated by Law 38/1992, of 28 December, on Special Taxes, as well as in the Regulation of Special Taxes, approved by Royal Decree 1165/1995, of 7 July, and therefore, by means of this law, certain precepts of these regulations are modified.

INTRODUCTORY TITLE

General Provisions

Article 1. Nature and purpose.

1. The Top-Up Tax is a direct tax of a personal nature levied on the income of the constituent entities of a multinational group or a large-scale domestic group, as referred to in Article 6(1) of this law, when they are located in a jurisdiction with an effective tax rate, calculated at the jurisdictional level, lower than the minimum tax rate, in accordance with the rules of this law, pursuant to Council Directive (EU) 2022/2523 of 15 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union.

2. The purpose of this law is to regulate a Top-Up Tax to ensure a minimum effective taxation of the income of multinational or large-scale domestic groups, as defined in section 6(1) of this law, that is obtained in low-tax jurisdictions, in the form of:

a) A domestic top-up tax, by virtue of which all the constituent entities of a multinational or large-scale national group located in Spanish territory shall be taxed on the tax base obtained by such entities, in accordance with the provisions of this law, by applying the tax rate provided for in Article 23 of this law;

(b) A primary top-up tax, under which the parent entity of a multinational group located in Spanish territory shall be subject to the attributable part of the top-up tax, determined in accordance with this law, in respect of the income of the multinational group's constituent entities which are not located in Spanish territory, where such income has been taxed, at the jurisdictional level, at a tax rate lower than the minimum tax rate, in accordance with this law (income inclusion rule);

(c) A secondary top-up tax, under which a constituent entity of a multinational group located in Spanish territory shall be subject to the amount of top-up tax determined in accordance with this law, in respect of the income of the multinational group’s constituent entities which are not located in Spanish territory and which are not subject to a qualifying income inclusion rule, where such income has been taxed, at the jurisdictional level, at a tax rate lower than the minimum tax rate, in accordance with this law (undertaxed profits rule).

Article 2. Territorial scope of application.

1. The Top-Up Tax will apply throughout Spanish territory.

For the purposes of the provisions of the preceding paragraph, Spanish territory also includes those areas adjacent to the territorial waters over which Spain may exercise the rights to which it is entitled, relating to the marine soil and subsoil, overlying waters, and their natural resources, in accordance with Spanish and international law.

2. The provisions of the previous section shall be understood to be without prejudice to the regional tax systems of economic agreement and economic convention in force, respectively, in the Historical

Territories of the Autonomous Community of the Basque Country and in the Autonomous Region of Navarre.

Article 3. Treaties and conventions.

The provisions of this law shall be without prejudice to the provisions of international treaties and conventions that have become part of the domestic legal system, in accordance with Article 96 of the Spanish Constitution.

TITLE I

Taxable event

Article 4. Taxable event.

1. The taxable event for the Top-Up Tax shall be the receipt of income by constituent entities with a low tax level, in accordance with the provisions of this law.

2. Likewise, the income attributed to them in accordance with the provisions of this law shall be deemed to have been obtained by the constituent entities of a multinational group or a large-scale domestic group.

TITLE II

Definitions

Article 5. Definitions.

For the purposes of this law, the following definitions shall apply:

(1) 'qualified refundable tax credit':

(a) A refundable tax credit designed in such a way that it is to be paid as a cash payment or a cash equivalent to a constituent entity within four years from the date when the constituent entity is entitled to receive the refundable tax credit under the laws of the jurisdiction granting the credit; or

(b) If the tax credit is refundable in part, the portion of the refundable tax credit that is payable as a cash payment or a cash equivalent to a constituent entity within four years from the date when the constituent entity is entitled to receive the partial refundable tax 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;

(2) 'non-qualified refundable tax credit': a tax credit that is a not a qualified refundable tax credit but that is refundable in whole or in part;

(3) 'material competitive distortion': in respect of the application of a specific principle or procedure under a set of generally acceptable accounting principles, an application that results in an aggregate variation of income or expense of more than EUR 75 000 000 in a fiscal year as compared to the amount that would have been determined by applying the corresponding principle or procedure under International Financial Reporting Standards (IFRS or IFRS as adopted by the Union pursuant to Regulation (EC) No 1606/2002, of 19 July 2002 on the application of international accounting standards);

(4) ‘entity’: any legal arrangement that prepares separate financial accounts or any legal person.

(5) ‘constituent entity’;

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

(b) Any permanent establishment of a main entity that is part of a multinational group referred to in point (a);

(6) ‘low-taxed constituent entity’:

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

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

(7) ‘filing constituent entity’: an entity filing a top-up tax information return in accordance with Article 47 of this law;

(8) ‘investment entity’:

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

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

(c) An entity where a minimum of 85 % of the value of the entity is owned by an entity referred to in point (a), provided that substantially all of its income is derived from dividends or equity gains or losses that are excluded from the computation of the qualifying income or loss for the purposes of this law;

(9) ‘pension services entity’: an entity that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities referred to in point 22(a) or to carry out activities that are ancillary to the regulated activities referred to in point 22(a), provided that the pension services entity forms part of the same group as the entities carrying out those regulated activities;

(10) ‘designated filing entity’: the constituent entity, other than the ultimate parent entity, that has been appointed by the multinational group or large-scale domestic group to fulfil the filing obligations set out in Article 47 of this law on behalf of the multinational group or the large-scale domestic group;

(11) ‘parent entity’: an ultimate parent entity which is not an excluded entity, an intermediate parent entity or a partially-owned parent entity;

(12) ‘intermediate parent entity’: a constituent entity that owns, directly or indirectly, an ownership interest in another constituent entity in the same multinational group or large-scale domestic group and that does not qualify as an ultimate parent entity, a partially-owned parent entity, a permanent establishment, an investment entity or an insurance investment entity;

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

(14) 'ultimate parent entity':

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

(b) The main entity of a group as defined in point 24(b).

SWFs that meet the definition of a public entity set out in point 16 of this Article shall not be considered to be the ultimate parent entity;

(15) 'main entity': an entity that includes the financial accounting net income or loss of a permanent establishment in its financial statements;

(16) 'governmental entity': an entity that meets all of the following criteria:

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

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

(i) Fulfilling a government function; or

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

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

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

(17) 'constituent entity-owner': a constituent entity that owns, directly or indirectly, an ownership interest in another constituent entity of the same MNE group or large-scale domestic group;

(18) '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 is deemed to be:

(a) A tax-transparent entity with respect to its income, expenditure, profit or loss to the extent that it is fiscally transparent in the jurisdiction in which its owner is located;

(b) A reverse hybrid entity with respect to its income, expenditure, profit or loss to the extent that it is not fiscally transparent in the jurisdiction in which its owner is located;

For the purposes of this definition, a ‘fiscally transparent entity’ means an entity whose income, expenditure, profit or loss is treated by the laws of a jurisdiction as if it were derived or incurred by the direct owner of that entity in proportion to its interest in that entity;

An ownership interest in an entity or a permanent establishment that is a constituent entity shall be treated as held through a tax transparent structure if that ownership interest is held indirectly through a chain of tax transparent entities.

A constituent entity that is not tax resident and not subject to a covered tax or a qualified domestic top-up tax based on its place of management, place of creation or similar criteria shall be treated as a flow-through entity and a tax transparent entity in respect of its income, expenditure, profit or loss, to the extent that:

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

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

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

(19) ‘permanent establishment’:

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

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

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

(d) A place of business or a deemed place of business that is not described in points (a) to (c) through which operations are conducted outside the jurisdiction where the entity is located, provided that such jurisdiction exempts the income attributable to such operations;

(20) ‘consolidated financial statements’:

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

(b) For groups defined in point (24)(b), the financial statements prepared by an entity in accordance with an acceptable financial accounting standard;

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

(d) Where the ultimate parent entity does not prepare financial statements as described in point (a), (b) or (c), the financial statements that would have been prepared if the ultimate parent entity were required to prepare such financial statements in accordance with:

(i) An acceptable financial accounting standard; or

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

(21) 'investment fund': an entity or arrangement that meets all the following conditions:

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

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

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

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

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

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

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

(22) 'pension fund':

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

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

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

(b) A pension services entity;

(23) 'qualifying income or loss': the financial accounting net income or loss of a constituent entity adjusted in accordance with the rules established in this law;

(24) 'group':

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

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

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

(26) 'large-scale domestic group': any group of which all constituent entities are located in Spanish territory;

(27) 'Top-Up Tax': the domestic top-up tax, the primary top-up tax (income inclusion rule) and the secondary top-up tax (under-taxed profits rule), calculated in accordance with the provisions of this law;

(28) 'Qualified domestic top-up tax': a top-up tax that is implemented in the domestic law of a jurisdiction provided that such jurisdiction does not provide any benefits that are related to those rules, and that:

(a) Provides for the determination of the tax base of the constituent entities located in that jurisdiction in accordance with the rules laid down in Council Directive (EU) 2022/2523 of 15 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union or, as regards third-country jurisdictions, the OECD Model Rules and the application of the minimum tax rate to that tax base for the jurisdiction and the constituent entities in accordance with the rules laid down in the aforementioned Directive or, as regards third-country jurisdictions, the OECD Model Rules; and

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

(29) 'disqualified refundable imputation tax': any tax, other than a qualified imputation tax, accrued or paid by a constituent entity that is:

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

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

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

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

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

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

(d) To a governmental entity, an international organisation, a resident non-profit organisation, a resident pension fund, a resident investment entity that is not part of the MNE group or the large-scale domestic group, or a resident life insurance company to the extent that the dividend is received in connection with resident pension fund activities and is subject to tax in a similar manner as a dividend received by a pension fund.

For the purposes of point (d):

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

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

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

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

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

(32) ‘acceptable financial accounting standard’: International Financial Reporting Standards (IFRS or IFRS as adopted by the Union pursuant to Regulation (EC) No 1606/2002 of the European Parliament and of the Council, of 19 July 2002, on the application of international accounting standards), and the generally accepted accounting principles of Australia, Brazil, Canada, the Member States of the European Union, the Member States of the European Economic Area, Hong Kong (China), Japan, Mexico, New Zealand, the People’s Republic of China, the Republic of India, the Republic of Korea, Russia, Singapore, Switzerland, the United Kingdom and the United States of America;

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

(34) ‘international organisation’: any intergovernmental organisation, including a supranational organisation, or wholly-owned agency or instrumentality thereof that meets all the following criteria:

(a) It is comprised primarily of governments;

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

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

(35) 'non-profit organisation': an entity that meets all the following criteria:

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

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

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

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

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

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

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

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

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

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

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

(36) 'controlling interest': an ownership interest in an entity whereby the interest holder is required, or would have been 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; a main entity is deemed to hold the controlling interests in its permanent establishments; A sovereign wealth fund that meets the definition of a governmental entity, as defined in paragraph 16 of this Article, is deemed not to hold controlling interests;

(37) 'ownership interest in an entity': any equity interest in an entity that carries rights to the profits, capital or reserves of an entity or of a permanent establishment;

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

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

(40) ‘eligible distribution tax system’: a corporate income tax system that:

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

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

(iii) Was in force on or before 1 July 2021;

(41) 'qualified under-taxed profits rule': a set of rules implemented in the domestic law of a jurisdiction, provided that such jurisdiction does not provide any benefits that are related to those rules, and that:

(a) Are equivalent to the rules laid down in Council Directive (EU) 2022/2523 of 15 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union or, as regards third-country jurisdictions, the OECD Model Rules, in accordance with which a jurisdiction collects its allocable share of top-up tax of an MNE group that was not charged under the IIR in respect of the low-taxed constituent entities of that MNE group;

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

(42) ‘qualified income inclusion rule (IIR)’: a set of rules that is implemented in the domestic law of a jurisdiction, provided that such jurisdiction does not provide any benefits that are related to those rules, and that is:

(a) Equivalent to the rules laid down in Council Directive (EU) 2022/2523 of 15 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union or, as regards third-country jurisdictions, the OECD Model Rules, in accordance with which the parent entity of an MNE group or of a large-scale domestic group computes and pays its allocable share of top-up tax in respect of the low-taxed constituent entities of that group;

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

(43) ‘minimum tax rate’: 15 percent;

(44) ‘net book value of tangible assets’: 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.

TITLE III

Subjective scope and taxability rules

Article 6. Taxable persons and taxability rules.

1. A constituent entity located in Spanish territory, in accordance with the provisions of Article 8 of this law, under the terms set out in paragraphs 2, 3, 4 and 5 below, and which forms part of a multinational enterprise group or a large-scale domestic group, shall be subject to the Top-Up Tax when, in at least two of the four tax periods immediately prior to the beginning of the tax period, the net revenue of all the entities forming part of the group, including that of the excluded entities referred to in Article 7 of this law, is equal to or greater than 750 million euros according to the ultimate parent entity's consolidated financial statements.

Where the duration of one or more of the tax periods referred to in the preceding paragraph is more or less than twelve months, the net revenue referred to in that paragraph shall be adjusted proportionately for each of those tax periods.

2. The constituent entities of the groups referred to in the previous section shall be subject to domestic top-up tax on the income obtained in the tax period when the group's effective tax rate in Spanish territory is lower than the minimum tax rate, under the terms set out in this law.

3. The following constituent entities of a MNE group, as referred to in paragraph 1 of this Article, shall be subject to primary top-up tax on the part attributable to their direct or indirect ownership in other constituent entities that are stateless or located in other jurisdictions, in respect of the income obtained by such entities provided that they have been taxed, at the jurisdictional level, at an effective tax rate lower than the minimum tax rate, under the terms set out in this law:

(i) The ultimate parent entity.

(ii) An intermediate parent entity whose ultimate parent entity is located in a third jurisdiction or is an excluded entity that is located in a Member State, unless:

– The ultimate parent entity is subject to and applies a top-up tax in accordance with a qualified income inclusion rule, or

– Another intermediate parent entity directly or indirectly holds a controlling interest in the intermediate parent entity that is located in Spanish territory, and is subject to a top-up tax under an qualified income inclusion rule in its jurisdiction.

(iii) A partially-owned parent entity, unless another partially-owned parent entity directly or indirectly holds the entire ownership in respect of the former and is subject to a top-up tax under a qualified income inclusion rule in its jurisdiction.

4. The constituent entities of an MNE group, pursuant to paragraph 1 of this article, shall be subject to secondary top-up tax in respect of the portion of the top-up tax attributable to other low-tax constituent entities that are stateless or located in other jurisdictions, where the ultimate parent entity is located in a jurisdiction that does not apply a qualified income inclusion rule or is located in a low-tax jurisdiction, as well as where the ultimate parent entity is an excluded entity, under the terms set out in this law.

In addition, the constituent entities of an MNE group, as referred to in paragraph 1 of this Article, shall be subject to secondary top-up tax on the part of the top-up tax attributable to other low-tax constituent entities whose ultimate parent entity is located in a Member State which has opted out of the income inclusion rule and the under-taxed profits rule in accordance with Article 50 of Directive (EU) 2022/2523.

The provisions of this paragraph shall not apply to constituent entities which are investment entities.

5. Notwithstanding the foregoing, in any event, one of the following constituent entities of an MNE group or large-scale domestic group shall be considered to be a substitute for the taxpayer of the Top-Up Tax provided for in paragraph 1 of this Article, and must file the tax return or returns and pay the tax debt or debts under the terms provided for in Articles 50 and 51 of this law, in accordance with the following order of precedence:

i) The ultimate parent entity when it is located in Spanish territory, to the extent that it is not considered to be an excluded entity or, failing that,

ii) The parent entity located in Spanish territory whose net book value of tangible assets in the tax period, as defined in Article 5 (44) of this Law, is the highest among the group's parent entities located in Spanish territory, to the extent that it is not considered an excluded entity or, failing that,

iii) The group's constituent entity located in Spanish territory whose net book value of tangible assets in the tax period, as defined in Article 5 (44) of this Law, is the highest among the group's constituent entities located in Spanish territory, to the extent that it is not considered an excluded entity.

In particular, verification actions shall be carried out with the constituent entity with the status of substitute for the taxpayer under the terms to be developed in regulations.

6. The constituent entities of the MNE group or large-scale domestic group that are considered to be taxpayers and are not liable to pay tax in accordance with the provisions of this article shall be jointly and severally liable for payment of all tax debts owed by the group's constituent entities.

Article 7. Excluded entities.

1. The following entities shall be excluded from the scope of this law and shall not be subject to its application:

(a) Governmental entities, international organisations, non-profit organisations, pension funds, or investment funds that are the ultimate parent entity or real estate investment vehicles that are the ultimate parent entity;

(b) An entity where at least 95 percent of its value is owned by one or more of the entities referred to in point (a), directly or through one or more excluded entities, other than pension services entities; and

(i) It operates exclusively or almost exclusively for the purpose of holding assets or investing funds for the benefit of the entity or entities referred to in point (a); or

(ii) It performs exclusively ancillary activities to those carried out by the entity or entities referred to in point (a);

(c) An entity where at least 85 percent of its equity is owned by one or more of the entities referred to in point (a), directly or through one or more excluded entities, other than pension services entities, provided that substantially all of its profits come from dividends or capital gains or losses which are excluded from the calculation of qualifying income or loss in accordance with Article 10(2)(b) and (c) of this law.

2. As an exception to the provisions of the preceding paragraph, the filing constituent entity may, in accordance with Article 49(1) of this law, choose not to consider any of the entities listed in paragraph 1(b) and (c) of this article to be an excluded entity.

Article 8. Location of constituent entities.

For the purposes of this law:

1. An entity—with the exception of a flow-through entity—is located in the jurisdiction in which it is considered resident for tax purposes on the basis of its place of management, its place of incorporation or a similar criterion.

Where the jurisdiction in which a constituent entity—other than a flow-through entity—is located cannot be determined in accordance with the preceding paragraph, it shall be deemed to be located in the jurisdiction in which it was created.

2. A flow-through entity shall be deemed to be stateless unless it is the ultimate parent entity of a multinational group or a large-scale domestic group or is required to apply an income inclusion rule under this law, in which case the flow-through entity shall be deemed to be resident in the jurisdiction in which it was created.

3. The permanent establishments referred to in Article 5(19)(a) of this law shall be deemed to be located in the jurisdiction in which they are treated as permanent establishments and are subject to taxation on income under the applicable tax convention.

The permanent establishments referred to in Article 5(19)(b) of this law shall be deemed to be located in the jurisdiction in which they are subject to taxation in accordance with the terms of that paragraph.

The permanent establishments referred to in Article 5(19)(c) of this law shall be deemed to be located in the jurisdiction in which they are situated as referred to in that paragraph.

The permanent establishments referred to in Article 5(19)(d) of this law shall be deemed to be stateless.

4. Where a constituent entity is located in two jurisdictions that have signed an applicable tax treaty that is in force, the constituent entity shall be deemed to be located in the jurisdiction in which it is considered resident for tax purposes under that tax treaty.

Paragraph 5 below shall apply if the said tax convention requires the competent authorities to reach a mutual agreement on the constituent entity's residence for tax purposes and such agreement is not reached.

In case of failure to eliminate double taxation under the applicable tax treaty, due to the fact that a constituent entity is resident for tax purposes in both signatory jurisdictions, the provisions of paragraph 5 below shall apply.

5. Where a constituent entity is deemed to be located in two jurisdictions and these jurisdictions do not have an applicable tax treaty, the constituent entity shall be deemed to be located in the jurisdiction in which the highest amount of covered tax for the tax period was paid, disregarding, for

these purposes, the amount resulting from applying the special controlled foreign company tax regime.

If the amount of covered taxes referred to in the preceding paragraph in both jurisdictions is the same or zero, the constituent entity shall be deemed to be located in the jurisdiction in which the amount of the income exclusion linked to economic substance for the tax period, as calculated by the entity in accordance with the provisions of Article 14 of this law, is greater.

If the amount of the income exclusion linked to economic substance in both jurisdictions is the same or zero, the constituent entity will be treated as stateless, unless it is an ultimate parent entity, in which case it will be treated as resident in the jurisdiction in which it was created.

6. Where, as a result of applying paragraphs 4 and 5 above, a parent entity is located in a third jurisdiction in which it is not subject to a qualified income inclusion rule, the other jurisdiction that has a qualified income inclusion rule may require that parent entity to apply such a rule, unless an applicable tax treaty prohibits the application of such a rule.

If, in accordance with the preceding paragraph, the qualified income inclusion rule refers to the rule applicable by a Member State, the parent entity shall apply that rule, unless an applicable tax treaty prohibits its application.

7. Where a constituent entity changes location during the course of a tax period, it shall be deemed to be located in the jurisdiction it was located in at the beginning of that tax period, in accordance with this Article.

TITLE IV.

Taxable base

Article 9. Accounting result. Accounting standards.

1. A constituent entity’s qualifying income or loss shall be calculated by making the adjustments set out in Articles 10 to 13 of this law to the constituent entity's accounting profit or loss for the tax period, before any consolidation adjustment to eliminate intra-group transactions, in accordance with the acceptable or authorised financial accounting standard used to prepare the ultimate parent entity's consolidated financial statements.

2. Where it is not reasonably possible to determine the accounting profit or loss of constituent entity in accordance with the preceding paragraph, the accounting profit or loss of the constituent entity for the tax period may be determined using another acceptable financial accounting standard or an authorised financial accounting standard, provided that:

(a) The constituent entity’s financial accounts are prepared using that accounting standard;

(b) The information contained in the financial accounts is reliable; and

(c) Permanent differences of more than EUR 1 million resulting from applying a particular principle or standard to items of income, expense or transactions, where that principle or standard differs from the financial standard used to prepare the ultimate parent entity's consolidated financial statements, are adjusted to conform to the treatment required for that item in the accounting standard used to prepare the consolidated financial statements.

3. An ultimate parent entity's consolidated financial statements that are not prepared in accordance with an acceptable financial accounting standard and have not been adjusted in the sense referred to in Article 5(20)(c) of this law shall be adjusted to avoid any material competitive distortions.

4. Where an ultimate parent entity does not prepare consolidated financial statements in accordance with Article 5(20)(a), (b) and (c) of this law, such consolidated financial statements shall, in accordance with Article 5(20)(d) of this law, be those that would have been prepared if it had been required to prepare such consolidated financial statements in accordance with:

(a) An acceptable financial accounting standard; or

(b) An authorised financial accounting standard, provided that such consolidated financial statements are adjusted to avoid any material competitive distortions.

5. Where the application of a specific principle or procedure within a set of generally accepted accounting principles would result 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 (IFRS or IFRS as adopted by the Union in accordance with Regulation (EC) No 1606/2002).

Article 10. Adjustments to determine qualifying income or loss.

1. For the purposes of this article, the following definitions apply:

(a) 'net tax expense' means the net amount of the following items:

(i) 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 qualifying income or loss computation;

(ii) Deferred tax assets attributable to a loss for the fiscal year;

(iii) Qualified domestic top-up taxes accrued as an expense;

(iv) Taxes arising pursuant to the rules of this law, Council Directive (EU) 2022/2523 of 15 December 2022 on ensuring an overall minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union, or, as regards third-country jurisdictions, the OECD Model Rules, accrued as an expense; and

(v) Disqualified refundable imputation taxes accrued as an expense;

(b) 'excluded dividend' means a dividend or other distribution received or accrued in respect of an ownership interest, except a dividend or other distribution received or accrued in respect of:

i) A non-significant ownership interest.

A non-significant ownership interest shall mean an ownership interest in which:

– The percentage interest held by the group in an entity carries rights to less than 10 % of the profits, capital or reserves, or voting rights of that entity at the date of the distribution or disposition (a 'portfolio shareholding'); and

– That is economically owned by the constituent entity that receives or accrues the dividend or other distribution for less than one year at the date of the distribution;

(ii) An ownership interest in an investment entity that is subject to an election pursuant to Article 45 of this law;

(c) ‘excluded equity gain or loss’: a gain, profit or loss, included in the financial accounting net income or loss of the constituent entity, arising from:

(i) Changes in the fair value of an ownership interest, except for a portfolio shareholding;

(ii) Ownership interest that is included under the equity method of accounting; and

(iii) The disposal of an ownership interest, except for the disposal of a portfolio shareholding;

(d) ‘included revaluation method gain or loss’: a net gain or loss, increased or decreased by any associated covered taxes for the fiscal year, arising from the application of an accounting method or practice that, in respect of all property, plant and equipment:

(i) Periodically adjusts the carrying value of such property, plant and equipment to its fair value;

(ii) Records the changes in value in “other comprehensive income”; and

(iii) Does not subsequently report the gain or loss accrued in other comprehensive income through profit and loss;

(e) ‘asymmetric foreign currency gain or loss’: a foreign currency gain or loss of an entity whose accounting and tax functional currencies are different and that is:

(i) Included in the computation of the taxable income or loss of a constituent entity and that is attributable to fluctuations in the exchange rate between the accounting functional currency and the tax functional currency of the constituent entity;

(ii) Included in the computation of the financial accounting net income or loss of a constituent entity and that is attributable to fluctuations in the exchange rate between the accounting functional currency and the tax functional currency of the constituent entity;

(iii) Included in the computation of the financial accounting net income or loss of a constituent entity and that is attributable to fluctuations in the exchange rate between a third foreign currency and the accounting functional currency of the constituent entity; and

(iv) Attributable to fluctuations in the exchange rate between a third foreign currency and the tax functional currency of the constituent entity, irrespective of whether such third foreign currency gain or loss is included in the taxable income.

The tax functional currency is the functional currency used to determine the constituent entity’s taxable income or loss for a covered tax in the jurisdiction in which it is located. The accounting functional currency is the functional currency used to determine the constituent entity’s financial accounting net income or loss. A third foreign currency is a currency that is not the constituent entity’s tax functional currency or accounting functional currency;

(f) ‘disqualified expense consisting of illegal payments, fines and penalties’:

(i) An expense accrued by the constituent entity for illegal payments, including bribes and kickbacks; and

(ii) An expense accrued by the constituent entity for fines and penalties that equal or exceed EUR 50,000 or an equivalent amount in the functional currency in which the financial accounting net income or loss of the constituent entity is computed;

(g) 'prior period errors and changes in accounting principles' means a change in the opening equity of a constituent entity at the beginning of a fiscal year that is attributable to:

(i) A correction of an error in the determination of the financial accounting net income or loss in a previous fiscal year that affected the income or expenses able to be included in the computation of the qualifying income or loss in that previous fiscal year, except to the extent such correction of an error resulted in a material decrease of a liability for covered taxes subject to article 21 of this law; and

(ii) A change in accounting principles or policy that affected the income or expenses included in the computation of the qualifying income or loss;

(h) 'accrued pension expense': 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.

2. The financial accounting net income or loss of a constituent entity shall be adjusted by the amount of the following items to determine its qualifying income or loss:

a) Net tax expenses.

b) Excluded dividends.

The filing constituent entity may choose for each constituent entity of the multinational group or large-scale domestic group not to apply the exclusion of these dividends for at least five tax periods.

(c) Excluded equity gains or losses.

(d) Included revaluation method gains or losses;

(e) Gains or losses arising from the disposal of excluded assets and liabilities under article 37 of this law;

(f) Asymmetric foreign currency gains or losses;

(g) Disqualified expenses consisting of illegal payments, fines and penalties;

(h) Prior period errors and changes in accounting principles;

i) Accrued pension expense.

3. At the election of the filing constituent entity, a constituent entity may substitute the amount allowed as a deduction for the computation of its taxable income in its location for the amount expensed in its financial accounts for a cost or expense of such constituent entity that was paid with stock-based compensation.

Where the option to use the stock-options has not been exercised, the amount of stock-based compensation cost or expense that has been deducted from the financial accounting net income or loss of the constituent entity for the computation of its qualifying income or loss for all previous fiscal years shall be included in the fiscal year in which that option has expired.

Where part of the amount of stock-based compensation cost or expense has been recorded in the financial accounts of the constituent entity in fiscal years prior to the fiscal year in which the election is made, an amount equal to the difference between the total amount of stock-based compensation cost or expense that has been deducted for the computation of its qualifying income or loss in those previous fiscal years and the total amount of stock-based compensation cost or expense that would have been deducted for the computation of its qualifying income or loss in those previous fiscal years if the election had been made in such fiscal years shall be included in the computation of the qualifying income or loss of the constituent entity for that fiscal year.

The election provided for in this section shall be made in accordance with Article 49(1) of this law and shall apply consistently to all constituent entities located in the same jurisdiction for the tax period in which the election is made and all subsequent tax periods until such election is revoked.

In the tax period in which the election is revoked, the amount of unpaid stock-based compensation cost or expense deducted pursuant to the election that exceeds the financial accounting expense accrued shall be included in the computation of the qualifying income or loss of the constituent entity.

4. Any transaction between constituent entities located in different jurisdictions that is not recorded in the same amount in the financial accounts of both constituent entities or that is not consistent with the arm’s length principle shall be adjusted so as to be in the same amount and consistent with the arm’s length principle.

A loss from a sale or other transfer of an asset between two constituent entities located in the same jurisdiction that is not recorded consistently with the arm’s length principle shall be adjusted based on the arm’s length principle if that loss is included in the computation of the qualifying income or loss.

For the purposes of this paragraph, ‘arm’s length principle’ means the principle under which transactions between constituent entities are to be recorded by reference to the conditions that would have been obtained between independent enterprises in comparable transactions and under comparable circumstances.

The adjustment referred to in this paragraph shall not be made where it results in double taxation or double counting of losses within the scope of this law.

5. Qualified refundable tax credits referred to in Article 5, point (1) of this law, shall be treated as income for the computation of the qualifying income or loss of a constituent entity. Non-qualified refundable tax credits shall not be treated as income for the computation of the qualifying income or loss of a constituent entity.

6. At the election of the filing constituent entity, gains and losses in respect of assets and liabilities that are subject to fair value or impairment accounting in the consolidated financial statements for a

fiscal year may be determined on the basis of the realisation principle for the computation of the qualifying income or loss.

Gains or losses which result from applying fair value or impairment accounting in respect of an asset or a liability shall be excluded from the computation of the qualifying income or loss of a constituent entity under the first subparagraph.

The carrying value of an asset or a liability for the purpose of determining a gain or a loss under the realisation method shall be the carrying value at the time the asset was acquired or the liability was incurred, or on the first day of the tax period in which the election is made, whichever date is the latest.

The election shall be made in accordance with Article 49(1) of this law and shall apply to all constituent entities located in the jurisdiction to which the election is made, and to all assets and liabilities that are recorded using fair value or impairment accounting, unless the filing constituent entity chooses to limit the election to the tangible assets of the constituent entities or to investment entities.

In the tax period in which the election is revoked, an amount equal to the difference between the fair value of the asset or liability and the carrying value of the asset or liability on the first day of the tax period in which the revocation is made, determined pursuant to the election, shall be included, if the fair value exceeds the carrying value, or deducted, if the carrying value exceeds the fair value, for the computation of the qualifying income or loss of the constituent entities.

7. At the election of the filing constituent entity, the qualifying income or loss of a constituent entity located in a jurisdiction arising from the disposal of local tangible assets located in that jurisdiction by such constituent entity to third parties for a fiscal year may be adjusted as set out in this paragraph. For the purposes of this paragraph, local tangible assets are immovable property located in the same jurisdiction as the constituent entity.

No covered taxes corresponding to a net gain or a net loss in the period in which the option under this paragraph is exercised shall be included in the adjusted covered taxes for the period.

The net gain arising from the disposal of local tangible assets as referred to in the above paragraph in the fiscal year in which the election is made shall be offset against any net loss of a constituent entity located in that jurisdiction arising from the disposal of local tangible assets in the tax period in which the election is made and in the four tax periods prior to that tax period (the ‘five-year period’). The net gain shall be offset first against the net loss, if any, that has arisen in the earliest fiscal year of the five-year period that was not previously offset. Any residual amount of net gain shall be carried forward and offset against any net losses that have arisen in subsequent fiscal years of the five-year period.

Any residual amount of net gain that remains after applying the provisions of the above paragraph shall be spread evenly over the five-year period. The residual amount of net gain allocated to a constituent entity shall be proportionate to the net gain of that constituent entity in the period it makes the election divided by the net gain of all constituent entities in that same period.

For the purposes of calculating this formula, the constituent entities with net gain that should be taken into account are those entities which, in each of the apportionment periods (five-year period), were located in the jurisdiction for which this election was made. Any residual amount of net gain that could not be apportioned according to the above formula must be attributed uniformly to the constituent entities located in that jurisdiction in each of the apportionment periods.

Any adjustment under this paragraph for the tax periods preceding the tax period in which the election is made shall be subject to the provisions of Article 30(1) of this law.

The election provided for in this section shall be made annually in accordance with Article 49(2) of this law.

8. Any expense related to a financing arrangement whereby one or more constituent entities provides credit to or otherwise makes an investment in one or more other constituent entities of the same group (the 'intra-group financing arrangement') shall not be taken into consideration in the computation of the qualifying income or loss of a constituent entity if the following conditions are met:

(a) The constituent entity is located in a low-tax jurisdiction or in a jurisdiction that would have been low-taxed if the expense had not been accrued by the constituent entity;

(b) It can reasonably be anticipated that, over the expected duration of the intra-group financing arrangement, the intra-group financing arrangement will increase the amount of expenses taken into account for the computation of the qualifying income or loss of that constituent entity, without resulting in a commensurate increase in the taxable income of the constituent entity providing the credit (the 'counterparty');

(c) The counterparty is located in a jurisdiction that is not a low-tax jurisdiction or in a jurisdiction that would not have been low-taxed if the income related to the expense had not been accrued by the counterparty.

9. An ultimate parent entity may elect to apply its consolidated accounting treatment to eliminate income, expense, gains and losses from transactions between constituent entities that are located in the same jurisdiction and included in a tax consolidation group for the purpose of computing the net qualifying income or loss of those constituent entities.

The election shall be made in accordance with Article 49(1) of this law.

In the tax period in which the election is made or revoked, appropriate adjustments shall be made so that items of qualifying income or loss are not taken into consideration more than once or omitted as a result of such election or revocation.

10. An insurance company shall exclude from the computation of its qualifying income or loss any amount charged to policyholders for taxes paid by the insurance company in respect of returns to the policyholders.

An insurance company shall include in the computation of its qualifying income or loss any returns to policyholders that are not reflected in its financial accounting net income or loss to the extent that the corresponding increase or decrease in liability to the policyholders is reflected in its financial accounting net income or loss.

11. Any amount that is recognised as a decrease in the equity of a constituent entity and is the result of distributions made or due in respect of an instrument issued by that constituent entity pursuant to

prudential regulatory requirements (the ‘additional tier one capital’) shall be treated as an expense in the computation of its qualifying income or loss.

Any amount that is recognised as an increase in the equity of a constituent entity and is the result of distributions received or due to be received in respect of an additional tier one capital held by the constituent entity shall be included in the computation of its qualifying income or loss.

In no case shall adjustments to equity arising from the issue or redemption of such instruments (additional tier one capital) count towards the constituent entity’s qualifying income or loss.

Article 11. International shipping income exclusion.

1. For the purposes of this article, the following definitions apply:

(a) ‘international shipping income’: net income obtained by a constituent entity from the following activities, provided that the transportation is not carried out via inland waterways within the same jurisdiction:

(i) Transportation of passengers or cargo by ship in international traffic, whether the ship is owned, leased or otherwise at the disposal of the constituent entity;

(ii) Transportation of passengers or cargo by ship in international traffic under slot-chartering arrangements;

(iii) Leasing of a ship to be used for the transportation of passengers or cargo in international traffic on charter fully equipped, crewed and supplied;

(iv) Leasing of a ship used for the transportation of passengers or cargo in international traffic, on a bareboat charter basis, to another constituent entity;

(v) Participation in a pool, a joint business or an international operating agency for the transportation of passengers or cargo by ship in international traffic; and

(vi) 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;

(b) ‘qualified ancillary international shipping income’: net income obtained by a constituent entity from the following activities, provided that such activities are performed primarily in connection with the transportation of passengers or cargo by ships in international traffic:

(i) Leasing of a ship, on a bareboat charter basis, to another shipping enterprise that is not a constituent entity, provided that the duration of the charter does not exceed three years;

(ii) Sale of tickets issued by other shipping enterprises for the domestic leg of an international voyage;

(iii) Leasing and short-term storage of containers or detention charges for the late return of containers;

(iv) Provision of services to other shipping enterprises by engineers, maintenance staff, cargo handlers, catering staff and customer services personnel; and

(v) Investment income, where the investment that generates the income is made as an integral part of the carrying on of the business of operating ships in international traffic.

2. The international shipping income and the qualified ancillary international shipping income of a constituent entity shall be excluded from the computation of its qualifying income or loss, provided that the constituent entity demonstrates that the strategic or commercial management of all ships concerned is effectively carried on from within the jurisdiction where the constituent entity is located.

3. Where the computation of a constituent entity's international shipping income and qualified ancillary international shipping income results in a loss, such loss shall be excluded from the computation of the constituent entity's qualifying income or loss.

4. The aggregated qualified ancillary international shipping income of all constituent entities located in a jurisdiction shall not exceed 50 % of those constituent entities' international shipping income.

5. The costs incurred by a constituent entity that are directly attributable to its international shipping activities listed in paragraph 1, point (a), and qualified ancillary international shipping activities listed in paragraph 1, point (b), shall be allocated to such activities for the purpose of computing the net international shipping income and the net qualified ancillary international shipping income of the constituent entity.

The costs incurred by a constituent entity that indirectly result from its international shipping activities and qualified ancillary international shipping activities shall be deducted from the constituent entity's revenues from such activities to compute the international shipping income and qualified ancillary international shipping income of the constituent entity on the basis of its revenues from such activities in proportion to its total revenues.

6. All direct and indirect costs attributed to a constituent entity's international shipping income and qualified ancillary international shipping income in accordance with paragraph 5 shall be excluded from the computation of its qualifying income or loss.

Article 12. Allocation of the qualifying income or loss between a main entity and a permanent establishment.

1. Where a constituent entity is a permanent establishment as defined in Article 5(19)(a), (b) or (c) of this law, its financial accounting net income or loss shall be the net income or loss reflected in the separate financial accounts of that permanent establishment.

Where a 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.

2. Where a constituent entity meets the definition of a permanent establishment in Article 5(19)(a) or (b) of this law, its financial accounting net income or loss 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 deductible expenses in that jurisdiction.

Where a constituent entity meets the definition of a permanent establishment in Article 5(19)(c) of this law, its financial accounting net income or loss shall be adjusted to reflect only the amounts and items of income and expense that would have been attributable to it in accordance with Article 7 of the OECD Model Tax Convention on Income and Capital, as amended.

3. Where a constituent entity meets the definition of a permanent establishment in Article 5(19)(d) of this law, its financial accounting net income or loss shall be computed based on the amounts and items of income that are exempt in the jurisdiction where the main entity is located and attributable to the operations conducted outside of that jurisdiction and the amounts and items of expense that are not deducted for tax purposes in the jurisdiction where the main entity is located and that are attributable to such operations.

4. The financial accounting net income or loss of a permanent establishment shall not be taken into account in determining the qualifying income or loss of the main entity, except as provided in paragraph 5.

5. A qualifying loss of a permanent establishment shall be treated as an expense of the main entity, and not of the permanent establishment, for the computation of its qualifying income or loss to the extent that the loss of the permanent establishment is treated as an expense in the computation of domestic taxable income of such main entity and is not set off against an item of the domestic taxable income that is subject to tax under the laws of both the jurisdiction of the main entity and the jurisdiction of the permanent establishment.

Qualifying income that is subsequently earned by the permanent establishment shall be treated as qualifying income of the main entity up to the amount of the qualifying loss that was previously treated as an expense of the main entity under the above paragraph.

Article 13. Allocation of the qualifying income or loss of a flow-through entity.

1. The financial accounting net income or loss of a constituent entity that is a flow-through entity in the jurisdiction where it was created shall be reduced by the amount allocable to its owners that are not group entities and that hold their ownership interest in such flow-through entity directly or through a chain of tax transparent entities, unless:

(a) the flow-through entity is an ultimate parent entity; or

(b) the flow-through entity is held, directly or through a chain of tax transparent entities, by an ultimate parent entity referred to in point (a).

2. The financial accounting net income or loss of a constituent entity that is a flow-through entity shall be reduced by the financial accounting net income or loss that should be allocated to another constituent entity pursuant to this law.

3. Where a flow-through entity wholly or partially carries out business through a permanent establishment, its financial accounting net income or loss which remains after applying paragraph 1 of this article shall be allocated to that permanent establishment in accordance with article 12 of this law.

4. Where a tax transparent entity is not the ultimate parent entity, the financial accounting net income or loss of the flow-through entity which remains after applying paragraphs 1 to 3 shall be allocated to its constituent entity-owners in accordance with their ownership interests in the flow-through entity.

5. Where a flow-through entity is a tax transparent entity that is the ultimate parent entity or a reverse hybrid entity, any financial accounting net income or loss of the flow-through entity which remains after applying paragraphs 1 to 3 shall be allocated to the ultimate parent entity or the reverse hybrid entity.

6. Paragraphs 3, 4 and 5 shall be applied separately with respect to each ownership interest in the flow-through entity.

Article 14. Substance-based income exclusion.

1. For the purposes of this article, the following definitions apply:

(a) Eligible employees: full-time or part-time employees of a constituent entity and independent contractors participating in the ordinary operating activities of the MNE group or large-scale domestic group under the direction and control of the MNE group or large-scale domestic group;

(b) Eligible payroll costs: employee compensation expenditures, including salaries, wages and other expenditures that provide a direct and separate personal benefit to the employee, such as health insurance and pension contributions, payroll and employment taxes, and employer social security contributions;

(c) Eligible tangible assets:

(i) property, plant and equipment located in the jurisdiction;

(ii) natural resources located in the jurisdiction;

(iii) a lessee's right of use of tangible assets located in the jurisdiction; and

iv) A licence or similar arrangement from the government for the use of immovable property or exploitation of natural resources that entails significant investment in tangible assets.

2. Unless a filing constituent entity of an MNE group or of a large-scale domestic group elects, in accordance with Article 49(2) of this law, not to apply the substance-based income exclusion for the fiscal year, the net qualifying income for a jurisdiction shall be reduced, for the purpose of computing the top-up tax, by an amount equal to the sum of the payroll carve-out referred to in paragraph 3 of this article and the tangible asset carve-out referred to in paragraph 4 of this article for each constituent entity located in the jurisdiction.

3. The payroll carve-out of a constituent entity located in a jurisdiction shall be equal to 5 % of its eligible payroll costs of eligible employees who perform activities for the MNE group or large-scale domestic group in such jurisdiction, with the exception of eligible payroll costs that are:

(a) Capitalised and included in the carrying value of eligible tangible assets;

(b) Attributable to income that is excluded in accordance with Article 11 of this law.

4. The tangible asset carve-out of a constituent entity located in a jurisdiction shall be equal to 5 % of the carrying value of the eligible tangible assets located in the jurisdiction, with the exception of:

(a) The carrying value of property, including land and buildings, that is held for sale, lease or investment;

(b) The carrying value of tangible assets used to derive income that is excluded in accordance with Article 11 of this law.

5. For the purposes of paragraph 4, the carrying value of eligible tangible assets shall be the average of the carrying value of eligible tangible assets at the beginning and end of the fiscal year, as recorded for the purpose of preparing the consolidated financial statements of the ultimate parent entity, reduced by any accumulated depreciation, amortisation and depletion and increased by any amount attributable to the capitalisation of payroll expenses.

6. For the purposes of paragraphs 3 and 4, 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 12(1) and (2) of this law, provided that the eligible payroll costs and eligible tangible assets are located in the same jurisdiction as the permanent establishment.

The eligible payroll costs and eligible tangible assets of a permanent establishment shall not be taken into account for the eligible payroll costs and eligible tangible assets of the main entity.

Where the income of a permanent establishment was wholly or partially excluded pursuant to Article 13(1) and Article 40(6) of this law, the eligible payroll costs and eligible tangible assets of such permanent establishment shall be excluded in the same proportion from the computation under this article.

7. Eligible payroll costs of eligible employees paid by, and eligible tangible assets owned by, a flow-through entity that are not allocated under paragraph 6 shall be allocated to:

(a) The constituent entity-owners of the flow-through entity, in proportion to the amount allocated to them pursuant to Article 13(4) of this law, provided that the eligible employees and eligible tangible assets are located in the jurisdiction of the constituent entity-owners; and

(b) The flow-through entity if it is the ultimate parent entity, reduced in proportion to the income excluded from the computation of the qualifying income of the flow-through entity pursuant to Article 40(2) and (3) of this law, provided that the eligible employees and eligible tangible assets are located in the jurisdiction of the flow-through entity.

All other eligible payroll costs and eligible tangible assets of the flow-through entity shall be excluded from the substance-based income exclusion computations of the MNE group or large-scale domestic group.

8. 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.

9. The substance-based income exclusion computed under this article shall not include the payroll carve-out and the tangible asset carve-out of constituent entities that are investment entities in that jurisdiction.

10. For the purposes of point 1 of this article:

a) The definition of “eligible employees” includes working members and employee members of cooperatives.

(b) The definition of “Eligible payroll costs” shall include the remuneration received by the working members and employee members, in particular:

1. Salary advances.

2. Social security contributions, both those paid by the cooperative and those paid by the cooperative to the Special System for Self-Employed Workers on behalf of its members.

3. Remuneration of contributions to share capital.

Article 15. Determining the tax base.

1. The tax base for the top-up tax in a jurisdiction with a low tax level, whether in the form of the domestic top-up tax or the primary top-up tax, shall be the positive amount resulting from subtracting the substance-based income exclusion, in accordance with the provisions of this law, from the net qualifying profit of the constituent entities in the jurisdiction for the tax period.

2. The tax base for the top-up tax for the taxpayers referred to in Article 6(2) of this law, in Spanish territory in the tax period, shall be the amount resulting from multiplying the tax base of the top-up tax by the proportion represented by the taxpayer's qualifying income obtained in the tax period, with respect to the aggregate qualifying income in Spanish territory.

The tax base for the top-up tax of the taxpayers referred to in section 6(3) of this law, in a jurisdiction and in the tax period, shall be the amount obtained by multiplying the top-up tax base of a low tax jurisdiction by the proportion of the qualifying income of each constituent entity held in the tax period in respect of the aggregate qualifying income of each low tax jurisdiction, multiplied by the percentage ownership held, directly or indirectly, in each stateless constituent entity or constituent entity based in another jurisdiction.

3. The tax base of the taxpayers referred to in Article 6(4) of this law, in the tax period, shall be the amount determined in accordance with Article 29(10) of this law divided by the tax rate of the low tax jurisdiction.

TITLE V

Determining adjusted covered taxes

Article 16. Covered taxes.

1. For the purposes of this law, the covered taxes of a constituent entity shall include:

(a) Taxes recorded in the financial accounts of a constituent entity with respect to its income or profits, or its share of the income or profits of a constituent entity in which it owns an ownership interest.

(b) Taxes on distributed profits, deemed profit distributions, and non-business expenses imposed under an eligible distribution tax system;

(c) Taxes imposed in lieu of a generally applicable corporate income tax; and

(d) Taxes levied by reference to retained earnings and corporate equity, including taxes on multiple components based on income and equity.

2. The covered taxes of a constituent entity shall not include:

a) The top-up tax accrued in Spanish territory in accordance with the provisions of this law.

(b) The top-up tax accrued under a qualified income inclusion rule.

(c) Domestic top-up tax from another jurisdiction.

(d) Top-up tax attributable to a constituent entity as a result of the application of a qualified undertaxed profits rule;

(e) Disqualified refundable imputation tax.

(f) Taxes paid by an insurance company in respect of amounts excluded under Article 10(10) of this law.

3. Covered taxes in respect of any net gain or loss arising from the disposal of local tangible assets as referred to in Article 10(7), first paragraph, in the tax period in which the election referred to in that paragraph is made shall be excluded from the computation of the covered taxes.

Article 17. Adjusted covered taxes.

1. The adjusted covered taxes of a constituent entity for a tax period shall be determined by adjusting the sum of the current tax expense accrued in its financial accounting net income or loss with respect to covered taxes for the tax period, by:

(a) The net amount of its additions and reductions to covered taxes for the tax period as set out in paragraphs 2 and 3;

(b) The total deferred tax adjustment amount as set out in Article 18 of this law; and

(c) Any increase or decrease in covered taxes recorded in equity or “other comprehensive income” relating to amounts included in the computation of qualifying income or loss that will be subject to tax under local tax rules.

2. The additions to the covered taxes of a constituent entity for the tax period shall include:

a) Any amount of covered taxes accrued as an expense in the profit before taxation in the financial accounts;

b) Any amount of qualifying loss deferred tax asset that has been used in the tax period pursuant to Article 19(2) of this law;

(c) Any amount of covered taxes relating to an uncertain tax position previously excluded under paragraph 3, point (d), that is paid in the fiscal year; and

(d) Any amount of credit or refund in respect of a qualified refundable tax credit that was accrued as a reduction to the current tax expense.

3. The reductions to the covered taxes of a constituent entity for the tax period shall include:

(a) The amount of current tax expense with respect to income excluded from the computation of qualifying income or loss under this law.

(b) Any amount of credit or refund in respect of a non-qualified refundable tax credit that was not recorded as a reduction to the current tax expense

(c) Any amount of covered taxes refunded or credited to a constituent entity that was not treated as an adjustment to current tax expense in the financial accounts, unless it relates to a qualified refundable tax credit

(d) The amount of current tax expense that relates to an uncertain tax position.

(e) Any amount of current tax expense that is not expected to be paid within three years after the end of the fiscal year.

4. For the purpose of computing adjusted covered taxes, where an amount of covered tax is described in more than one point above, it shall only be taken into account once.

5. Where, for a fiscal year, there is no net qualifying income in a jurisdiction and the amount of adjusted covered taxes for that jurisdiction is negative and less than the expected adjusted covered taxes, the amount equal to the difference between the amount of adjusted covered taxes and the amount of expected adjusted covered taxes shall be treated as an additional top-up tax for that fiscal year. The amount of additional top-up tax shall be allocated to each constituent entity in the jurisdiction in accordance with Article 30(3) of this law.

Notwithstanding the foregoing, the filing constituent entity may elect to treat the difference between the expected adjusted covered taxes and the adjusted covered taxes referred to in the preceding paragraph as an additional top-up tax in a subsequent tax period in which qualifying income is earned in the jurisdiction, thereby reducing the adjusted covered taxes of the subsequent tax period to zero. The excess, if any, shall be carried forward to subsequent tax periods and shall be allocated in accordance with the conditions set out in this paragraph.

The election provided for in this paragraph shall be made in accordance with Article 49(3) of this law and shall apply in all subsequent tax periods until the difference referred to in the previous paragraph has been fully integrated into the subsequent tax periods as additional top-up tax.

In the event that the multinational group or large-scale domestic group no longer has constituent entities in the jurisdiction, the amount outstanding to be integrated as additional top-up tax shall be carried forward to subsequent tax periods and shall be charged under the conditions set out in this paragraph from the tax period in which the group again has constituent entities in that jurisdiction.

For the purposes of this paragraph, expected adjusted covered tax is defined as the result of multiplying the jurisdiction's qualified net loss by the minimum tax rate.

6. For the purposes set out in this article, the rebate on the full amount of corporation tax set out in article 34(2) of Law 20/1990, of 19 December, on the Tax System for Cooperatives, and applicable to specially protected cooperatives, will be considered an “qualified refundable tax credit”, thereby increasing the entity's covered taxes in the tax period.

The deductions and/or rebates on the gross tax payable established specifically for specially protected cooperatives in the respective provincial regulations governing the tax system for cooperatives in the Historical Territories of the Autonomous Community of the Basque Country and the Autonomous Region of Navarre will receive similar treatment.

Article 18. Total deferred tax adjustment amount.

1. For the purposes of this article, the following definitions apply:

a) Disallowed accrual:

(i) Any movement in deferred tax expense accrued in the financial accounts of a constituent entity which relates to an uncertain tax position; and

(ii) Any movement in deferred tax expense accrued in the financial accounts of a constituent entity which relates to distributions from a constituent entity.

(b) Unclaimed accrual: 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 the time period set out in paragraph 7 of this article and which the filing constituent entity annually elects, in accordance with Article 49(2) of this law, not to include in the total deferred tax adjustment amount for such fiscal year.

2. Where the tax rate applied for the purpose of computing the deferred tax expense is equal or below the minimum tax rate, the total deferred tax adjustment amount to be added to the adjusted covered taxes of a constituent entity for a fiscal year shall be the deferred tax expense accrued in its financial accounts with respect to covered taxes, subject to the adjustments under paragraphs 3 to 6 of this article.

Where the tax rate applied for the purpose of computing the deferred tax expense is above the minimum tax rate, the total deferred tax adjustment amount to be added to the adjusted covered taxes of a constituent entity for a fiscal year shall be the deferred tax expense accrued in its financial accounts with respect to covered taxes recast at the minimum tax rate.

3. The total deferred tax adjustment amount shall be increased by:

(a) Any amount of disallowed accrual or unclaimed accrual paid during the fiscal year.

(b) Any amount of recaptured deferred tax liability determined in a preceding fiscal year that has been paid during the fiscal year.

4. Where, for a fiscal year, a loss deferred tax asset is not recognised in the financial accounts because the recognition criteria are not met, the total deferred tax adjustment amount shall be reduced by the amount that would have reduced the total deferred tax adjustment amount if the recognition criteria had been met.

5. The total deferred tax adjustment amount shall not include:

(a) The amount of deferred tax expense or income with respect to items excluded from the computation of qualifying income or loss under the provisions of this law.

(b) The amount of deferred tax expense or income with respect to disallowed accruals and unclaimed accruals.

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

(d) The amount of deferred tax expense or income arising from a re-measurement with respect to a change in the applicable domestic tax rate.

e) The amount of deferred tax expense or income with respect to the generation and use of tax credits.

6. Where a deferred tax asset that is attributable to a qualifying loss of a constituent entity has been recorded for a fiscal year at a rate lower than the minimum tax rate, it may be recast at the minimum tax rate in the same fiscal year, provided that the taxpayer is able to demonstrate that the deferred tax asset is attributable to a qualifying loss.

Where a deferred tax asset is increased pursuant to the above paragraph, the total deferred tax adjustment amount shall be reduced accordingly.

7. A deferred tax liability that is not reversed and whose amount is not paid within the five subsequent fiscal years shall be recaptured to the extent it was taken into account in the total deferred tax adjustment amount of a constituent entity, provided that the provisions of the following section do not apply.

The amount of the recaptured deferred tax liability determined for the current fiscal year shall be treated as a reduction to the covered taxes in the fifth fiscal year preceding the current fiscal year, and the effective tax rate and top-up tax of that fiscal year shall be recomputed in accordance with Article 30(1) of this law. The recaptured deferred tax liability for the current fiscal year shall be 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 fiscal year preceding the current fiscal year that has not reversed by the end of the last day of the current fiscal year.

8. By way of derogation from paragraph 7, where a deferred tax liability is a recapture exception accrual, it shall not be recaptured even if it is not reversed or paid within the five subsequent years. A recapture exception accrual shall be the amount of tax expense accrued in the period that is attributable to changes in associated deferred tax liabilities, in respect of the following items:

a) Cost recovery allowances on tangible assets.

(b) Cost of a licence or similar arrangement from a government for the use of immovable property or exploitation of natural resources which entails significant investment in tangible assets.

(c) Research and development expenses.

(d) De-commissioning and remediation expenses.

(e) Fair value accounting on unrealised net gains.

f) Foreign currency exchange net gains.

(g) Insurance reserves and insurance policy deferred acquisition costs.

h) 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.

(i) Additional amounts accrued as a result of accounting principle changes with respect to items listed in points (a) to (h).

Article 19. Qualifying loss election.

1. By way of derogation from Article 18, a filing constituent entity may make a qualifying loss election for a jurisdiction, according to which a qualifying loss deferred tax asset shall be determined for each fiscal year in which there is a net qualifying loss in that jurisdiction. For that purpose, the qualifying loss deferred tax asset shall be equal to the net qualifying loss for a fiscal year for the jurisdiction multiplied by the minimum tax rate.

A qualifying loss election shall not be made for a jurisdiction with an eligible distribution tax system under Article 42 of this law.

2. The qualifying loss deferred tax asset determined pursuant to paragraph 1 shall be used in any subsequent fiscal year in which there is net qualifying income for the jurisdiction in an amount equal to the net qualifying income multiplied by the minimum tax rate or, if lower, the amount of qualifying loss deferred tax asset that is available.

3. The qualifying loss deferred tax asset determined pursuant to paragraph 1 shall be reduced by the amount that is used for a fiscal year and the balance shall be carried forward to subsequent fiscal years.

4. Where a qualifying loss election is revoked, any remaining qualifying loss deferred tax asset determined pursuant to paragraph 1 of this article shall be reduced to zero as of the first day of the first fiscal year in which the qualifying loss election is no longer applicable.

5. The qualifying loss election shall be filed with the first top-up tax information return referred to in Article 47 of this law of the MNE group or large-scale domestic group that includes the jurisdiction for which the election is made.

6. Where a flow-through entity which is the ultimate parent entity of an MNE group or of a large-scale domestic group makes a qualifying loss election under this article, the qualifying loss deferred tax asset shall be computed by reference to the qualifying loss of the flow-through entity after reduction pursuant to Article 40(3) of this law.

Article 20. Specific allocation of covered taxes incurred by certain types of constituent entities.

1. A permanent establishment shall be allocated the amount of any covered taxes that are included in the financial accounts of a constituent entity and that relate to qualifying income or loss of that permanent establishment.

2. A constituent entity-owner shall be allocated the amount of any covered taxes that are included in the financial accounts of a tax transparent entity and that relate to qualifying income or loss allocated to that constituent entity-owner in accordance with Article 13(4) of this law.

3. A constituent entity shall be allocated the amount of any covered taxes included in the financial accounts of its direct or indirect constituent entity-owners under a controlled foreign company tax regime, on their share of the controlled foreign company's income.

4. A constituent entity that is a hybrid entity or reverse hybrid entity shall be allocated the amount of any covered taxes included in the financial accounts of its constituent entity-owner and which relate to qualifying income of the hybrid entity or reverse hybrid entity.

A ‘hybrid entity’ means an entity treated as fiscally transparent in the jurisdiction in which its owner is located, but which lacks such status in the jurisdiction where the entity is located.

Pursuant to Article 5(18)(b) of this law, a reverse hybrid entity is an entity which is considered fiscally transparent in the jurisdiction in which the entity is located but is not considered fiscally transparent in the jurisdiction in which its owner is located.

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

6. A constituent entity that was allocated covered taxes pursuant to paragraphs 3 and 4 of this article in respect of passive income shall include such covered taxes in its adjusted covered taxes in an amount equal to the covered taxes allocated in respect of such passive income.

By way of derogation from the above paragraph, the constituent entity referred to in the above paragraph shall include in its adjusted covered taxes the amount resulting from the multiplication of the top-up tax percentage for the jurisdiction by the amount of the constituent entity’s passive income that is included under a controlled foreign company tax regime or a fiscal transparency rule where the result is lower than the amount determined under the above paragraph. For the purposes of this subparagraph, the top-up tax percentage for the jurisdiction shall be determined without regard to covered taxes incurred with respect to such passive income by the constituent entity-owner.

Any covered taxes of the constituent entity-owner incurred with respect to such passive income that remains after the application of this paragraph shall not be allocated under paragraphs 3 and 4.

For the purposes of this paragraph, ‘passive income’ means the following items of income included in qualifying income to the extent a constituent entity-owner has been subject to tax under a controlled foreign company tax regime or as a result of an ownership interest in a hybrid entity:

(a) A dividend or dividend equivalents;

(b) Interest or interest equivalents;

(c) Rent;

(d) Royalty;

(e) Annuity; or

f) Net gains from property of a type that produces income described in points (a) to (e).

7. Where the qualifying income of a permanent establishment is treated as qualifying income of the main entity in accordance with Article 12(5) of this law, any covered taxes arising in the jurisdiction where the permanent establishment is located and associated with such income shall be treated as covered taxes of the main entity for an amount not exceeding such income multiplied by the highest tax rate on ordinary income in the jurisdiction where the main entity is located.

Article 21. Post-filing adjustments and tax rate changes.

1. Where a constituent entity records an adjustment in its financial accounts that results in an increase in its covered taxes for a previous fiscal year, such adjustment shall be treated as an adjustment to covered taxes in the fiscal year in which the adjustment is made.

Where there is a decrease in covered taxes that were included in the constituent entity's adjusted covered taxes for a previous fiscal year, the effective tax rate and top-up tax for such fiscal year shall be recomputed in accordance with Article 30(1) of this law by reducing adjusted covered taxes by the amount of the decrease in covered taxes. The qualifying income for the fiscal year and any previous fiscal years shall be adjusted accordingly.

Notwithstanding the preceding paragraph, at the annual election of the filing constituent entity made in accordance with Article 49(2) of this law, an immaterial decrease in covered taxes may be treated as an adjustment to covered taxes in the fiscal year in which the adjustment is made. An immaterial decrease in covered taxes shall be an aggregate decrease of less than 1 million euro in the adjusted covered taxes determined for the jurisdiction for the fiscal year.

2. Where the applicable domestic tax rate is reduced below the minimum tax rate and such reduction results in a deferred tax expense, the amount of the resulting deferred tax expense shall be treated as an adjustment to the constituent entity's liability for covered taxes that are taken into consideration pursuant to Article 17 for a previous fiscal year.

3. Where a deferred tax expense was taken into account at a rate lower than the minimum tax rate and the applicable tax rate is later increased, the amount of deferred tax expense that results from such increase shall be treated upon payment as an adjustment to a constituent entity's liability for covered taxes claimed for a previous fiscal year in accordance with Article 17.

The adjustment under the above paragraph shall not exceed an amount equal to the deferred tax expense recast at the minimum tax rate.

4. Where more than 1 million euro of the amount accrued by a constituent entity as 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 top-up tax for the fiscal year in which the unpaid amount was claimed as a covered tax shall be recomputed in accordance with Article 30(1) by excluding such unpaid amount from the adjusted covered taxes.

TITLE VI

Effective tax rate

Article 22. Determination of the effective tax rate.

1. The effective tax rate of a multinational group or a large-scale domestic group shall be calculated for each tax period and for each jurisdiction in which there is net qualifying income.

The jurisdiction's effective tax rate shall be the result of dividing the adjusted covered taxes by the net qualifying income of the constituent entities located in that jurisdiction, expressed in percentage terms, rounded to four decimal places.

2. The adjusted covered taxes of the constituent entities shall be the sum of the adjusted covered taxes of all constituent entities located in the jurisdiction determined in accordance with the provisions of this law.

3. The net qualifying income or loss of the constituent entities located in the jurisdiction for a tax period shall be the difference between the qualifying income and the qualifying loss of such constituent entities.

The qualifying income of the constituent entities shall be the positive sum of the qualifying income of all constituent entities located in the jurisdiction, determined in accordance with the provisions of this law.

The qualifying losses of the constituent entities shall be the sum of the qualifying losses of all constituent entities located in the jurisdiction, determined in accordance with the provisions of this law.

4. Adjusted covered taxes and qualifying income or loss of constituent entities that are investment entities shall be excluded from the computation of the effective tax rate in accordance with paragraph 1 and the computation of the net qualifying income in accordance with paragraph 2.

5. The effective tax rate of each stateless constituent entity shall be computed, for each fiscal year, separately from the effective tax rate of all other constituent entities.

TITLE VII

Tax debt

CHAPTER I

Tax rate

Article 23. Top-up tax rate.

For the purposes of calculating the top-up tax, the tax rate applicable to the taxpayers referred to in paragraphs 2, 3 and 4 of Article 6 of this law, in the tax period and in relation to each jurisdiction, shall be the positive difference between the minimum tax rate referred to in point 43 of Article 5 of this law and the effective tax rate in each jurisdiction, determined in accordance with the provisions of Article 22 of this law, expressed as a percentage.

CHAPTER II

Top-Up Tax Amount

Article 24. Top-Up Tax Amount.

1. The top-up tax liability of a constituent entity located in Spanish territory in the tax period will be the result of adding together the domestic top-up tax liability, the primary top-up tax liability and the secondary top-up tax liability.

The amount of the domestic top-up tax shall be the top-up tax payable by the taxpayers referred to in Article 6(2) of this law. Its amount is the result of applying the domestic top-up tax, regulated in Chapter III of this Title, in accordance with paragraph 5 of this provision.

The amount of the primary top-up tax shall be the top-up tax payable by the taxpayers referred to in Article 6(3) of this law. Its amount is the result of applying the income inclusion rule regulated in Chapter IV of this Title, in accordance with paragraph 5 of this provision.

The amount of the secondary top-up tax shall be the top-up tax payable by the taxpayers referred to in Article 6(4) of this law, in accordance with the provisions of Chapter V of this Title.

2. Where in the tax period the effective tax rate of the jurisdiction in which the constituent entities of a multinational or large-scale domestic group are located is lower than the minimum tax rate, the taxpayers referred to in Article 6(2) and (3) of this law shall calculate the top-up tax for that jurisdiction. They shall also determine the top-up tax applicable to each of the constituent entities which have qualifying income and which have been included in the computation of the net qualifying income of that jurisdiction.

For the purposes of the provisions of this paragraph, the rules contained in Chapters III, IV, V and VI of this Title shall be taken into consideration.

3. The rate of top-up tax levied in a jurisdiction for a tax period shall be the positive difference, in percentage points, between the minimum tax rate and the effective tax rate calculated in accordance with the provisions of Article 22 of this law.

4. The top-up tax for a low tax jurisdiction in a tax period shall be the positive amount, if any, resulting from multiplying that jurisdiction’s tax rate, as referred to in the preceding paragraph, by the jurisdiction’s tax base, determined in accordance with the provisions of section 15(1) of this law.

Finally, the amount of a jurisdiction's top-up tax for the tax period will be increased by any additional top-up tax due and reduced by the amount of qualified domestic top-up tax that would have been due in other low-tax jurisdictions.

For the purposes of the previous paragraph, the following definitions shall apply:

– Additional top-up tax means the amount of tax calculated in accordance with Article 30 of this law in the tax period.

– Qualified domestic top-up tax means the amount of qualified domestic top-up tax from another jurisdiction in the tax period, where it does not meet the requirements of section 34 of this law, provided that the financial accounting net income or loss of the constituent entities located in that jurisdiction has been determined in accordance with section 9(1) of this law or in accordance with another acceptable financial accounting standard or an authorised financial accounting standard appropriately adjusted to prevent any significant material competitive distortions.

5. A constituent entity's top-up tax in the tax period is the result of multiplying the top-up tax of the jurisdiction in which it is located by the proportional amount of the qualifying income of the constituent entity in respect of the aggregate qualifying income of all constituent entities located in the jurisdiction.

The qualifying income of a constituent entity for a jurisdiction in the tax period means income determined in accordance with the provisions of this law.

The aggregate qualifying income of all constituent entities in the jurisdiction for the tax period means the sum of the qualifying income of all constituent entities located in that jurisdiction for the tax period.

6. If the top-up tax of a low-tax jurisdiction results from a recomputation pursuant to Article 30(1) of this law and there is no net qualifying income in the jurisdiction for the fiscal year, the top-up tax shall

be allocated to each constituent entity located in the jurisdiction using the formula set out in paragraph 4 of this article, based on the qualifying income of the constituent entities in the fiscal years for which the recomputations pursuant to Article 30(1) are performed.

7. The top-up tax of each stateless constituent entity shall be computed, for each fiscal year, separately from the top-up tax of all other constituent entities.

8. The top-up tax liability for Spanish territory in the tax period shall be the result of adding to the amount of top-up tax from the Spanish jurisdiction in the tax period, whether in the form of domestic top-up tax or primary top-up tax, determined in accordance with paragraph 4 of this article, the amount of secondary top-up tax corresponding to the Spanish jurisdiction in accordance with the provisions of paragraph 1 of Article 29 of this law.

9. For the purposes of this Title, the exchange rate in force on the last day of the period established in Article 50 of this law for payment in the voluntary period or on the date of payment, whichever is earlier, shall be used.

CHAPTER III

Domestic top-up tax

Article 25. Domestic top-up tax.

1. The taxpayers referred to in Article 6(2) of this law shall be subject to the domestic top-up tax referred to in this Chapter.

The domestic top-up tax shall be determined in accordance with the provisions of Article 24 of this law, without prejudice to the special provisions laid down for certain entities in Title X, which shall determine such tax in accordance with the provisions of their specific rules. For these purposes, in the domestic top-up tax, the term jurisdiction shall refer to Spanish territory.

2. For the purpose of calculating the domestic top-up tax, the financial accounting net income or loss of the constituent entities shall be determined in accordance with Article 9(1) of this law. Where it is not possible to reasonably determine the constituent entity’s financial accounting net income or loss in accordance with the above, the entity’s financial accounting net income or loss for the tax period shall be determined in accordance with the accounting standards generally accepted in Spanish territory used to prepare the constituent entity's financial statements.

Permanent differences of more than EUR 1 million resulting from applying a particular principle or standard to items of income, expense or transactions, where that principle or standard differs from the financial standard used to prepare the ultimate parent entity's consolidated financial statements, shall be adjusted to conform to the treatment required for that item in the accounting standard used to prepare the consolidated financial statements.

In any case, if the constituent entity's tax period differs from the accounting period of the ultimate parent entity taken into consideration to prepare the consolidated financial statements, the provisions of Article 9 of this Law shall apply.

3. For the purposes of calculating the effective tax rate in accordance with Article 22 of this law, for the taxpayers referred to in Article 6(2) of this law, the following shall not be taken into account:

(a) Covered taxes of the direct or indirect owners of a constituent entity subject to a controlled foreign company tax regime which have been allocated, in accordance with Article 20(3) of this law, to that constituent entity located in Spanish territory.

(b) Covered taxes of the main entity which have been allocated, in accordance with Article 20(1) of this law, to a permanent establishment located in Spanish territory.

(c) Covered taxes of the owner of a constituent entity which is a hybrid entity, which have been allocated, in accordance with Article 20(4) of this law, to the hybrid entity located in Spanish territory.

(d) Covered taxes of the owner of a constituent entity which have been allocated, in accordance with Article 20(5) of this law, to the constituent entity located in Spanish territory which has made the distributions. In any event, covered taxes corresponding to withholdings on distributions made by a constituent entity located in Spanish territory will be allocated to that entity for the purposes of calculating the domestic top-up tax.

4. Notwithstanding the foregoing, the domestic top-up tax liability corresponding to those constituent entities that are considered to be securitisation entities or mechanisms must be paid by the remaining constituent entities of the multinational or large-scale domestic group located in Spanish territory that have qualifying income in the tax period, in the proportion that the qualifying income of each of the remaining constituent entities obtained in the tax period represents with respect to the aggregate qualifying income in Spanish territory. However, if there are no other constituent entities of the MNE group or large-scale domestic group with qualifying income in the tax period, other than the constituent entities that qualify as securitisation entities or mechanisms, the latter must pay the domestic top-up tax for the period.

A securitisation entity or mechanism means an entity or mechanism that participates in a securitisation arrangement and meets the following requirements:

(a) The entity or mechanism only engages in activities that allow for adopting one or more securitisation agreements.

(b) Its assets secure the rights of its creditors or the creditors of another entity or securitisation mechanism.

(c) The cash flows generated by its assets are used to pay its creditors or the creditors of another securitisation entity or mechanism, on an annual or more frequent basis, except in the case of:

(i) Cash flows to be retained to cover an amount of profit, as required by the securitisation agreement, for eventual distribution to unitholders or shareholders.

(ii) Cash flows which, in accordance with the securitisation agreement, serve either or both of the following purposes:

1. Make provisions for future payments set out in the securitisation agreement.

2. Maintain or improve the creditworthiness of the entity or mechanism.

An entity or mechanism with profits shall not qualify as a securitisation entity or mechanism unless the profits referred to in point (c)(i) of this paragraph are insignificant in relation to the entity or mechanism’s income.

A securitisation agreement shall mean an agreement which:

(a) Is entered into for the purpose of pooling and bundling a portfolio of assets (or risks associated with those assets) for investors that are not constituent entities of the MNE group or large-scale domestic group, in such a way as to legally segregate one or more clearly identified groups of assets; and

(b) Seeks to limit investors' exposure to the insolvency risk of the entity holding the legally segregated assets by controlling the ability of identified creditors of that entity (or another entity set forth in the agreement) to pursue claims against it through binding contracts entered into by those creditors.

CHAPTER IV

Primary top-up tax: allocation of the tax and income inclusion rule offset

Article 26. Allocation of the primary top-up tax.

1. The primary top-up tax owed by the taxpayer referred to in Article 6(3) of this law, which corresponds to a constituent entity located in another low-tax jurisdiction, shall be equal to the top-up tax of such constituent entity, calculated in accordance with the provisions of Article 24 of this law, in the proportion that corresponds to the parent entity calculated in accordance with the provisions of the following paragraph.

Such a taxpayer shall also be subject to the primary top-up tax applicable to the low-tax stateless entities in which it holds an ownership interest.

2. A parent entity’s allocable share in the primary top-up tax with respect to a low-taxed constituent entity shall be the proportion of the parent entity’s ownership interest in the qualifying income of the low-taxed constituent entity. That proportion shall be equal to the qualifying income of the low-taxed constituent entity for the fiscal year, reduced by the amount of such income attributable to ownership interests held by other owners, divided by the qualifying income of the low-taxed constituent entity for the fiscal year.

The amount of qualifying income attributable to ownership interests in a low-taxed constituent entity held by other owners shall be the amount that would have been treated as attributable to such owners under the principles of the acceptable financial accounting standard used in the ultimate parent entity’s consolidated financial statements if the low-taxed constituent entity’s net income were equal to its qualifying income and:

(a) The parent entity had prepared consolidated financial statements in accordance with that accounting standard (the ‘hypothetical consolidated financial statements’);

(b) The parent entity owned a controlling interest in the low-taxed constituent entity such that all of the income and expenses of the low-taxed constituent entity were consolidated on a line-by-line basis with those of the parent entity in the hypothetical consolidated financial statements;

(c)All of the low-taxed constituent entity’s qualifying income were attributable to transactions with persons that are not group entities; and

(d) All ownership interests not directly or indirectly held by the parent entity were held by persons other than group entities.

Article 27. Offset rules.

Where a parent entity that is a taxpayer pursuant to article 6(3) of this law holds an ownership interest in a low-taxed constituent entity indirectly through an intermediate parent entity or a partially-owned parent entity that is subject to a qualified income inclusion rule for the fiscal year, the primary top-up tax due by the taxpayer shall be reduced by an amount equal to the portion of the first-mentioned parent entity's allocable share of the top-up tax which is due by the intermediate parent entity or the partially-owned parent entity in accordance with article 26(2) of this law.

CHAPTER V

Secondary top-up tax: application of the under-taxed profits rules

Article 28. Application of the under-taxed profits rule.

1. Where the ultimate parent entity of an MNE group is located in a third-country jurisdiction that does not apply a qualified income inclusion rule, or where the ultimate parent entity of an MNE group is an excluded entity, the constituent entities referred to in Article 6(4) of this law shall be subject in the tax period to the amount of top-up tax allocable to Spanish territory pursuant to the under-taxed profits rule, in accordance with Article 29 of this law.

2. Where the ultimate parent entity of an MNE group is located in a third-country jurisdiction with a low level of taxation, the constituent entities referred to in Article 6(4) of this law shall be subject in the tax period to the amount of top-up tax corresponding to the ultimate parent entity and its constituent entities located in the same jurisdiction, attributable to Spanish territory by virtue of the under-taxed profits rule, in accordance with Article 29 of this law.

The preceding paragraph shall not apply where the ultimate parent entity in the low-tax jurisdiction is subject in the tax period to a qualified income inclusion rule in relation to itself and its constituent entities located in the low-tax jurisdiction.

3. Where the ultimate parent entity of an MNE group is located in a Member State which has opted for the deferred application of the income inclusion and under-taxed profits rules in accordance with Article 50(1) of Council Directive (EU) 2022/2523 of 15 December, the taxpaying constituent entities referred to in Article 6(4) of this law shall be subject to the amount of top-up tax referred to in paragraphs 1 and 2 of this article that are allocable to Spanish territory under the under-taxed profits rule in accordance with Article 29 of this law, during the tax periods in which that option is in force.

4. Constituent entities which are investment entities shall not be subject to the provisions of this article.

Article 29. Computation and allocation of the secondary top-up tax associated with the under-taxed profits rule.

1. The secondary top-up tax amount allocated to Spanish territory shall be computed by multiplying the total UTPR top-up tax, as determined in accordance with paragraph 2 of this article, by the Spanish territory's UTPR percentage, as determined in accordance with paragraph 5 of this article.

2. The total secondary top-up tax associated with the under-taxed profits rule for a fiscal year shall be equal to the sum of the top-up tax computed for each low-taxed constituent entity of the MNE group

for that fiscal year in accordance with Article 24 of this law, subject to the adjustments set out in paragraphs 3 and 4 of this Article.

3. The UTPR top-up tax of a low-taxed constituent entity shall be equal to zero where, for the fiscal year, all of the ultimate parent entity's ownership interests in such low-taxed constituent entity are held directly or indirectly by one or more parent entities that are required to apply a qualified IIR in respect of that low-taxed constituent entity for that fiscal year.

4. Where paragraph 3 does not apply, the UTPR top-up tax of a low-taxed constituent entity shall be reduced by a parent entity's allocable share of the top-up tax of that low-taxed constituent entity that is brought into charge under qualified IIR.

5. The percentage of the under-taxed profits rule corresponding to Spanish territory will be calculated, for each tax period and MNE group, by adding the following two factors:

(i) 50 percent of the quotient between the number of employees in Spanish territory and the number of employees in all jurisdictions with an under-taxed profit rule.

(ii) 50 percent of the quotient between the total value of tangible assets in Spanish territory and the total value of tangible assets in all jurisdictions with an under-taxed profit rule.

For the purposes of this paragraph:

(a) The number of employees in Spanish territory is the total number of employees of all the constituent entities of the MNE group located in Spanish territory;

(b) The number of employees in all UTPR jurisdictions is the total number of employees of all the constituent entities of the MNE group located in a jurisdiction that has a qualified UTPR in force for the fiscal year.

(c) The total value of tangible assets in Spanish territory is the sum of the net book value of tangible assets of all the constituent entities of the MNE group located in Spanish territory;

(d) The total value of tangible assets in all UTPR jurisdictions is the sum of the net book value of tangible assets of all the constituent entities of the MNE group located in a jurisdiction that has a qualified UTPR in force for the fiscal year.

6. The number of employees shall be the number of employees on a full-time equivalent basis of all constituent entities located in the relevant jurisdiction, including independent contractors provided that they participate in the ordinary operating activities of the constituent entity.

The tangible assets shall include the tangible assets of all constituent entities located in the relevant jurisdiction but shall not include cash or cash equivalent, intangible or financial assets.

7. The employees whose payroll costs are included in the separate financial accounts of a permanent establishment as determined by Article 12(1) of this law and adjusted in accordance with Article 12(2) shall be allocated to the jurisdiction in which the permanent establishment is located.

Tangible assets included in the separate financial accounts of a permanent establishment as determined by Article 12(1) of this law and adjusted in accordance with Article 12(2) shall be allocated to the jurisdiction in which the permanent establishment is located.

The number of employees and the tangible assets allocated to the jurisdiction of a permanent establishment shall not be taken into account for the number of employees and the tangible assets of the jurisdiction of the main entity.

The number of employees and the net book value of tangible assets held by an investment entity shall be excluded from the elements of the formula set out in paragraph 5.

The number of employees and the net book value of tangible assets of a flow-through entity shall be excluded from the elements of the formula set out in paragraph 5, unless they are allocated to a permanent establishment or, in the absence of a permanent establishment, to the constituent entities that are located in the jurisdiction where the flow-through entity was created.

8. By way of derogation from paragraph 5, a jurisdiction's UTPR percentage for an MNE group shall be deemed to be zero for a fiscal year as long as the UTPR top-up tax amount allocated to that jurisdiction in a prior fiscal year has not resulted in the constituent entities of that MNE group located in that jurisdiction having an additional cash tax expense equal, in total, to the UTPR top-up tax amount for that prior fiscal year allocated to that jurisdiction.

The number of employees and the net book value of tangible assets of the constituent entities of an MNE group which is located in a jurisdiction with a UTPR percentage of zero for a fiscal year shall be excluded from the elements of the formula for allocating the total UTPR top-up tax to the MNE group for that fiscal year.

9. Paragraph 8 of this article shall not apply for a fiscal year if all jurisdictions with a qualified UTPR in force for the fiscal year have a UTPR percentage of zero for the MNE group for that fiscal year.

10. The amount of top-up tax allocated to Spanish territory in accordance with the provisions of the preceding paragraphs of this Article shall be allocated to the constituent entities referred to in Article 6(4) of this law, provided that they are constituent entities that are not considered securitisation entities or mechanisms as defined in Article 25.4 of this law, by means of the formula in paragraph 5 of this Article, in which the numerator shall refer to the number of employees and the total value of the tangible assets of each of the constituent entities and the denominator to the number of employees and the total value of the assets for all the aforementioned constituent entities.

Notwithstanding the foregoing, if all the constituent entities of the MNE group located in Spanish territory are considered securitisation entities or mechanisms, the allocation provided for in this section shall be carried out using the formula in paragraph 5 of this article, in which the numerator shall refer to the number of employees and the total value of the tangible assets of each of the constituent entities and the denominator to the number of employees and the total value of the assets for all the aforementioned constituent entities.

CHAPTER VI

Additional top-up tax

Article 30. Additional top-up tax.

1. Where, pursuant to Article 10(7), Article 18(7), Article 21(1) and (4), paragraph 5 of this article and Article 42(4) of this law, an adjustment to covered taxes or qualifying income or loss results in the recomputation of the effective tax rate and top-up tax of the MNE group or the large-scale domestic

group for a prior fiscal year, the effective tax rate and top-up tax shall be recomputed in accordance with the rules set out in Article 14 and Chapters II, III, IV and V of Title VII of this law for that previous tax period. Any amount of incremental top-up tax arising from such recomputation shall be treated as an additional top-up tax for the purposes of Article 24(4) of this law for the fiscal year during which the recomputation is made.

2. Where there is an additional top-up tax and no net qualifying income for the jurisdiction for the fiscal year, the qualifying income of each constituent entity located in that jurisdiction shall be an amount equal to the additional top-up tax allocated to such constituent entities pursuant to Article 24(5) and (6) divided by the minimum tax rate.

3. Where, pursuant to Article 17(5) of this law, additional top-up tax is due, the qualifying income of each constituent entity located in the jurisdiction shall be an amount equal to the top-up tax allocated to such constituent entity divided by the minimum tax rate. The allocation shall be made pro-rata, to each constituent entity, based on the percentage resulting from multiplying the qualifying income or loss of the constituent entity by the minimum tax rate, and subtracting from that product the amount of the adjusted covered taxes of the constituent entity, then dividing this result by the qualifying income or loss of all constituent entities multiplied by the minimum tax rate, after subtracting the amount of the adjusted covered taxes of all constituent entities.

The additional top-up tax shall only be allocated to constituent entities that record an amount of adjusted covered tax that is less than zero and less than the qualifying income or loss of such constituent entities multiplied by the minimum tax rate.

4. Where a constituent entity is allocated additional top-up tax in accordance with this Article and Article 24(5) and (6), such constituent entity shall be treated as a low-taxed constituent entity for the purposes of this law.

5. Where all or part of the amount of the qualified domestic top-up tax of another jurisdiction has not been paid within four tax periods following the end of the tax period in which it became due, the amount of the unpaid tax shall be added to the amount of the top-up tax determined in accordance with Article 24 of this law, which, pursuant to Article 11(3) of Directive (EU) 2022/2523, shall not be collected by the jurisdiction in which it was due.

TITLE VIII

Tax period and accrued amount

Article 31. Tax period.

The tax period for the top-up tax of the constituent entities of an MNE group or large-scale domestic group shall coincide with the fiscal year of the ultimate parent entity of the MNE group or large-scale domestic group if it prepares consolidated financial statements or, failing this, shall coincide with the calendar year.

Article 32. Accrual of tax.

The Top-Up Tax shall be due on the last day of the tax period.

TITLE IX

Non-applicability of Top-Up Tax

Article 33. De minimis exclusion.

1. By way of derogation from Articles 14, 22, 23, 24, 30 and 46 of this law, at the election of the filing constituent entity, the top-up tax due for the constituent entities located in a jurisdiction shall be equal to zero for a fiscal year if, for such fiscal year:

(a) The average qualifying revenue of all constituent entities located in such jurisdiction is less than EUR 10 000 000; and

(b) The average qualifying income or loss of all constituent entities in such jurisdiction is a loss or is less than EUR 1 000 000.

The election shall be made annually in accordance with Article 49(2) of this law.

2. The average qualifying revenue or average qualifying income or loss referred to in paragraph 1 shall be the average of the qualifying revenue or qualifying income or loss of the constituent entities located in the jurisdiction for the fiscal year and the two preceding fiscal years.

If there are no constituent entities with qualifying revenue or qualifying loss located in the jurisdiction in the first or second preceding fiscal year, or both, such fiscal year or years shall be excluded from the computation of the average qualifying revenue or qualifying income or loss of that jurisdiction.

3. The qualifying revenue of the constituent entities located in a jurisdiction for a fiscal year shall be the sum of all the revenues of the constituent entities located in that jurisdiction, reduced or increased by any adjustment carried out in accordance with articles 9 to 13 of this law.

4. The qualifying income or loss of the constituent entities located in a jurisdiction for a fiscal year shall be the net qualifying income or loss of that jurisdiction as computed in accordance with Article 22 of this law.

5. The provisions of this article shall not be applicable to stateless constituent entities and investment entities. The revenue and qualifying income or loss of such entities shall be excluded from the computation of the de minimis exclusion provided for in this article.

Article 34. Non-applicability of Top-Up Tax.

1. Primary top-up tax shall be zero in the tax period for the taxpayers referred to in Article 6(3) of this law, in relation to their constituent entities located in another Member State, where that Member State requires a qualified domestic top-up tax that has been determined in the tax period in accordance with the acceptable financial accounting standard of the ultimate parent entity or international financial reporting standards (IFRS or IFRS as adopted by the Union in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards), except for the part of any additional top-up tax due under Article 30 of this law that is not included in the qualified domestic top-up tax.

2. Primary top-up tax shall be zero in the tax period for the taxpayers referred to in Article 6(3) of this law, in relation to their constituent entities that are subject to a domestic top-up tax in another jurisdiction, when said jurisdiction requires a qualified domestic top-up tax that ensures that the

effective level of taxation of the constituent entities subject to that tax meets the conditions of a qualifying international agreement on safe harbours.

3. Top-up tax shall be zero in the tax period for the taxpayers referred to in Article 6 of this law, in relation to the constituent entities located in a jurisdiction that meets the conditions of an “qualifying international agreement on safe harbours”, under the terms set out in such international agreement.

4. For the purposes of paragraphs 2 and 3 of this Article, a “qualifying international agreement on safe harbours” means an international set of rules and conditions which all jurisdictions have consented to and which grants groups in the scope of this application of the OCDE Model Standards the possibility of electing to benefit from one or more safe harbours for a jurisdiction.

TITLE X

Special Systems

CHAPTER I

Corporate restructuring and joint ventures

Article 35. Determining the threshold for restructuring, mergers and demergers.

1. For the purposes of this article, the following definitions apply:

(a) ‘merger’ means any agreement where:

(i) All or substantially all of the group entities of two or more separate groups are brought under common control in a way that they constitute entities of a combined group.

(ii) An entity that is not a member of any group is brought under common control with another entity or group in a way that they constitute entities of a combined group.

(b) ‘demerger’: any arrangement where the group entities of a single group are separated into two or more different groups that are no longer consolidated by the same ultimate parent entity.

2. Where two or more groups merge to form a single group in two of the last four consecutive fiscal years immediately preceding the tested fiscal year, the consolidated revenue threshold of the MNE group or large-scale domestic group referred to in Article 6(1) 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 EUR 750 000 000 or more.

3. Where an entity that is not a member of a group (the ‘target’) merges with an entity or a group (the ‘acquiring entity’) in the tested fiscal year, and either the target or the acquiring entity did not have consolidated financial statements in any of the last four consecutive fiscal years immediately preceding the tested fiscal year, the consolidated revenue threshold of the MNE group or large-scale domestic group shall be deemed to be met for that year if the sum of the revenue included in each of their financial statements or consolidated financial statements for that fiscal year is EUR 750 000 000 or more.

4. Where a single MNE group or large-scale domestic group within the scope of this law demerges into two or more groups (each a ‘demerged group’), the consolidated revenue threshold shall be deemed to be met by a demerged group where:

(i) With respect to the first fiscal year after the fiscal year in which the demerger takes place, the demerged group has an annual revenue of EUR 750 000 000 or more.

(ii) With respect to the second to fourth tested fiscal years ending after the demerger, the demerged group has an annual revenue of EUR 750 000 000 or more in at least two of those fiscal years.

Article 36. Constituent entities joining and leaving an MNE group or a large-scale domestic group.

1. Where an entity (the 'target') becomes or ceases to be a constituent entity of an MNE group or of a large-scale domestic group as a result of a transfer of direct or indirect ownership interests in the target, or where the target becomes the ultimate parent entity of a new group during a fiscal year (the 'acquisition year'), the following rules shall apply for the purposes of computing the effective tax rate and the top-up tax of the target:

(a) The target shall be treated as a member of the MNE group or large-scale domestic group of which it is a part, provided that it is consolidated on a line-by-line basis in the consolidated financial statements of the ultimate parent entity in the acquisition year.

(b) In the acquisition year, an MNE group or large-scale domestic group shall take into account only the financial accounting net income or loss and adjusted covered taxes of the target that are included in the consolidated financial statements of the ultimate parent entity.

(c) In the acquisition year, and in each subsequent fiscal year, the qualifying income or loss and adjusted covered taxes of the target shall be based on the historical carrying value of its assets and liabilities.

(d) For the purposes of applying the substance-based income exclusion, only the payroll costs that are reflected in the consolidated financial statements of the ultimate parent entity shall be taken into account, and the carrying value of the eligible tangible assets of the target shall be adjusted, where applicable, in proportion to the period of time in which the target was a member of the MNE group or large-scale domestic group during the acquisition year.

(e) With the exception of the qualifying loss deferred tax asset where entities make the qualifying loss election under this law, the deferred tax assets and deferred tax liabilities of a target shall be taken into account by the acquiring group in the same manner and to the same extent as if the acquiring group controlled the target when such assets and liabilities arose.

f) Deferred tax liabilities of the target that have previously been included in its total deferred tax adjustment amount shall be treated as reversed by the disposing group and as arising from the acquiring group in the acquisition year, and the 5-year period provided for in article 18(7) will begin to count again for their reversal.

The above paragraph shall not apply in respect of deferred tax liabilities under Article 18(8) of this law which are not subject to reversal, in which case they shall reduce the amount of covered taxes for the target in the acquisition period in which the amount is recovered.

(g) Where the target is an ultimate parent entity and is a group entity in two or more MNE groups or large-scale domestic groups during the acquisition year, it shall apply separately the IIR to its allocable shares of the top-up tax of low-taxed constituent entities determined for each MNE group or large-scale domestic group.

2. By way of derogation of the above paragraph, the acquisition or disposal of a controlling interest in a target shall be treated as an acquisition or disposal of assets and liabilities if the jurisdiction in which the target is located, or in the case of a tax transparent entity the jurisdiction in which the assets are located, treats the acquisition or disposal of that controlling interest in the same, or in a similar, manner as an acquisition or disposal of assets and liabilities.

In addition, that jurisdiction is required to impose a covered tax on the seller based on the difference between the tax basis and the consideration paid in exchange for the controlling interest or the fair value of the assets and liabilities.

Article 37. Transfer of assets and liabilities.

1. For the purposes of this article, the following definitions apply:

(a) Reorganisation: a transformation or transfer of assets and liabilities such as in a merger, demerger, liquidation or similar transaction where:

(i) The consideration for the transfer is, in whole or in significant part, equity interests issued by the acquiring constituent entity or by a person connected with the acquiring constituent entity, or, in the case of a liquidation, the cancellation of equity interests in the acquired entity.

The provisions of the preceding paragraph shall not apply where the issuance of an equity interest would have no economic significance.

(ii) The disposing constituent entity's gain or loss on those assets is not subject to tax, in whole or in part.

(iii) The tax laws of the jurisdiction in which the acquiring constituent entity is located require the acquiring constituent entity to compute taxable income after the disposal or acquisition using the disposing constituent entity's tax basis in the assets, adjusted for any non-qualifying gain or loss on the disposal or acquisition, under the terms of this law.

(b) Non-qualifying gain or loss: the lesser of the gain or loss of the disposing constituent entity arising in connection with a reorganisation that is subject to tax in the disposing constituent entity's location and the financial accounting gain or loss arising in connection with the reorganisation.

2. A constituent entity that disposes of assets and liabilities (the 'disposing constituent entity') shall include the gain or loss arising from such disposal in the computation of its qualifying income or loss.

A constituent entity that acquires assets and liabilities (the 'acquiring constituent entity') shall determine its qualifying income or loss on the basis of its carrying value of the acquired assets and liabilities determined under the financial accounting standard used in preparing consolidated financial statements of the ultimate parent entity.

3. By way of derogation from the preceding paragraph, where a disposal or acquisition of assets and liabilities is performed in the context of a reorganisation:

(a) The disposing constituent entity shall exclude any gain or loss arising from such disposal from the computation of its qualifying income or loss.

(b) The acquiring constituent entity shall determine its qualifying income or loss on the basis of the carrying value of the acquired assets and liabilities of the disposing constituent entity upon disposal.

4. By way of derogation from paragraphs 2 and 3, where the disposal of assets and liabilities is performed in the context of a reorganisation which results, for the disposing constituent entity, in a non-qualifying gain or loss:

(a) The disposing constituent entity shall include the gain or loss on the disposal in the computation of its qualifying income or loss to the extent of the non-qualifying gain or loss.

(b) The acquiring constituent entity shall determine its qualifying income or loss after the acquisition using the disposing constituent entity's carrying value of the acquired assets and liabilities upon disposal, as adjusted consistently with local tax rules of the acquiring constituent entity to account for the non-qualifying gain or loss.

5. At the election of the filing constituent entity, where a constituent entity is required or permitted to adjust the basis of its assets and the amount of its liabilities to fair value for tax purposes in the jurisdiction where it is located, such constituent entity may:

(a) Include, in the computation of its qualifying income or loss, an amount of gain or loss in respect of each of its assets and liabilities, which shall be:

(i) Equal to the difference between the carrying value for financial accounting purposes of the asset or liability immediately before the date of the event that triggered the tax adjustment (the 'triggering event') and the fair value of the asset or liability immediately after the triggering event.

(ii) Decreased (or increased) by the non-qualifying gain or loss, if any, arising in connection with the triggering event.

(b) Use the fair value for financial accounting purposes of the asset or liability immediately after the triggering event to compute qualifying income or loss in the fiscal years ending after the triggering event.

(c) Include the net total of the amounts determined in point (a) in the constituent entity's qualifying income or loss in one of the following ways:

(i) The net total of those amounts is included in the fiscal year in which the triggering event occurs.

(ii) An amount equal to the net total of those amounts divided by five is included in the fiscal year in which the triggering event occurs and in each of the immediate four subsequent fiscal years, unless the constituent entity leaves the MNE group or large-scale domestic group in a fiscal year within this period, in which case the remaining amount will be wholly included in that fiscal year.

Article 38. Joint ventures.

1. For the purposes of this article, the following definitions apply:

(a) Joint venture: an entity whose financial results are reported under the equity method in the consolidated financial statements of the ultimate parent entity, provided that the ultimate parent entity holds, directly or indirectly, at least 50 % of its ownership interest.

A joint venture does not include:

(i) An ultimate parent entity of an MNE group or of a large-scale domestic group that is to apply the IIR.

(ii) An excluded entity as defined in accordance with Article 7 of this law.

(iii) An entity whose ownership interests are held directly through an excluded entity referred to in Article 7 and which meets one of the following conditions:

– It operates exclusively or almost exclusively to hold assets or invest funds for the benefit of its investors.

– It carries out activities that are ancillary to those carried out by the excluded entity.

– All or substantially all of its income is excluded from the computation of qualifying income or loss in accordance with Article 10(2), points (b) and (c).

(iv) An entity that is held by an MNE group or large-scale domestic group composed exclusively of excluded entities.

(v) A joint venture affiliate.

(b) Joint venture affiliate:

(i) An entity whose assets, liabilities, income, expenses and cash flows are consolidated by a joint venture under an acceptable financial accounting standard or would have been consolidated had the joint venture been required to consolidate such assets, liabilities, income, expenses and cash flows under an acceptable financial accounting standard.

(ii) A permanent establishment whose main entity is a joint venture or an entity referred to in point (i).

(c) Joint venture group: a group consisting of a joint venture and its affiliates.

2. A parent entity that holds a direct or indirect ownership interest in a joint venture or a joint venture affiliate shall apply the IIR with respect to its allocable share of the top-up tax of that joint venture or joint venture affiliate in accordance with Article 6(3) and Article 27 of this law.

3. The computation of the top-up tax of the joint venture group shall be made in accordance with the general rules regarding covered taxes and qualifying income, as if they were constituent entities of a separate MNE group or large-scale domestic group and the joint venture was the ultimate parent entity of that group.

4. The top-up tax due by the joint venture group shall be reduced by each parent entity's allocable share of the top-up tax under paragraph 2.

Any remaining amount of top-up tax for the joint venture group shall be added to the total secondary top-up tax amount pursuant to Article 29(2) of this law.

For the purposes of this paragraph, 'top-up tax due by the joint venture group' means the parent entity's allocable share of the top-up tax of the joint venture group.

Article 39. Multi-parented MNE groups.

1. For the purposes of this Article, the following definitions apply:

(a) Multi-parented MNE group or large-scale domestic group: two or more groups where the ultimate parent entities enter into an arrangement that is a stapled structure or a dual-listed arrangement that includes at least one entity or permanent establishment of the combined group which is located in a different jurisdiction with respect to the location of the other entities of the combined group.

(b) Stapled structure: an arrangement entered into by two or more ultimate parent entities of separate groups under which:

(i) 50 % or more of the ownership interests in the ultimate parent entities of separate groups which are, if they are listed, quoted at a single price, and are, by reason of form of ownership, restrictions on transfer, or other terms or conditions, combined with each other, and cannot be transferred or traded independently.

(ii) One of the ultimate parent entities prepares consolidated financial statements in which the assets, liabilities, income, expenses and cash flows of all the entities of the groups concerned are presented together as those of a single economic unit and that are required by a regulatory regime to be externally audited.

(c) Dual-listed arrangement: an arrangement entered into by two or more ultimate parent entities of separate groups under which:

(i) The ultimate parent entities agree to combine their business by contract alone.

(ii) Pursuant to contractual arrangements the ultimate parent entities will make distributions, with respect to dividends and in liquidation, to their shareholders based on a fixed ratio.

(iii) The ultimate parent entities' activities are managed as a single economic unit under contractual arrangements while retaining their separate legal identities.

(iv) The ownership interests of the ultimate parent entities that comprise the agreement are quoted, traded or transferred independently in different capital markets.

(v) The ultimate parent entities prepare consolidated financial statements in which the assets, liabilities, income, expenses and cash flows of entities in all of the groups are presented together as those of a single economic unit, and are required by a regulatory regime to be externally audited.

2. Where entities and constituent entities of two or more groups form part of a multi-parented MNE group or large-scale domestic group, the entities and constituent entities of each group shall be treated as members of one multi-parented MNE group or large-scale domestic group.

An entity, other than an excluded entity under this law, shall be treated as a constituent entity if it is consolidated on a line-by-line basis by the multi-parented MNE group or large-scale domestic group or if its controlling interests are held by entities in the multi-parented MNE group or large-scale domestic group.

3. The consolidated financial statements of the multi-parented MNE group or large-scale domestic group shall be the combined consolidated financial statements referred to in the definitions of a stapled structure or a dual-listed arrangement in paragraph 1, prepared under an acceptable financial accounting standard, which is deemed to be the accounting standard of the ultimate parent entity.

4. The ultimate parent entities of the separate groups that compose the multi-parented MNE group or large-scale domestic group shall be the ultimate parent entities of the multi-parented MNE group or large-scale domestic group.

When applying this law in respect of a multi-parented MNE group or large-scale domestic group, any references to an ultimate parent entity shall apply, as required, as if they are references to multiple ultimate parent entities.

5. The parent entities of the multi-parented MNE group or large-scale domestic group, including each ultimate parent entity, shall apply the IIR in accordance with the provisions of this law with respect to their allocable share of the top-up tax of the low-taxed constituent entities.

6. The constituent entities of the multi-parented MNE group or large-scale domestic group located in Spanish territory shall apply the UTPR in accordance with this law, taking into account the top-up tax of each low-taxed constituent entity that is a member of the multi-parented MNE group or large-scale domestic group.

7. The ultimate parent entities of the multi-parented MNE group or large-scale domestic group shall be required to file the top-up tax information return, unless they appoint a single designated filing entity.

That return shall include information concerning each of the groups that compose the multi-parented MNE group or large-scale domestic group.

CHAPTER II

Neutrality and distribution regimes

Article 40. Ultimate parent entity that is a flow-through entity.

1. The provisions of this article shall apply to the ultimate parent entities of an MNE group or of a large-scale domestic group, whether resident or non-resident, which are flow-through entities within the meaning of Article 5(18) of this law.

2. The qualifying income of the entities referred to in the above paragraph shall be reduced, for the fiscal year, by the amount of qualifying income that is attributable to the holder of an ownership interest (the 'ownership holder') in the flow-through entity, provided that:

(a) The ownership holder is subject to tax on such income for a taxable period that ends within 12 months after the end of that fiscal year at a nominal rate that equals or exceeds the minimum tax rate.

(b) It can be reasonably expected that the aggregated amount of adjusted covered taxes of the ultimate parent entity and taxes paid by the ownership holder on such income within 12 months after the end of the fiscal year equals or exceeds an amount equal to that income multiplied by the minimum tax rate.

3. The qualifying income of the entities referred to in paragraph 1 of this article shall also be reduced, for the fiscal year, by the amount of qualifying income that is allocated to the ownership holder in the flow-through entity provided that the ownership holder is:

(a) A natural person that is tax resident in the jurisdiction where the ultimate parent entity is located and that holds ownership interests representing a right to 5 % or less of the profits and assets of the ultimate parent entity.

(b) A governmental entity, an international organisation, a non-profit organisation or a pension fund, as defined in article 5 of this law, that is tax resident in the jurisdiction where the ultimate parent entity is located and that holds ownership interests representing a right to 5 % or less of the profits and assets of the ultimate parent entity.

4. The qualifying loss of the entities referred to in paragraph 1 of this article shall be reduced by the amount of qualifying loss that is attributable to the ownership holder in the flow-through entity. The foregoing shall be without prejudice to the provisions of Article 19 of this law.

The above shall not apply to the extent the ownership holder is not allowed to use such loss for the computation of its taxable income.

5. The covered taxes of the entities referred to in this article shall be reduced proportionally to the amount of qualifying income reduced in accordance with paragraphs 2 and 3 of this article.

6. Paragraphs 2 to 5 of this article shall apply to a permanent establishment in any of the following cases:

(a) Where the entities referred to in paragraph 1 carry out their business wholly or partly through such a permanent establishment.

(b) Where, through such a permanent establishment, a flow-through entity, as defined in Article 5(18) of this law, carries out all or part of its business, provided that such entity is wholly owned by an entity referred to in paragraph 1 of this article, either directly or through a chain of tax transparent entities.

Article 41. Ultimate parent entity subject to a deductible dividend regime.

1. For the purposes of this article, the following definitions apply:

(a) 'deductible dividend regime': a tax regime that applies a single level of taxation on the income of the owners of an entity by deducting or excluding from the income of the entity the profits distributed to the owners or by exempting a cooperative from taxation;

(b) 'deductible dividend': with respect to a constituent entity that is subject to a deductible dividend regime:

(i) A distribution of profits to the holder of an ownership interest in the constituent entity that is deductible from the taxable income of the constituent entity under the laws of the jurisdiction in which it is located; or

(ii) A patronage dividend to a member of a cooperative; and

(c) 'cooperative': an entity that collectively markets or acquires goods or services on behalf of its members and that is subject to a tax regime in the jurisdiction where it is located that ensures the tax neutrality in respect of goods or services that are sold or acquired by its members through the cooperative.

2. The provisions of this article shall apply to the ultimate parent entities of an MNE group or of a large-scale domestic group that are not at the same time subsidiaries of another entity, whether resident or non-resident, and which are subject to a deductible dividend regime.

3. The entities referred to in the above paragraph shall reduce, up to zero, for the fiscal year, their qualifying income by the amount that is distributed as deductible dividend within 12 months after the end of the fiscal year, provided that:

(a) The dividend is subject to tax in the hands of the recipient for a taxable period that ends within 12 months after the end of the ultimate parent entity's fiscal year at a nominal rate that equals or exceeds the minimum tax rate.

(b) It can be reasonably expected that the aggregate amount of adjusted covered taxes and taxes of the ultimate parent entity paid by the recipient on such dividend equals or exceeds that income multiplied by the minimum tax rate.

4. The entities referred to in paragraph 2 of this article shall also reduce, up to zero, for the fiscal year, their qualifying income by the amount that they distribute as deductible dividend within 12 months after the end of the fiscal year, provided that the recipient is:

a) A natural person, and the dividend received is a patronage dividend from a supply cooperative.

(b) A natural person that is tax resident in the same jurisdiction where the ultimate parent entity is located and that holds ownership interests representing a right to 5 % or less of the profits and assets of the ultimate parent entity.

(c) A governmental entity, an international organisation, a non-profit organisation or a pension fund other than a pension services entity, in the terms defined by Article 5 of this law, that is tax resident in the jurisdiction where the ultimate parent entity is located.

5. The covered taxes of the entities referred to in paragraph 2 shall be reduced proportionally to the amount of qualifying income reduced in accordance with paragraphs 3 and 4 of this article. In addition, the qualifying income of the entities referred to in paragraph 2 of this article shall be reduced by the amount of the tax expense computed in accordance with Article 10(2)(a) of this law for the purpose of determining the qualifying income or loss for the period.

6. Paragraphs 3 to 5 of this article shall apply to any constituent entity, other than the entities referred to in paragraph 2, provided that it is subject to deductible dividend regime, and the following requirements are met:

(a) It is owned by an entity referred to in paragraph 2 of this article, either directly or through a chain of constituent entities.

(b) It is resident in the jurisdiction of the ultimate parent entity.

(c) The entity referred to in paragraph 2 of this article distributes dividends to recipients who meet the requirements of paragraphs 3 and 4 of this article.

7. A patronage dividend distributed by a supply cooperative shall be treated as subject to tax in the hands of the recipient insofar as such dividend reduces a deductible expense or cost in the computation of the recipient's taxable income or loss.

Article 42. Eligible distribution tax systems.

1. A filing constituent entity may make an election for itself or with respect to another constituent entity that is subject to an eligible distribution tax system to include the amount determined as a deemed distribution tax in accordance with paragraph 3 in the adjusted covered taxes of the constituent entity for the fiscal year.

The election shall be made annually in accordance with Article 49(2) of this law and shall apply to all the constituent entities that are located in a jurisdiction and are subject to an eligible distribution tax system.

2. The amount of deemed distribution tax shall be the lesser of:

(a) The amount of adjusted covered taxes necessary to increase the effective tax rate as computed in accordance with Article 22 for the jurisdiction for the fiscal year to the minimum tax rate.

(b) The amount of tax that would have been due if the constituent entities located in the jurisdiction had distributed all of their income that is subject to the eligible distribution tax system during such fiscal year.

3. Where an election is made under paragraph 1, a deemed distribution tax recapture account shall be established for each fiscal year in which such election applies for each jurisdiction.

The amount of deemed distribution tax determined in accordance with paragraph 2 for the jurisdiction shall be added to the deemed distribution tax recapture account for the fiscal year in which it was established.

At the end of each subsequent fiscal year, the outstanding balances in the deemed distribution tax recapture accounts established for prior fiscal years shall be reduced in chronological order, up to zero, in the following order:

(a) By the taxes paid by the constituent entities during the fiscal year in relation to actual or deemed distributions.

(b) By an amount equal to the net qualifying loss of a jurisdiction multiplied by the minimum tax rate.

4. Any residual amount of net qualifying loss multiplied by the minimum tax rate remaining after the application of letter b) above for the jurisdiction, shall be carried forward to the following fiscal years and shall reduce any residual amount in the deemed distribution tax recapture accounts remaining after the application of paragraph 3.

5. The outstanding balance, if any, of the deemed distribution tax recapture account on the last day of the fourth fiscal year after the fiscal year for which such account was established shall be treated as a reduction to the adjusted covered taxes previously determined for such fiscal year. The effective tax rate and top-up tax for such fiscal year shall be recomputed accordingly, in accordance with Article 30 of this law.

6. Taxes that are paid during the fiscal year in relation to actual or deemed distributions shall not be included in adjusted covered taxes to the extent they reduce a deemed distribution tax recapture account in accordance with the above paragraphs.

7. Where a constituent entity that is subject to an election under paragraph 1 leaves the MNE group or large-scale domestic group or substantially all of its assets are transferred to a person that is not a constituent entity of the same MNE group or large-scale domestic group located in the same jurisdiction, any outstanding balance of the deemed distribution tax recapture accounts in previous fiscal years in which such account was established shall be treated as a reduction to the adjusted covered taxes for each of those fiscal years in accordance with Article 30 of this law.

For the purpose of determining any additional top-up tax amount due in the jurisdiction, the amount resulting from applying the preceding paragraph shall be multiplied by the quotient resulting from dividing the qualifying income of the constituent entity leaving the group or transferring the majority of its assets to a person that is not a constituent entity of the same group by the net qualifying income of the jurisdiction.

For this purpose, the qualifying income of the constituent entity leaving the group or transferring the majority of its assets to a person that is not a constituent entity of the same group shall be determined in accordance with Title IV of this law for each fiscal year in which there is an outstanding balance of the deemed distribution tax recapture accounts for the jurisdiction, and the net qualifying income of the jurisdiction shall be determined in accordance with Article 22 of this law, for each fiscal year in which there is an outstanding balance of the deemed distribution tax recapture accounts for the jurisdiction.

CHAPTER III

Investment entities and insurance investment entities

Article 43. Determination of the effective tax rate and the top-up tax.

1. For the purposes of this article and the following article, an “insurance investment entity” is an entity that would meet the definition of an investment fund set out in Article 5(21) or real estate investment vehicle set out in Article 5(30) if it had not been established in relation to liabilities under an insurance or annuity contract and if it were not wholly owned by an entity that is subject to regulation in the jurisdiction where it is located as an insurance company.

2. The provisions of this article shall apply where one of the constituent entities of an MNE group or a large-scale domestic group:

(a) Is an investment entity within the meaning of Article 5(8) of this law or is an insurance investment entity.

(b) Is not considered a tax transparent entity under the terms of Article 5 of this law.

(c) Has not exercised the option provided for in Articles 44 and 45 of this law.

3. For the entity referred to in the preceding paragraph, the effective tax rate shall be computed separately from the effective tax rate of the jurisdiction in which it is located.

4. The effective tax rate of the entity referred to in paragraph 1 of this article shall be the quotient resulting from dividing:

(a) In the numerator, the entity's adjusted covered taxes.

(b) In the denominator, the allocable share of the MNE group or large-scale domestic group in the qualifying income or loss of that entity.

Where more than one investment entity or insurance investment entity is located in a jurisdiction, their effective tax rate shall be computed by combining their adjusted covered taxes as well as the allocable share of the MNE group or large-scale domestic group in their qualifying income or loss.

5. The adjusted covered taxes of an entity as referred to in paragraph 2 of this article shall be the sum of:

(a) The adjusted covered taxes that are attributable to the allocable share of the MNE group or large-scale domestic group in the qualifying income of the investment entity or of the insurance investment entity.

(b) The covered taxes allocated to the entity in accordance with Article 20 of this law.

In no case shall the adjusted covered taxes of the entity referred to in paragraph 2 include any covered taxes accrued by the entity attributable to income that is not part of the MNE group or large-scale domestic group's allocable share of the investment entity's income.

6. The top-up tax of an investment entity as referred to in paragraph 2 shall be an amount equal to the top-up tax percentage of the investment entity multiplied by an amount equal to the difference between the allocable share of the MNE group or large-scale domestic group in the qualifying income of the investment entity and the substance-based income exclusion computed for the investment entity.

The top-up tax percentage of an entity referred to in paragraph 2 shall be a positive amount equal to the difference between the minimum tax rate and the effective tax rate of such entity.

7. Where more than one investment entity or insurance investment entity is located in a jurisdiction, their effective tax rate shall be computed by combining their substance-based income exclusion amounts as well as the allocable share of the MNE group or large-scale domestic group in their qualifying income or loss.

8. The substance-based income exclusion of an entity referred to in this article shall be determined in accordance with Article 14 of this law.

The eligible payroll costs of eligible employees and eligible tangible assets taken into account for such investment entity or insurance investment entity shall be reduced in proportion to the allocable share of the MNE group or large-scale domestic group in the qualifying income of the investment entity divided by the total qualifying income of such investment entity.

9. For the purposes of this article, the allocable share of the MNE group or large-scale domestic group in the qualifying income or loss of an entity referred to in paragraph 2 of this article shall be determined in accordance with Article 26 of this law, taking into account only interests that are not subject to an election in accordance with Article 44 or 45 of this law.

Article 44. Tax transparent investment entity or insurance investment entity.

1. Constituent entities with ownership interests in a constituent entity that is an investment entity or an insurance investment entity may elect to consider such investment entity or insurance investment entity as a tax transparent entity, as provided for in this article.

This election may be made by the filing constituent entity under the conditions laid down in Article 49 of this law.

2. A constituent entity that is an investment entity or an insurance investment entity may be treated as a tax transparent entity within the meaning of Article 5(18) of this law if the following conditions are met:

(a) The constituent entity-owner of the constituent entity that is an investment entity or insurance investment entity is subject to tax in the jurisdiction in which it is located under a fair market value or a similar regime based on the annual changes in the fair value of its ownership interests in such entity.

(b) The tax rate applicable to the constituent entity-owner on such income equals or exceeds the minimum tax rate.

3. A constituent entity that indirectly owns an ownership interest in an investment entity or in an insurance investment entity through a direct ownership interest in another investment entity or an insurance investment entity shall be considered to be subject to tax under a fair market value or similar regime with respect to its indirect ownership interest in the first-mentioned entity or insurance investment entity if it is subject to a fair market value or similar regime with respect to its direct ownership interest in the second-mentioned entity or insurance investment entity.

4. If the election provided for in this article is revoked, any gain or loss from the disposal of an asset or a liability held by the investment entity or an insurance investment entity shall be determined on the basis of the fair market value of the asset or liability on the first day of the year the revocation is made.

Article 45. Taxable distribution method.

1. Constituent entity-owners of an investment entity or an insurance investment entity may elect to apply a taxable distribution method with respect to their ownership interest in the investment entity or insurance investment entity, under the terms provided for in this article.

This election may be made by the filing constituent entity under the conditions laid down in Article 49 of this law.

2. A constituent entity-owner of an investment entity or insurance investment entity may apply a taxable distribution method with respect to its ownership interest in said entity, provided that

(a) The constituent entity-owner is not an investment entity or an insurance investment entity, and

(b) The constituent entity can be reasonably expected to be subject to tax on distributions from the investment entity or insurance investment entity at a tax rate that equals or exceeds the minimum tax rate.

3. The taxable distribution method referred to in the preceding paragraph shall assume that:

(a) Distributions and deemed distributions of the qualifying income of an investment entity or an insurance investment entity shall be included in the qualifying income of the constituent entity referred to in paragraph 2 that received the distribution.

(b) The amount of covered taxes incurred by the investment entity or the insurance investment entity that is creditable against the tax liability of the constituent entity referred to in paragraph 2 of this article, arising from the distribution of the investment entity or insurance investment entity shall be included in the qualifying income and adjusted covered taxes of the constituent entity referred to in paragraph 2 that received the distribution.

(c) The share of the constituent entity referred to in paragraph 2 in the undistributed net qualifying income of the investment entity or insurance investment entity arising in the third year preceding the fiscal year (the 'tested year'), under the terms defined in paragraph 4 below, shall be treated as qualifying income of that investment entity for the fiscal year.

For the purposes of this law, the amount equal to such qualifying income multiplied by the minimum tax rate shall be treated as top-up tax of a low-taxed constituent entity for the fiscal year.

(d) The qualifying income or loss of an investment entity or an insurance investment entity and the adjusted covered taxes attributable to such income for the fiscal year shall be excluded from the computation of the effective tax rate in accordance with Title VI and with Article 43 of this law, except for the amount of covered taxes referred to in the letter (b) of this paragraph.

4. For the purposes of the preceding paragraph, the undistributed net qualifying income of an investment entity or an insurance investment entity for the tested year shall be the amount of qualifying income of that investment entity for the tested year reduced, up to zero, by:

(a) The covered taxes of the investment entity or the insurance investment entity;

(b) Distributions and deemed distributions to shareholders of the investment entity or insurance investment entity that are not investment entities themselves during the period starting with the first day of the third year preceding the fiscal year and ending with the last day of the reporting fiscal year in which the ownership interest was held (the 'testing period');

(c) Qualifying losses arising during the testing period; and

(d) Any residual amount of qualifying losses that has not already reduced the undistributed net qualifying income of that investment entity or insurance investment entity for a previous tested year, namely the investment loss carry-forward.

5. Notwithstanding the preceding paragraph, the undistributed net qualifying income of an investment entity or insurance investment entity shall not be reduced by the following amounts:

(a) The amount of distributions or deemed distributions that already reduced the undistributed net qualifying income of that investment entity or insurance investment entity for a previous tested year in application of the letter (b) of the above paragraph.

(b) The amount of qualifying losses that already reduced the undistributed net qualifying income of that investment entity or insurance investment entity for a previous tested year in application of the letter (c) of the above paragraph.

6. For the purposes of this Article, a deemed distribution shall arise when a direct or indirect ownership interest in the investment entity or insurance investment entity is transferred to an entity that does not belong to the MNE group or large-scale domestic group and is equal to the share of the undistributed net qualifying income attributable to such ownership interest on the date of such transfer, determined in accordance with the above paragraph.

7. If the election provided for in this article is revoked, the share of the constituent entity referred to in paragraph 2 of this article in the undistributed net qualifying income of the investment entity or insurance investment entity for the tested year at the end of the fiscal year preceding the fiscal year the revocation is made shall be treated as qualifying income of the investment entity or insurance investment entity for the fiscal year. For the purposes of this law, the amount equal to such qualifying income multiplied by the minimum tax rate shall be treated as top-up tax of a low-taxed constituent entity for the fiscal year.

CHAPTER IV

Minority-owned constituent entities

Article 46. Minority-owned constituent entity.

1. For the purposes of this Article, the following definitions apply:

(a) Minority-owned constituent entity: a constituent entity in which the ultimate parent entity has a direct or indirect ownership interest of 30 % or less.

(b) Minority-owned ultimate parent entity: 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 another minority-owned constituent entity.

(c) Minority-owned subgroup: a minority-owned ultimate parent entity and its minority-owned subsidiaries.

(d) Minority-owned subsidiary: a minority-owned constituent entity whose controlling interests are held, directly or indirectly, by a minority-owned parent entity.

2. The computation of the effective tax rate and the top-up tax for a jurisdiction in accordance with this law with respect to members of a minority-owned subgroup shall apply as if each minority-owned subgroup were a separate MNE group or large-scale domestic group.

The adjusted covered taxes and qualifying income or loss of members of a minority-owned subgroup shall be excluded from the computation of the effective tax rate and the qualifying income or loss of the MNE group or large-scale domestic group in accordance with Article 22(1), (2) and (3) of this law.

3. The effective tax rate and top-up tax of a minority-owned constituent entity that is not a member of a minority-owned subgroup shall be computed on an entity basis in accordance with this law.

The adjusted covered taxes and qualifying income or loss of a minority-owned constituent entity shall be excluded from the computation of the effective tax rate and the qualifying income or loss of the MNE group or large-scale domestic group in accordance with Article 22(1), (2) and (3) of this law.

This paragraph shall not apply to a minority-owned constituent entity that is an investment entity.

TITLE XI

Formal obligations

CHAPTER I

Filing obligation and penalty system

Article 47. Filing obligations.

1. For the purposes of this article, the following definitions apply:

(a) ‘designated local entity’ means the constituent entity of an MNE group or of a large-scale domestic group that is located in Spain and has been appointed by the other constituent entities of the MNE group or large-scale domestic group located in the same territory to file the top-up tax information return or submit the notifications in accordance with this Article on their behalf;

(b) ‘qualifying competent authority agreement’ means a bilateral or multilateral agreement or arrangement between two or more competent authorities that provides for the automatic exchange of annual top-up tax information returns.

2. Any constituent entity of an MNE or large-scale domestic group located in Spanish territory must file a top-up tax information return in the place and in the manner to be determined by regulations.

3. By way of derogation from paragraph 2, a constituent entity shall not have the obligation to file a top-up tax information return if such return has been filed, in accordance with this article, by:

a) The ultimate parent entity located in Spanish territory or a jurisdiction that has, for the reporting fiscal year, a qualifying competent authority agreement in effect with the Kingdom of Spain.

(b) A constituent entity other than the ultimate parent entity located in Spanish territory that has been designated by the MNE group or large-scale domestic group to file such information on behalf of the constituent entities located in Spanish territory that are part of such group.

(c) A constituent entity other than the ultimate parent entity designated by the MNE group, which is located in another jurisdiction with which there is a qualifying competent authority agreement in force for the tax period with the Kingdom of Spain, for information exchange purposes.

In the case envisaged in letter (b) above, where there are several constituent entities located in Spanish territory, if one of them is the local entity designated by the MNE group or the large-scale domestic group to file the top-up tax information return, only that entity shall be obliged to file the return in accordance with the previous section, provided that it can obtain all the information necessary to file the information in accordance with the provisions of this article. Otherwise, the provisions of the previous paragraph shall apply.

Likewise, in the event that a constituent entity located in Spanish territory that does not have the status of ultimate parent entity has been designated by the MNE group to which it belongs to file the top-up tax information return, it must request the information corresponding to said group from the ultimate parent entity.

For the purposes of this section, any constituent entity located in Spanish territory that is part of an MNE or large-scale domestic group that must file the return established herein must notify the tax authorities of the identification and the country or territory of residence of the ultimate parent entity or of the entity designated to file the return, in the manner and within the period determined by regulations.

4. The top-up tax information return shall include the following information, as well as any other information and with the special features established by regulation:

a) Identification of the constituent entities, including their tax identification numbers, if any, the jurisdiction in which they are located and their status under the rules of this law.

b) Information on the overall corporate structure of the group, including the direct or indirect controlling interests in the constituent entities held by other constituent entities, as well as information on ownership interests in any entities excluded from top-up tax rules and any changes in the group's configuration that took place during the tax period referred to in the return.

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

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

(ii) The top-up tax of a member of a joint venture group.

(iii) The allocation of top-up tax amount to each jurisdiction.

(d) A record of the elections made in accordance with this law.

(e) Any other information relevant to the purpose of this return.

5. By way of derogation from paragraph 4 of this article, where a constituent entity is located in Spanish territory with an ultimate parent entity located in a third-country jurisdiction that applies rules which have been assessed as equivalent to the rules of this law pursuant to Article 54, the constituent entity or the designated local entity shall file a top-up tax information return containing the following information:

(a) Al information that is necessary for the application of Article 6(3)(iii), including:

(i) Identification of all the constituent entities in which a partially-owned parent entity holds, directly or indirectly, an ownership interest at any time during the fiscal year and the structure of such ownership interests;

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

(iii) All information that is relevant for that purpose in accordance with Articles 25, 26 and 27 of this law.

(b) All information that is necessary for the application of Article 28(2), including:

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

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

(iii) All information necessary for the allocation of such top-up tax based on the UTPR allocation formula set out in Articles 28 and 29 of this law.

(c) All information that is necessary for the application of a qualified domestic top-up tax by any jurisdiction that has made the election to apply such a top-up tax.

6. The top-up tax information return shall be filed under the terms determined by regulation with the tax administration, pursuant to paragraph 2 of this article, no later than 15 months after the last day of the reporting fiscal year, without prejudice to the fifth transition provision of this law. Any other relevant notification shall be submitted in accordance with the terms to be established by regulation.

Article 48. Penalty system.

1. The following constitute tax offences:

a) Failure to file the information return referred to in Article 47 of this law on time.

Infringement shall be serious and the penalty shall consist of a fixed pecuniary fine of EUR 10 000 euros for each piece of information or set of information that should have been included in the return, with a maximum limit of 1 percent of the net revenues of all the entities that form part of the MNE or large-scale domestic group, including that of excluded entities, in accordance with the consolidated financial statements of the ultimate parent entity for the tax period.

The penalty and maximum limit provided for in the previous paragraph shall be reduced by half when the return was filed after the deadline without prior request from the tax administration.

If incomplete, inaccurate or false returns have been filed on time and then a supplementary or substitute return is submitted outside the deadline without prior request, the infringement referred to in point (b) of this paragraph shall not occur in relation to the returns submitted on time and the penalty resulting from applying this paragraph shall be imposed in respect of the returns submitted outside the deadline.

(b) Filing an incomplete, inaccurate or false information return as referred to in Article 47 of this law.

Infringement shall be serious and the penalty shall consist of a fixed pecuniary fine of EUR 10 000 euros for each piece of information or set of information that should have been included in the return, with a maximum limit of 1 percent of the net revenues of all the entities that form part of the MNE or large-scale domestic group, including that of excluded entities, in accordance with the consolidated financial statements of the ultimate parent entity for the tax period.

c) The infringements and penalties regulated in this section shall be incompatible with those established in Articles 198 and 199 of Law 58/2003 of 17 December on General Taxation.

2. Failure to file any of the notifications referred to in Article 47(3) and paragraph 5 of the third transition provision of this law within the deadline shall constitute a serious tax infringement. The penalty shall consist of a fixed pecuniary fine of EUR 10 000.

CHAPTER II

Elections

Article 49. Elections.

1. The elections referred to in Articles 7(2), 10(2)(b), (3), (6) and (9), 44 and 45 of this law shall apply from the tax period in which they are made and may be revoked after five years have elapsed from the beginning of that tax period. The revocation shall have a minimum duration of five years from the beginning of the tax period in which it occurs.

2. The elections referred to in Articles 10(7), 14(2), 18(1)(b), 21(1), 33(1) and 42(1) of this law shall apply from the tax period in which they are made and in subsequent tax periods ending before notice is given of revocation.

3. The election referred to in Article 17(5) of this law shall be irrevocable and shall apply from the tax period in which it is made and in subsequent tax periods under the terms set out in that provision.

4. The elections indicated in the three previous sections shall be made by the filing constituent entity or by the designated filing entity in the top-up tax information return provided for in section 2 of the previous article and the provisions of section 3 of Article 119 of Law 58/2003 of 17 December on General Taxation shall apply to them.

The elections indicated in paragraphs 1 and 2 above may be revoked by the filing constituent entity or by the designated filing entity in the top-up tax information return provided for in section 2 of the previous article, and the provisions of section 3 of Article 119 of Law 58/2003 of 17 December on General Taxation shall apply to them.

TITLE XII

Tax Management

Article 50. Tax return.

1. Taxpayers or, where applicable, the taxpayer substitutes established by this law shall file the top-up tax return in the place and form determined by the head of the Treasury, within 25 calendar days following the fifteenth month after the end of the tax period, unless the provisions of the fifth transition provision of this law are applicable.

2. The taxpayer substitute may claim the amount of the tax liability paid from the taxpayer.

Article 51. Self-assessment and payment of the tax debt.

1. The taxpayers that must file the tax return, under the terms provided for in Article 50 of this law or, where applicable, in the fifth transition provision, shall, at the time of filing their return, determine the corresponding debt and pay it in the place and in the manner determined by the head of the Treasury.

2. Payment of tax debt may be made by handing over assets belonging to Spanish historic heritage that are registered in the General Inventory of Movable Goods or in the General Register of Goods of Cultural Interest, in accordance with the provisions of article seventy-three of Law 16/1985, of 25 June, on Spanish Historic Heritage.

Article 52. Provisional settlement.

Tax management bodies may issue the appropriate provisional settlement in accordance with the provisions of Articles 133 and 139 of Law 58/2003, of 17 December, on General Taxation, without prejudice to the subsequent verification and investigation that may be carried out by Tax Inspection.

TITLE XIII

Powers of the administration to determine the tax base

Article 53. Powers of the administration to determine the tax base and other tax elements.

For the purposes of determining the tax base and other elements of the top-up tax, the Tax Administration shall apply the accounting rules set out in Article 9 of this law and other applicable regulations.

TITLE XIV

Assessment of equivalence

Article 54. Assessment of equivalence.

1. The legal framework implemented in the domestic law of a third-country jurisdiction shall be considered to be equivalent to a qualified IIR set out in this law, and shall not be treated as a controlled foreign company tax regime, if it fulfils the following conditions:

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

b) It establishes a minimum effective tax rate of at least 15 % below which a constituent entity is considered to be low-taxed.

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

(d) For the purpose of computing a top-up tax under the equivalent qualified IIR, it provides for relief for any top-up tax that was paid in application of the qualified IIR and for any qualified domestic top-up tax.

2. The simplified notification procedures referred to in Article 55 of Directive (EU) 2022/2523 shall apply where they have been agreed in accordance with that article.

TITLE XV

Order of jurisdiction

Article 55. Order of jurisdiction.

After exhausting economic-administrative channels, the contentious-administrative jurisdiction shall be the only jurisdiction empowered to settle disputes of fact and law that arise between the Tax Administration and taxpayers in relation to any of the issues referred to in this law.

Additional provision one. Personal Income Tax deductions for energy efficiency improvement works.

Personal income tax deductions that are approved by the competent institutions of the Autonomous Community of the Basque Country, under the provisions of the Economic Agreement with the Autonomous Community of the Basque Country, approved by Law 12/2002, of 23 May, for the purpose of carrying out refurbishment works that contribute to achieving improvements in energy efficiency, accredited through the corresponding certificate, of a principal residence or of the rented dwelling that satisfies the permanent housing needs of the tenant, as well as of buildings of predominantly residential use shall fall under Component 2 “Housing refurbishment and urban regeneration plan” of Spanish Recovery, Transformation and Resilience Plan, provided that the actions that entitle the taxpayer to the deduction meet the following requirements:

1. They fall under milestone C02.I01 “Rehabilitation programme for the economic and social recovery of residential environments” as set out in number 26 of the Appendix to the proposal for a Council Implementing Decision of 16 June 2021 (COM/2021/322 final) on the approval of the evaluation of the Spanish recovery and resilience plan (CID).

2. They correspond to intervention field 025bis “Energy efficiency renovation of existing buildings, demonstration projects and support measures in line with energy efficiency criteria” of Annex VI of Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Resilience and Recovery Facility.

3. In their implementation and execution they respect the principle of no significant environmental harm, as defined in the Commission Notice Technical Guidance (2021/C 58/01) on the application of “ do no significant harm” under the Regulation on the Resilience and Recovery Facility, climate and digital labelling, as well as the other specific conditions applicable to such works, and especially those set out in the Appendix to the CID and in paragraphs 3, 6 and 8 of the Component 2 document of the Spanish Recovery, Transformation and Resilience Plan.

The competent institutions of the Autonomous Community of Euskadi will annually accredit to the corresponding Ministry of the Spanish Government the amount of the Personal Income Tax deduction generated by Basque Country taxpayers in order to justify the amount to be paid to execute the objectives set out in the aforementioned Component 2 “Housing rehabilitation and urban regeneration plan” of the Spanish Recovery, Transformation and Resilience Plan.

Additional provision two. Rebate for hiring by non-profit non-professional sports organisations.

1. Non-professional, non-profit sports clubs, associations or organisations shall be entitled to a 100% rebate of the business contribution for common contingencies for the employees in their service who act as trainers or monitors dedicated to training, preparing or coaching people under eighteen years of age.

In any event, for the purposes of this provision, non-professional sport shall mean sport in which the athletes are not subject to an employment relationship in accordance with the provisions of Article 1.Two of Royal Decree 1006/1985, of 26 June, which regulates the special employment relationship of professional athletes, regardless of their discipline, modality or category. In this regard, a non-profit sports club, association or entity may have both non-professional and professional sport, in which case the rebate will only apply to coaches and monitors of non-professional athletes.

2. The legal system applicable to this rebate for contributions, in terms of its application, oversight and coordination, shall be that established in articles 36 to 42 of Royal Decree-Law 1/2023, of 10 January, on urgent measures regarding hiring incentives and improving artists’ social protection.

Third additional provision. Donations from companies to employees affected by the DANA.

The extraordinary amounts paid by employers to their employees and/or family members to cover personal injury and material damage to housing, household goods and vehicles suffered by employees and/or their family members as a result of the Isolated High Level Depression (DANA) that occurred in 2024 will be exempt from Personal Income Tax and Inheritance and Gift Tax.

For the purposes of this exemption:

a) The amounts paid by employers to their employees for damages caused by the DANA, in addition to the salary received by the latter, shall be of an extraordinary nature.

b) Being a victim of the DANA and the amount of the damage must be accredited by means of a certificate from the insurance company indicating the status of victim and quantifying the damage, or alternatively, if there is no insurance, from a government body.

(c) The exemption shall be limited to amounts paid between 29 October 2024 and 31 December 2024, and up to the limit of certified damages.

(d) The sums received by the employees shall be included in the taxable base to the extent that they exceed the amount of the damage certified by the insurance company.

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

1. The transition tax period shall mean the first tax period in which the taxpayers referred to in Article 6 of this law are required to apply the provisions of this law for the first time in relation to each jurisdiction.

Without prejudice to the foregoing, the transition tax period shall mean the first period in which the provisions of the fourth transition provision of this law do not apply in the corresponding jurisdiction.

2. When determining the effective tax rate for a jurisdiction in a transition tax period, and for each subsequent fiscal year, all the deferred tax assets and deferred tax liabilities reflected or disclosed in the financial account of all the constituent entities in a jurisdiction at the beginning of the transition tax period shall be taken into account for the purposes of adjusted covered taxes.

The value of deferred tax assets and deferred tax liabilities shall be the lower of the value resulting from their computation using the minimum tax rate and the rate used to calculate the financial accounts referred to in the above paragraph.

The value resulting from applying the minimum tax rate is the result of multiplying said rate by the quotient of the deferred tax assets corresponding to tax credits carried forward, as recorded or disclosed in the financial statements, by the nominal tax rate at which they were recorded for the tax period prior to the transition period.

Notwithstanding the above, a deferred tax asset that has been recorded at a tax rate lower than the minimum tax rate may be taken into account at the minimum tax rate if the taxpayer is able to demonstrate that the deferred tax asset is attributable to a qualifying loss under this law.

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

3. Deferred tax assets arising from items excluded from the computation of qualifying income or loss in accordance with Title IV of this law shall be excluded from the computation referred to in paragraph 2 when such deferred tax assets are generated in a transaction that takes place after 30 November 2021 and until the beginning of the transition tax period.

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

5. Notwithstanding the preceding paragraph, an MNE group or large-scale domestic group may take into account a deferred tax asset associated with the income from the transfer, provided that it can be shown that the disposing entity has paid tax on the income from the transfer.

The deferred tax asset referred to in the preceding paragraph shall not exceed the lower of the following two amounts:

(i) The value resulting from multiplying the minimum tax rate by the difference between the tax value of the asset determined in accordance with the law of the jurisdiction in which the acquiring entity is located and the value referred to in paragraph 4 above.

ii) The tax paid by the disposing entity on the income derived from the transfer increased, where applicable, by the amount of the deferred tax asset corresponding to the loss that would have been taken into account by the disposing entity in accordance with the provisions of paragraph 2 of this transition provision, if the income from the transfer had not been deductible in the computation of the taxable income in the tax period in which the transfer takes place.

The deferred tax asset determined in accordance with this paragraph shall be applied on the basis of the recorded depreciation of the related asset or, where applicable, when it is transferred or decommissioned. In any case, the recognition of such a deferred tax asset does not reduce the amount of the acquiring entity's adjusted covered taxes.

6. Without prejudice to Article 18(5)(e) of this law, deferred tax assets corresponding to tax credits recorded or disclosed in the constituent entity's financial statements prepared in accordance with the acceptable or authorised financial accounting standard used to prepare the consolidated financial statements of the ultimate parent entity that existed at the beginning of the transition tax period, shall be taken into account when determining the effective tax rate for the transition tax period and, where applicable, for subsequent tax periods.

7. If the value at which the deferred tax assets referred to in the preceding paragraph have been recognised has been calculated using a tax rate that is lower than the minimum tax rate, the amount of those deferred tax assets shall be the amount of the deferred tax assets in the consolidated financial statements of the constituent entity.

8. If the value at which the deferred tax assets referred to in paragraph 6 above have been recognised has been calculated using a tax rate that is higher than or equal to the minimum tax rate, the amount of those deferred tax assets shall be equal to the result of multiplying the minimum tax rate by the quotient of the deferred tax assets relating to tax credits carried forward, as recorded or disclosed in the financial statements prepared in accordance with the acceptable or authorised financial

accounting standard used to prepare the consolidated financial statements of the ultimate parent entity, divided by the nominal tax rate at which they were recorded for the tax period before the transition tax period.

When the tax rate in a jurisdiction changes in a tax period after the transition tax period, the amount of deferred tax assets shall be recalculated in accordance with the formula determined in the preceding paragraph, maintaining the amount of tax credits that were in the financial statements prepared in accordance with the acceptable or authorised financial accounting standard used to prepare the consolidated financial statements of the ultimate parent entity at the beginning of the tax period in which the change in tax rate occurred. The change in the amount of deferred tax assets arising from the recalculation due to the change in the tax rate shall not be included in the total amount of the deferred tax adjustment in that tax period. To determine the deferred tax adjustment in the tax period in which the recalculation is made and in subsequent periods, the amount of the deferred tax asset resulting from the recalculation is used as the starting point.

9. By way of derogation from paragraph 4 above, where the group can prove that the disposing entity has paid tax on the income resulting from the transfer of the assets referred to in paragraph 4 above, which is equal to or greater than the result of multiplying the minimum tax rate by the income from the transfer, it may apply the provisions of the following paragraph.

In such a case, the assets acquired may be measured at the book value recorded by the acquiring entity upon the acquisition date as determined in accordance with the financial accounting standard used to prepare the acquiring entity's financial statements, and paragraph 5 above shall not apply.

Transition provision two. Applicable percentages in relation to the substance-based income exclusion.

1. For the purpose of applying Article 14(3), the value of 5 % shall be replaced, for each fiscal year beginning from 31 December of the following calendar years, with the values set out in the following table:

Year of application	Applicable percentage (%)
2023	10
2024	9.8
2025	9, 6
2026	9.4
2027	9.2
2028	9.0
2029	8.2

Year of application	Applicable percentage (%)
2030	7.4
2031	6.6
2032	5.8

2. For the purpose of applying Article 14(4), the value of 5 % shall be replaced, for each fiscal year beginning from 31 December of the following calendar years, with the values set out in the following table:

Year	Percentage (%)
2023	8
2024	7.8
2025	7, 6
2026	7.4
2027	7.2
2028	7.0
2029	6.6
2030	6.2
2031	5.8
2032	5.4

Transition provision three. Transitional non-applicability of the top-up tax for MNE groups and large-scale domestic groups.

1. The domestic top-up tax due by an ultimate parent entity and its constituent entities located in Spanish territory in accordance with Article 25 of this law, or by an intermediate parent entity and its constituent entities located in Spanish territory when the ultimate parent entity is an excluded entity, shall be reduced to zero:

(a) In the first five years of the initial phase of the international activity of the MNE group.

(b) In the first five years, starting from the first day of the tax period in which the large-scale domestic group falls within the scope of this law for the first time.

2. The secondary top-up tax referred to in Article 29(2) of this law for the taxpayers referred to in Article 6(4) of this law, shall be zero in the first five years of the initial phase of the international activity of such group.

3. An MNE group shall be considered to be in the initial phase of its international activity if, for a tax period:

(a) It has constituent entities in no more than six jurisdictions.

(b) The sum of the net book value of the tangible assets of all the constituent entities of the MNE group located in all jurisdictions other than the reference jurisdiction does not exceed EUR 50 000 000.

For the purposes of this paragraph, reference jurisdiction means the jurisdiction in which the constituent entities of the MNE group have the highest total value of tangible assets in the fiscal year in which the MNE group originally falls within the scope of this law.

4. The period of five years referred to in paragraph 1, point (a), and in paragraph 2 shall start from the beginning of the first tax period in which the MNE group originally falls within the scope of this law.

5. The filing constituent entity shall inform the tax administration of the jurisdiction in which it is located of the start of the initial phase of the MNE group's international activity.

When the filing constituent entity referred to in Article 47 of this law is located in Spanish territory, it shall notify the Spanish tax authorities of the start of the initial phase of the MNE group's international activity. Likewise, the filing constituent entity of a large-scale domestic group located in Spanish territory shall notify the Spanish tax authorities of the start of the five-year period provided for in paragraph 1(b) of this transition provision. The notification referred to in this paragraph shall be filed in accordance with the terms to be determined by regulation.

Transition provision four. Non-applicability of top-up tax according to qualifying country-by-country information.

1. For the purposes of this transition provision, the following definitions apply:

(a) Qualifying country-by-country information: country-by-country information prepared and submitted to the relevant tax administration using acceptable financial statements. Country-by-country information is that referred to in the Final Report of Action 13 of the OECD and G20 Base Erosion and Profit Shifting Project "Transfer Pricing Documentation and Country-by-Country Reporting"; in Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation and, in articles 13 and 14 of the Corporation Tax Regulation, approved by Royal Decree 634/2015 of 10 July.

(b) Acceptable financial statements:

(i) Financial statements prepared in accordance with the acceptable or authorised financial accounting standard used to prepare the consolidated financial statements of the ultimate parent entity.

(ii) The financial statements of each constituent entity provided that they are prepared in accordance with an acceptable or authorised financial accounting standard and the information contained in such financial statements has been recorded in accordance with that accounting standard and is reliable.

(iii) The financial statements of the constituent entity that are used to prepare the country-by-country information of the MNE group when that entity is not consolidated on a line-by-line basis in the consolidated financial statements of the parent entity solely on the grounds of materiality.

(c) Transition period: tax periods starting from 31 December 2023 until 31 December 2026.

(d) Transition rate:

15 percent for tax periods beginning in 2023 and 2024.

16 percent for tax periods starting in 2025.

17 percent for tax periods starting in 2026.

e) Group gross income: the gross income reported in qualifying country-by-country information received by the Spanish tax administration for the jurisdictions concerned.

f) Profit or loss before corporate income tax or tax of the same or similar nature: amount of profit or loss before corporate income tax or tax of the same or similar nature reported in qualifying country-by-country information received by the Spanish tax administration for the jurisdictions concerned.

(g) Simplified covered taxes: the corporate income tax expense recorded in the financial statements of the constituent entities located the jurisdictions concerned, less the amount of taxes that do not qualify as covered taxes in accordance with Article 16(2) of this law and the tax expense related to uncertain tax positions.

h) Simplified effective tax rate: the result of dividing the amount of simplified covered taxes by the profit or loss before corporate income tax or tax of the same or similar nature reported in the qualifying country-by-country information received by the Spanish tax administration for the corresponding jurisdictions.

2. The top-up tax regulated in this law will be zero during the transition period referred to in this transition provision for taxpayers belonging to a multinational group that files qualifying country-by-country information, received by the Spanish tax administration, in relation to those jurisdictions and tax periods in respect of which one of the following three requirements is met:

(a) The amount of the group gross income and profit or loss before corporate income tax or tax of the same or similar nature for the jurisdiction is less than or equal to EUR 10 million and EUR 1 million, respectively.

This requirement shall be deemed to be fulfilled when the profit or loss before corporate income tax is zero or a loss.

For the purpose of calculating the group gross income referred to in this point, the gross income of the constituent entities held for sale located in the jurisdiction shall be taken into account.

(b) The simplified effective tax rate of the jurisdiction for each tax period of the transition period is equal to or higher than the transition rate set for that period.

(c) The profit or loss before corporate income tax or tax of the same or a similar nature is less than or equal to the amount corresponding to the substance-based income exclusion of such jurisdiction determined in accordance with the provisions of this law.

This requirement shall be deemed to be fulfilled when the profit or loss before corporate income tax is zero or a loss.

3. Special rules.

(a) The provisions of paragraph 2 of this transition provision shall apply to joint ventures and their affiliates referred to in Article 38 of this law as if they were constituent entities of a separate multinational group, although for the purpose of determining the qualifying income or loss and total gross income, the basis shall be the items recorded in the acceptable financial statements.

(b) The provisions of paragraph 2 of this transition provision shall not apply to investment entities that are considered tax resident in a jurisdiction for the purposes of qualifying country-by-country information, which must determine their top-up tax in accordance with the provisions of this law, except where:

(i) The investment entity and all its owners are resident in the same jurisdiction;

(ii) The elections provided for in Articles 44 and 45 of this law have not been made in relation to that investment entity.

Where, in accordance with the above, the provisions of paragraph 2 of this transition provision apply, the profit or loss before corporate income tax or tax of the same or a similar nature, the gross income and the covered taxes of the investment entity shall be taken into account exclusively in the jurisdiction of the direct owners of ownership interests, in proportion to those interests, irrespective of the jurisdiction in which the investment entity is located according to the country-by-country information.

For the purposes of this point (b), an investment entity includes an investment entity.

(c) The provisions of paragraph 2 of this transition provision shall not apply in respect of the jurisdiction of residence of the ultimate parent entities where they are flow-through entities which apply the provisions of Article 40 of this law, unless they are wholly owned by eligible persons.

If an ultimate parent entity applies the provisions of Article 40 or 41 of this law, the profit or loss before corporate income tax or tax of the same or similar nature shall be reduced by the proportion that must be allocated or distributed to an eligible person.

For the purposes of this point (c), eligible persons shall mean the persons referred to in Article 40(2)(a) and (b) and (3)(a) and (b) of this law, where applicable, and those referred to in Article 41(4)(a), (b) and (c) of this law, where applicable.

(d) A net unrealised fair value loss of more than EUR 50 million in a jurisdiction shall be excluded from profit or loss before corporate income tax or tax of the same or similar nature. For this purpose, net unrealised fair value loss shall mean the sum of all losses, reduced by any gains, arising from changes in the fair value of ownership interests in another entity, except for immaterial interests.

4. Paragraph 2 of this transition provision shall not apply in relation to the following constituent entities or MNE groups:

a) Non-resident constituent entities.

b) Multi-parented MNE groups referred to in Article 39 of this law when the information of the combined groups is not included in a single qualifying country-by-country information received by the Spanish tax administration.

(c) Constituent entities located in jurisdictions for which the election has been made to apply the eligible distribution tax system referred to in Article 42 of this law.

5. If an MNE group is within the scope of this law and does not apply the provisions of this transition provision in respect of any of the jurisdictions included in the qualifying country-by-country reporting in the tax period, it may not apply it in respect of that jurisdiction in a subsequent tax period.

6. The provisions of this transition provision shall apply to tax periods starting before 1 January 2027 and ending before 1 July 2028.

Transition provision five. Top-up tax information return and tax return corresponding to the transition tax period.

1. By way of derogation from Article 47(6) of this law, the top-up tax information return and the notifications referred to in said article shall be filed with the tax administration until the last day of the 18th month following the end of the first tax period in which an MNE group or large-scale domestic group first comes within the scope of top-up tax under a qualified income inclusion rule or a qualified under-taxed profits rule.

2. The tax return referred to in Article 50 of this law shall be filed within 25 calendar days following the 18th month after the end of the first tax period in which an MNE group or large-scale domestic group first comes within the scope of application of top-up tax under a qualified income inclusion rule or a qualified under-taxed profits rule.

Transition provision six. Temporary non-applicability of the under-taxed profits rule.

For an MNE group whose tax period does not exceed 12 months and begins before 31 December 2025 and ends before 31 December 2026, the amount of top-up tax that would result from applying the under-taxed profits rule under section 28 of this law in respect of the jurisdiction in which the ultimate parent entity is located shall be zero, provided that the ultimate parent entity has been subject to a tax on corporate profits at a nominal tax rate of at least 20 percent in each of the tax periods to which this provision applies.

Final provision one. Amendment to Law 37/1992, of 28 December, on Value Added Tax.

Law 37/1992, of 28 December, on Value Added Tax is hereby amended as follows:

One. The content of article 19.5. is amended and now reads as follows:

“5. The cessation of the situations referred to in Article 23 or the termination of the regimes included in Article 24 of this law, referred to goods whose intra-Community supply or acquisition for placement in the aforementioned situations or linked to said regimes would have benefited from tax exemption under the provisions of the aforementioned Articles and Article 26(1), or would have been the subject of supplies or services that are also exempt under the aforementioned articles.

By way of derogation from the preceding paragraph, the termination of the situations referred to in Article 23 and the end of the regime referred to in Article 24 of this law shall not constitute transactions equivalent to imports for the following goods: tin (CN code 8001), copper (CN codes 7402, 7403, 7405 and 7408), zinc (CN code 7901), nickel (CN code 7502), aluminium (CN code 7601), lead (CN code 7801), indium (CN codes ex 81 1292 and ex 81 1299), silver (CN code 7106) and platinum, palladium and rhodium (CN codes 71101 100, 71 102100 and 71103100). In these cases, the cessation of the situations or the termination of the aforementioned regimes shall give rise to the payment of tax under the terms established in section six of the appendix to this law.

For gasoline, diesel and biofuels to be used as fuel under headings 1.1, 1.2.1, 1.2.2, 1.3, 1.13 and 1.14 of the 1st rate referred to in article 50.1 of Law 38/1992, of 28 December, on Excise Taxes, the termination of the non-customs warehousing regime set out in article 24.One.1, letter f) of this law shall be deemed as complete with the last depositor of the product removed from the bonded warehouse, upon whom the Hydrocarbon Tax shall be levied, and who must pay the value added tax for the transaction equivalent to import, or for the owner of the bonded warehouse in the event that they are the owner of the product. Likewise, the last depositor of the product removed, or the owner of the bonded warehouse if they are the owner of the product, shall be obliged to guarantee payment of the Value Added Tax corresponding to the subsequent taxable and non-exempt supply of the goods removed from the bonded warehouse, in the manner provided for in section eleven of the annex to this law.

However, the cessation of the situations referred to in Article 23 or the termination of the regimes referred to in Article 24 shall not constitute a transaction equivalent to import where it results in a supply of goods to which the exemptions provided for in Articles 21, 22 or 25 of this law apply.

Two. Section Two.1.1 of Article 91 is amended and now reads as follows:

“Two. The rate of 4 percent shall be applied to the following transactions:

1. Deliveries, intra-Community acquisitions or imports of the goods listed below:

1. The following products:

(a) Common bread, as well as frozen common bread dough and frozen common bread intended exclusively for the production of common bread.

(b) Bread-making flour.

(c) The following types of milk produced by any animal species: natural, certified, pasteurised, concentrated, skimmed, sterilised, UHT, evaporated, powdered and fermented.

(d) Cheeses.

(e) Eggs.

(f) Fruit, vegetables, pulses, tubers and cereals, which have the status of natural products in accordance with the Food Code and the provisions laid down for its implementation.

(g) Olive oils.”

Three. An eleventh paragraph shall be added to the appendix, which reads as follows:

"Eleven. Guarantees for the payment of Value Added Tax on certain fuels that are no longer part of the non-customs warehousing regime referred to in the third paragraph of Article 19.5 of this law.

1. The last depositor of the products referred to in the third paragraph of Article 19.5 of this law which are removed from the bonded warehouse, or the owner of the bonded warehouse if they are the owner of said products, shall be obliged to provide and maintain a guarantee to ensure payment of the Value Added Tax corresponding to any subsequent taxable and non-exempt supplies of said goods.

2. The provisions of the previous paragraph shall not apply when the last depositor or, where applicable, the owner of the bonded warehouse fulfils any of the following requirements:

(a) They are recognised as an authorised economic operator in accordance with Regulation (EU) 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code.

(b) They are recognised as a reliable operator by fulfilling the following conditions:

(a') They are listed in the register of extractors,

(b') They had a volume of extractions during the previous calendar year of at least 1 billion litres of gasoline, diesel and biofuels intended for use as fuel under the third paragraph of Article 19.5 of this law,

(c') They have operated as a wholesale trader for the previous 3 years; and

(d') They comply with the financial solvency requirements set out in Article 39 of Regulation (EU) 952/2013 and Article 26 of Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015.

The procedure for recognising the status of reliable operator shall be determined by order of the head of the Treasury, as will the regulation of the creation and maintenance of a register of reliable operators.

3. The guarantee referred to in number 1 shall take one of the following forms:

a) A guarantee from a credit institution, financial institution or insurance company accredited in the European Union, which generally guarantees the payment of the value added tax corresponding to the taxable and non-exempt supplies that are subsequently made and which meets the following requirements:

– The minimum amount of the guarantee shall be 110 percent of the value added tax liability corresponding to the transactions treated as imports referred to in the third paragraph of Article 19.5 of this act carried out in the two immediately preceding months.

– When in the previous two months no operations treated as imports referred to in the third paragraph of Article 19.5 of this law have been carried out, the minimum amount of the guarantee shall be established according to a justified forecast of activity, with a minimum of 3 million euros.

– The amount of the guarantee shall be updated monthly and, in any case, when the guarantee is insufficient to reach the amount of 110 percent of the value added tax corresponding to the transactions treated as imports to be carried out, after deducting the amounts corresponding to the guaranteed extractions carried out.

– The guarantee shall be made out in favour of the tax administration or administrations responsible for levying the guaranteed tax.

– The competent administration may execute the guarantee when, three months after the removal of the goods from the bonded warehouse and the non-customs warehousing regime has been terminated, proof has not been furnished either of payment of value added tax on a non-exempt supply of the goods made by the taxpayer after the removal of the goods from the bonded warehouse, or of the use of the goods by that taxpayer for a purpose other than that of making such a supply.

– The requirements and processes for managing these guarantees will be developed by order of the head of the Treasury.

(b) Advanced payment of value added tax corresponding to a subsequent taxable and non-exempt supply of such goods. The advanced tax payment shall be for an amount equal to 110 percent of the value added tax liability corresponding to the transaction treated as an import as referred to in the third paragraph of Article 19.5 of this law and shall be made in the place, manner and on the form established by the competent tax administrations referred to in letter a) above. The advanced tax payment may be deducted by the taxpayer on the self-assessment corresponding to the tax payment period in which the value added tax on the subsequent supply would have been recorded (or declared), or the use of the product removed from the bonded warehouse by the taxpayer for a use other than making a supply is justified.

4. The last depositor, prior to the removal of the products from the bonded warehouse, must justify one of the following circumstances to the owner of the bonded warehouse:

– That it is an authorised economic operator or reliable operator, by means of certification from the tax administration that has the authority to verify and review compliance with the corresponding requirements.

– That there is sufficient guarantee, by means of a certificate from the tax administration referred to in letter a) of number 3 above in the case of a guarantee or, in the case of advanced tax payment, by means of proof of payment which includes the Complete Reference Number (CRN), the volume and the type of product to which it refers.

Once the competent tax administration has verified that sufficient guarantee or payment has been provided, it shall authorise the removal of the product from the bonded warehouse.

The procedure for authorising the removal of the product from the bonded warehouse shall be finalised by an express decision of the competent tax administration, which shall approve or deny the removal of the product from the bonded warehouse; such removal may be carried out by an electronic code.

The owner of the bonded warehouse who allows fuel to leave the warehouse without prior accreditation of any of the aforementioned circumstances shall be jointly and severally liable for payment of the tax debt corresponding to the supply subject to and not exempt from value added tax referred to in number 1 above. In the absence of proof to the contrary, it shall be presumed that the amount of value added tax payable by the jointly and severally liable party is 110 percent of the value added tax liability corresponding to the transaction treated as an import, as referred to in the third paragraph of Article 19.5 of this law.

5.1 During the month following the entry into force of the Order referred to in point 2.b) above, the last depositor of the products, or the owner of the warehouse if they are the owner of the goods, shall not be obliged to guarantee payment of the value added tax corresponding to the taxable and non-exempt supply which they make of said goods themselves.

2. During the same period, the depositor or, where applicable, the owner of the bonded warehouse, may apply for reliable operator status under the terms set out in the aforementioned Order.

3. The transition regime shall cease to apply when the application for recognition of reliable operator status is resolved and, in any case, after one month following the entry into force of this paragraph of the appendix.

If the transition period ends due to the expiry of the aforementioned period and the application for recognition of reliable operator status has not been resolved, the taxpayer must guarantee payment of the value added tax corresponding to the taxable and non-exempt supply that the last depositor of the products, or the owner of the bonded warehouse if they are the owner of the products, subsequently makes of said goods under the terms set out in number 3 above.

4. The tax administration shall provide the owners of bonded warehouses with the necessary technical systems to verify the application of this transition regime.”

Final provision two. Amendment to Law 38/1992, of 28 December, on Excise Taxes.

With effect from 1 January 2025, Law 38/1992, of 28 December, on Excise Taxes is hereby amended, except for the amendments relating to Articles 15(7) and 53(7), which shall take effect from the entry into force of this law, and shall read as follows:

One. A section 4 is added to article 2, with the following wording:

‘4. The Tax on Liquids for Electronic Cigarettes and other Tobacco-Related Products.”

Two. The first paragraph of Article 4(32) now reads as follows:

‘32. “Duty-free shops”: Establishments located on the premises of an airport or port, in the area under customs control intended for traveller embarkation, transit or arrival once they have passed the access security check and/or passport control, located on the Spanish mainland or in the Balearic Islands which, in compliance with the requirements laid down in regulations, supply alcoholic beverages or tobacco products or liquids for electronic cigarettes, or nicotine pouches or other nicotine products, duty free, to travellers carrying them as personal luggage, on a flight or sea crossing, bound for a third country or a third territory.”

Three. Section 3 of article 5 is amended to read as follows:

‘3. The provisions of the preceding paragraphs are without prejudice to the provisions of Articles 23, 40 and 64 bis of this law.”

Four. The first paragraph of Article 7(1) now reads as follows:

‘1. Without prejudice to the provisions of Articles 23, 28, 37, 40 and 64 quater of this law, the Tax will accrue:”

Five. The first paragraph of Article 9(1) now reads as follows:

‘1. Without prejudice to the provisions of Articles 21, 23, 42, 51, 61 and 64 octies of this law, the manufacture and import of products subject to excise taxes intended for the following purposes shall be exempt, under the conditions established by regulation:”

Six. The first paragraph of Article 10(1) now reads as follows:

‘1. Without prejudice to the provisions of Articles 9, 17, 22, 23, 40, 43, 52, 62 and 64 nonies of this law, the following shall be entitled to a refund of the manufacturing excise taxes, under the conditions established by regulations:”

Seven. Article 15(5), (7) and (9) now read as follows:

‘5. Without prejudice to Articles 10(1)(c), 22(c), 40(3), 52(d), 62(b) and 64(b) nonies, in cases where products are brought back to the establishment of origin because they could not be delivered to the consignee for reasons beyond the control of the authorised warehousekeeper who dispatched them, and in cases where the establishment where the products are located ceases to operate under an exemption, products subject to manufacturing excise taxes on which the tax was already accrued shall not be allowed to enter the factories and warehouses.”

‘7. The movement and holding of products for commercial purposes that are subject to manufacturing excise taxes must be covered by the documents set forth in the regulations proving that the tax has been paid in Spain or is under a tax suspension arrangement, an exemption or an intra-Community or internal movement system with duty accrued, without prejudice to the provisions of Article 44(3).

With regard to proof of payment of the tax in Spain, the above requirement shall not be deemed to be fulfilled when the tax administration proves that the corresponding tax has not been paid into the Treasury.”

‘9. For the purposes of point (e) of the preceding paragraph, products shall be deemed to be held for commercial purposes, unless there is proof to the contrary, where the quantities exceed the following:

a) Tobacco products:

1. Cigarillos, 800 units.

2. Cigarettes, 400 units.

3. Cigars, 200 units.

4. Other tobacco products, 1 kg.

(b) Alcoholic beverages:

1. Alcoholic beverages, 10 litres.

2. Intermediate products, 20 litres.

3. Wine and fermented beverages, 90 litres.

4. Beer, 110 litres.

(c) Tax on Liquids for Electronic Cigarettes and other Tobacco-Related Products.

1. Liquids for electronic cigarettes: 40 millilitres.

2. Nicotine pouches: 400 units.

3. Other nicotine products: 500 grams.”

Eight. A new paragraph 7 is added to Article 53, which reads as follows:

‘7. For the purposes of Article 8.2.h) of the law, when the possession of hydrocarbons is for distribution or for refuelling vehicles used for the transport of goods or passengers, the invoice or equivalent document stating the charge of the tax or the corresponding circulation document will not be sufficient to prove payment of the Hydrocarbon Tax in the following cases:

(a) Where the presence of products other than duly authorised markers or tracers and components permitted in the technical specifications is detected in such hydrocarbons.

(b) When they have been acquired from operators who do not appear on the list published by the National Energy Commission in accordance with the provisions of Article 42.2 of Law 34/1998, of 7 October, on the hydrocarbon sector.”

Nine. Article 60(1) is amended as follows:

‘1. The tax shall be levied at the following rate:

Heading 1. Cigars and cigarillos: except where the following paragraph applies, cigars and cigarillos shall be taxed at the rate of 15.8%.

The amount of the tax may not be less than the single rate of 47 euros per 1,000 units.

Heading 2. Cigarettes: except where the last paragraph of this heading applies, cigarettes shall be taxed simultaneously at the following rates:

a) Proportional rate: 48.5%.

(b) Specific rate: 33.50 euro per 1,000 cigarettes.

The amount of the tax may not be less than the single rate of 150 euros per 1,000 cigarettes.

Heading 3. Cigarette rolling tobacco: except where the last paragraph of this heading applies, cigarette rolling tobacco shall be taxed simultaneously at the following rates:

a) Proportional rate: 37.68%.

(b) Specific rate: 33.4 euros per kilogramme.

The amount of the tax may not be less than the single rate of 112.50 euros per kilogramme.

Heading 4. Other tobacco products: 34%.

Other tobacco products shall be taxed at the single rate of 30 euros per kilogramme where the amount which would result from the application of the rate laid down in the preceding paragraph is less than the amount of this single rate.”

Ten. Chapter IX of Title I is amended as follows:

“CHAPTER IX

Tax on Liquids for Electronic Cigarettes and other Tobacco-Related Products

Article 64. Target scope.

1. The target scope of the tax consists of liquids for electronic cigarettes, nicotine pouches, and other nicotine products besides those that fall within the target scope of the Tobacco Products Tax, when they are not considered medications.

2. For the purposes of this tax, liquids for electronic cigarettes shall mean liquids which may be used in electronic cigarettes or similar vaporising devices or for refilling electronic cigarettes or similar vaporising devices, whether they contain nicotine or not.

3. Electronic cigarette shall mean a product that can be used to consume vapour through a mouthpiece or any component of such a product, including a cartridge, a tank and a device without a cartridge or tank, and which may be disposable or refillable by means of a refill container or tank, or refillable with single-use cartridges.

4. Nicotine pouches shall mean products for oral administration containing nicotine, but not tobacco, mixed with plant fibres or an equivalent substrate, presented in porous sachet(s) or an equivalent format.

5. For the purposes of this tax, other nicotine products shall mean products for end consumption containing nicotine, but not tobacco, other than nicotine pouches as defined in the previous paragraph and liquids for electronic cigarettes as defined in paragraph 1.

Article 64 bis. Taxable event.

In addition to the provisions of Article 5, the entry of products falling within the scope of the tax into domestic territory from the territory of other Member States shall be subject to the tax.

The movement and holding of the goods subject to the tax from the place of entry into domestic territory to the place of reception by the consignee must be covered by a commercial document which correctly identifies the date of the beginning of the dispatch, the consignor, the consignee, as well as the nature and quantity of the goods being transported.

Article 64 ter. Non-applicability.

The entry of liquids for electronic cigarettes, nicotine pouches or other nicotine products into domestic territory in the cases regulated in Article 6 of this law shall not be subject to tax.

Article 64 quater. Accrual.

In addition to the provisions of Article 7 of this law, the tax shall accrue in the event of entry of the products subject to the tax into domestic territory at the time of receipt by the consignee in that territorial area. However, where such products enter directly via a factory or bonded warehouse, the entry shall take place under a tax suspension arrangement.

Article 64 quinquies. Taxpayers.

1. In addition to the provisions of Article 8 of this law, in the event of the entry of the products subject to the tax within domestic territory, the consignors shall be taxpayers, unless such entry is for commercial purposes, in which case the consignees of the products shall be taxpayers.

In any case, the owners of electronic platforms that facilitate the delivery of the products subject to the tax within domestic territory shall be deemed to be consignors.

2. Travellers coming from non-domestic Community territory shall also be taxed on the products subject to the tax which they are personally carrying.

Article 64 sexies. Taxable base.

1. The taxable base shall be the volume, expressed in millilitres, for liquids for electronic cigarettes and the weight of the product's contents, expressed in grams, for nicotine pouches and other nicotine products.

2. If this volume or weight is expressed in a decimal number, it shall be rounded up to the next number when the figure in the first decimal place is equal to or greater than five. It shall be rounded down in all other cases.

Article 64 septies. Tax rate.

The tax will be levied at the following rates:

Heading 1: Liquid for e-cigarettes containing no nicotine or 15 milligrams of nicotine or less per millilitre of product: 0.15 euros per millilitre.

Heading 2: Liquid for e-cigarettes containing more than 15 milligrams of nicotine per millilitre of product: 0.20 euros per millilitre.

Heading 3: Nicotine pouches: 0.10 euros per gram.

Heading 4: Other nicotine products: 0.10 euros per gram.

Article 64 octies. Exemptions.

1. In addition to the provisions of Article 9 of this law, the following shall be exempt under the conditions established by regulation:

(a) The import or entry into domestic territory of products subject to the tax carried personally by travellers over the age of seventeen from territories other than domestic territory, provided that they do not exceed 20 millilitres for liquids for electronic cigarettes, 200 units for nicotine pouches or 200 grams in the case of other nicotine products.

(b) The import or entry into domestic territory of products subject to the tax that are dispatched, on an occasional basis, from a territory other than domestic territory by one private individual to another private individual, without payment of any kind, provided that they do not exceed 10 millilitres for liquids for electronic cigarettes, 30 units in the case of nicotine pouches or 150 grams for other nicotine products.

(c) The manufacture, import or entry into domestic territory of taxable products that leave such territory with a destination in the Union and fall under a tax suspension arrangement, which shall be deemed to have been discharged.

(d) The manufacture, import or entry into domestic territory of products subject to the tax which are intended for scientific or quality-related analyses of the products, from factories or bonded warehouses.

2. The manufacture, import or entry into domestic territory of taxable products intended to be delivered by duty-free shops and carried in the personal luggage of travellers moving, by air or sea, outside the domestic territory shall also be exempt.

3. The entry into domestic territory of products subject to the tax which are intended for the uses provided for in Article 9(1) of this law shall be exempt from tax.

Article 64 nonies. Refunds.

In addition to the provisions of Article 10(1)(a) and (b) of this law, the following persons shall be entitled to a refund of tax payments, in the manner and under the conditions established, where appropriate, by regulation:

(a) Owners of liquids for electronic cigarettes, nicotine pouches or other nicotine products who destroy them under the supervision of the tax administration.

(b) Owners of liquids for electronic cigarettes, nicotine pouches or other nicotine products who return them to the factory for recycling.

c) Persons who dispatch the products subject to the tax from domestic territory to the territory of other Member States.

It shall be presumed, in the absence of proof to the contrary, that the products have been dispatched outside domestic territory when their delivery is exempt from Value Added Tax because it is an intra-Community delivery, in accordance with the provisions of Value Added Tax regulations.

Article 64 decies. Special provisions in relation to intra-Community movement.

The following provisions relating to intra-Community movement contained in Chapter I of Title I of this law shall not apply to this tax. In particular:

(a) Article 4(8), (10), (11), (12), (14), (15), (16), (27) and (34).

(b) Article 7(1)(c), (d), (f), (g), (i) and (m).

(c) Article 8(2)(c), (d) and (e), (3), (4), (6) and (9).

(d) Article 10(1)(c), (d) and (e).

(e) Article 13(2).

(f) Article 15(7).

(g) Article 16(2), (3) and (4).

(h) Article 17."

Eleven. A ninth transition provision is added, which reads as follows:

"Transition provision nine. Filing the information return for the Tax on Liquids for Electronic Cigarettes and Other Tobacco-Related Products.

During the 30 days following the entry into force of the tax on liquids for electronic cigarettes and other tobacco-related products, those storing products subject to the tax for commercial purposes shall submit to the Tax Agency's electronic office an informative return specifying the type and quantity of product stored at the time the tax enters into force. In particular, this return shall include the classification of the products according to the sections regarding tax rates, i.e. Article 64 sexies of this law.

It is a serious tax offence not to file the aforementioned tax return on time, or to file it incompletely, inaccurately or with false information. The sanction will consist of a fixed pecuniary fine of 500 euros and the provisions of article 188 of Law 58/2003, of 17 December will be applicable."

Twelve. A tenth transition provision is added, which reads as follows:

"Transition provision ten. Regularisation of products subject to the tax in storage at the entry into force of the Tax on Liquids from Electronic Cigarettes and other Tobacco-Related Products.

The holding of products subject to the tax which are stored for commercial purposes at the time of the entry into force of the tax shall be subject to the Tax on Liquids for Electronic Cigarettes and other Tobacco-Related Products.

Those in possession of such products shall be taxpayers.

The chargeable event shall occur on the day of entry into force of the tax, unless these products fall under a tax suspension arrangement within a factory or bonded warehouse.

The applicable tax rate is that set out in Article 64 septies.

The self-assessed tax return shall be filed from 1 to 20 April 2025, under the conditions and using the forms determined by the head of the Treasury."

Thirteen. A eleventh transition provision is added, which reads as follows:

"Transition provision eleven. Deadline for filing the self-assessed tax return for the Tax on Liquids for Electronic Cigarettes and Other Tobacco-Related Products during the first three months of 2025.

Self-assessed tax returns for the settlement periods of January, February and March 2025 shall be filed from 1 to 20 April 2025."

Fourteen. A paragraph is added to the second final provision, which now reads as follows:

"In addition, with regard to the Tax on Liquids for Electronic Cigarettes and Other Tobacco-Related Products, the budget laws of each year may amend the target scope, the definitions of the taxed products and the headings under which the tax rates are determined."

Final provision three. Amendment of the Value Added Tax Regulation, approved by Royal Decree 1624/1992 of 29 December, on the VAT settlement period for transactions relating to bonded warehouses, gasoline, diesel and other fuels.

The Value Added Tax Regulation, approved by Royal Decree 1624/1992, of 29 December, is amended.

A new number 5 is added to Article 71(3), which reads as follows:

“5. Owners of bonded warehouses for gasoline, diesel or biofuels included in the scope of the Hydrocarbon Tax, as well as business persons or professionals who extract these products from the bonded warehouses.”

Final provision four. Amendment of Law 19/1994, of 6 July, modifying the Economic and Tax System of the Canary Islands.

Effective for tax periods beginning 1 January 2025, the following amendments are added in sections 4 and 8 of Article 27 of Law 19/1994, of 6 July, modifying the Economic and Tax System of the Canary Islands:

One. Section 4 of article 27 is amended to read as follows:

‘4. The amounts allocated to the reserve for investments in the Canary Islands must be used within a maximum period of three years from the date of accrual of the tax corresponding to the financial year in which the reserve is set aside, to make any of the following investments:

A. Initial investments consisting of acquiring new tangible or intangible fixed assets as a result of:

– Creating an establishment.

– Expanding an establishment.

– Diversifying an establishment's activity to make new products.

– Substantial transformation in an establishment's production process.

Under no circumstances may the reserve for investment in the Canary Islands be used to acquire property intended for tourist accommodation.

Investments in land, whether built or not, shall also be deemed initial investments, provided that they have not previously benefited from the scheme provided for in this article and affect:

– The development of subsidised housing, when this qualification is appropriate in accordance with the provisions of Decree 27/2006, of 7 March, which regulates the actions of the Canary Islands Housing Plan, and they are intended for rental by the developer company.

– The rehabilitation of subsidised housing, in accordance with the provisions of Law 2/2003, of 30 January, on Canary Islands Housing, intended for rental by persons registered in the Public Register of Applicants for Subsidised Housing of the Canary Islands, in accordance with the provisions of the Order of 24 September 2009, which regulates the registration system, operation and structure of said Register.

– The development of industrial activities included in divisions 1 to 4 of the first section of the rates of the Economic Activities Tax, approved by Legislative Royal Decree 1175/1990, of 28 September, approving the rates and instructions for the Economic Activities Tax.

– Socio-health activities, residential centres for the elderly and neurological and physical rehabilitation centres.

– Commercial areas undergoing redevelopment.

– The tourism activities regulated in Law 7/1995, of 6 April, on the Regulation of Tourism in the Canary Islands, the acquisition of which is for the purpose of refurbishing a tourism establishment.

For the purpose of including the value corresponding to the land in the amount of Reserve used, refurbishment work shall mean the actions aimed at renovating, expanding or improving, provided that they meet the necessary conditions to be incorporated into the tangible fixed assets as an increase in the building's value.

Intangible fixed assets must be rights of use of industrial or intellectual property, non-patented knowledge (under the terms to be determined by regulations) and government concessions, and meet the following requirements:

– Used exclusively in establishments that meet the conditions set out in this point.

– Be amortisable.

– Be purchased from third parties under market conditions. In the case of government concessions, they shall be deemed to be acquired under market conditions when they are subject to a competitive tendering procedure.

– Be listed in the company's assets.

For taxpayers who meet the conditions of article 101 of Law 27/2014, of 27 November, on Corporation Tax, in the tax period in which the income used to allocated funds to the reserve is obtained, the investment may consist of acquiring used fixed assets, provided that the assets acquired have not previously benefited from the regime provided for in this article. In the case of land, the conditions set out in this point must be met.

The terms under which the an establishment is deemed to be created or expanded and its production materially diversified or transformed shall be determined by regulation.

B. Job creation directly related to the investments provided for in point A, occurring within a period of six months from the date of entry into operation of that investment.

Job creation will be determined by the increase in the taxpayer’s total average workforce in that period with respect to the average workforce in the 12 months prior to the date on which the investment comes into operation, provided that said increase is maintained for a period of five years, except in the case of taxpayers who meet the conditions of article 101 of Law 27/2014, of 27 November, on Corporation Tax, in the tax period in which the income used to allocated funds to the reserve is obtained, who must maintain this increase for three years.

To calculate the company's total average workforce and the growth thereof, the number of persons employed will be decided in accordance with the provisions of labour legislation, taking into account the contracted hours in relation to a full day.

B bis. Job creation carried out in the tax period that cannot be deemed to be initial investment because it does not meet any of the requirements established in point B above, up to a limit of 50 percent of the allocations to the Reserve made by the taxpayer in the tax period.

C. The acquisition of tangible or intangible fixed assets that cannot be deemed initial investment because they do not meet any of the conditions established in point A above, investment in assets that contribute to improving and protecting the environment in the Canary Islands, as well as expenses for research and development, as determined by regulations.

Under no circumstances may the Canary Islands investment reserve be used to refurbish or renovate properties intended for tourist accommodation.

In the case of vehicles for the carriage of passengers by sea or road, they must be used exclusively for public services within the scope of functions of general interest corresponding to the Canary Islands' public needs.

In the case of land, whether built or not, it must affect:

– The development of subsidised housing, when this qualification is appropriate in accordance with the provisions of Decree 27/2016, of 7 March, which regulates the actions of the Canary Islands Housing Plan, which is intended for rental by the developer company.

– The rehabilitation of subsidised housing, in accordance with the provisions of Law 2/2003, of 30 January, on Canary Islands Housing, intended for rental by persons registered in the Public Register of Applicants for Subsidised Housing of the Canary Islands, in accordance with the provisions of the Order of 24 September 2009, which regulates the registration system, operation and structure of said Register.

– The development of industrial activities included in divisions 1 to 4 of the first section of the rates of the Economic Activities Tax, approved by Legislative Royal Decree 1175/1990, of 28 September, approving the rates and instructions for the Economic Activities Tax.

– Socio-health activities, residential centres for the elderly and neurological and physical rehabilitation centres.

– Commercial areas undergoing redevelopment.

– The tourism activities regulated in Law 7/1995, of 6 April, on the Regulation of Tourism in the Canary Islands, the acquisition of which is for the purpose of refurbishing a tourism establishment.

For the purpose of including the value corresponding to the land in the amount of Reserve used, refurbishment work shall mean the actions aimed at renovating, expanding or improving, provided that they meet the necessary conditions to be incorporated into the tangible fixed assets as an increase in the building's value.

D. The subscription of:

1. Shares or equity interests issued by companies that carry out their activity in the Islands as a result of their incorporation or capital increase, provided that the following requirements are met:

These companies shall make the investments provided for in points A, B, B bis and C above, under the conditions laid down in this Article, without prejudice to the provisions of the second paragraph of section 1 of this Article. Provided that both the entity subscribing the capital and the entity making the investment meet the conditions of article 101 of Law 27/2014, of 27 November, on Corporation Tax, in the tax period in which the income used to allocated funds to the reserve is obtained, the investments referred to in letters A, B, B bis and C may be made under the terms and conditions provided for this type of taxpayers.

These companies must make these investments within three years of the date on which the tax accrued in the year in which the taxpayer acquiring the shares or equity interests had allocated money to the reserve provided for in this article.

The assets thus acquired must be kept in operation in the Canary Islands under the terms provided for in this article.

The cost price of the investments made by the investee company must be at least the amount paid for the shares or interests acquired by the taxpayer.

The investments made by the investee company shall not give rise to the application of any other tax benefits, except for those provided for in Article 25 of this law.

To this end, the company that subscribes the capital shall inform the issuing company in a reliable manner of the nominal value of the shares or interests acquired and the date on which the period for making its investment expires. The issuing company shall inform the company subscribing its capital in a reliable manner of the investments made using the proceeds from the subscription of its shares or interests, thereby using the reserve, and of the date on which such investments were made. The investments made shall be deemed to be financed by the funds derived from the shares or interests issued in the order in which they were actually paid for. In the case of payments made on the same date, they shall be deemed to contribute proportionately to financing the investment.

2. Shares or equity interests issued by Canary Islands Special Zone entities as a result of their incorporation or capital increase, provided that the requirements and conditions established in number 1 of this point D above and those laid down in Chapter I of Title V of this law are met. In addition, the following conditions must be met:

The amount of the issue or capital increase intended for the materialisation of the Reserve may not, under any circumstances, be applied to compliance with the minimum investment requirements of Canary Islands Special Zone entities regulated in Article 31 of this Law.

The person or entity subscribing the shares or interests issued may not transfer or assign to third parties use of the assets related to its economic activity existing in the financial year prior to the subscription, in that financial year or in the four subsequent financial years, unless their useful life has ended and they are replaced or they are transactions carried out in the normal course of business by taxpayers whose business consists of leasing or assigning fixed assets to third parties for their use, provided that there is no direct or indirect relationship with the lessees or assignees of said assets, in the terms defined in section 2 of article 18 of Law 27/2014 of 27 November on Corporation Tax, nor may they be financial leasing transactions. Under no circumstances may such assets be transferred or assigned to the Canary Islands Special Zone entity whose shares they subscribe or to any other person related to the latter under the terms indicated above.

The person or entity subscribing the issued shares or interests shall not reduce the total average workforce that exists in the financial year preceding the subscription in the four subsequent financial years. To calculate the company's total average workforce, the number of persons employed will be decided in accordance with the provisions of labour legislation, taking into account the contracted hours in relation to a full day.

3. Any financial instrument issued by financial institutions, provided that the funds raised for the purpose of materialising the Reserve are used to finance private projects in the Canary Islands, whose investments are suitable in accordance with the provisions of this article, provided that such issuance is supervised by the Government of the Canary Islands, and has a binding report from the Tax Agency, under the terms established in regulations.

For these purposes, taxpayers who make use of the reserve shall inform the financial institution of the amount of the reserve and the date on which the period for its use expires. The latter, in turn, shall inform the taxpayer in a reliable manner of the investments made and their date. The investments made shall be deemed to be financed in the order in which the actual disbursement was made. In the case of payments made on the same date, they shall be deemed to contribute proportionately to financing the investment.

The investments made shall not give rise to the application of any tax benefits other than those provided for in Article 25 of this law.

4. Public debt securities of the Autonomous Region of the Canary Islands, of Canary Islands Local Corporations or of its public companies or autonomous bodies, provided that they are used to finance investments in infrastructure and equipment or improving and protecting the environment of the Canary Islands, or to rehabilitate subsidised housing intended for rental by persons registered in the Public Register of Applicants for Subsidised Housing in the Canary Islands, up to a limit of fifty percent of the allocations made in each financial year.

To this end, the national government shall approve the amount and destination of the issues, based on the proposals made in this regard by the Autonomous Region of the Canary Islands, following a report by the Public Investment Committee.

5. Securities issued by public bodies to build or operate infrastructures or facilities of public interest or to refurbish subsidised housing intended for rental by people registered in the Public Register of Applicants for Subsidised Housing in the Canary Islands, for public administrations in the Canary Islands, when the financing obtained from such issue is used exclusively for such construction or operation, up to a limit of fifty percent of the allocations made in each financial year.

To this end, the national government shall approve the amount and destination of the issues, based on the proposals made in this regard by the Autonomous Region of the Canary Islands, following a report by the Public Investment Committee.

6. Securities issued by entities to build or operate infrastructures or facilities of public interest for the public administrations in the Canary Islands, once the corresponding administrative concession or

authorising administrative title has been obtained, when the financing obtained with this issue is used exclusively for such construction or operation, with the limit of fifty percent of the allocations made in each financial year and under the terms provided for in regulations. The issue of the corresponding securities shall be subject to prior administrative authorisation by the administration with the authority to grant the corresponding authorising administrative title.

For these purposes and in the case of public sector entities, the national government shall approve the amount and destination of the issues, based on the proposals made in this regard by the Autonomous Region of the Canary Islands, where appropriate, following a report by the Public Investment Committee.

Two. Section 8 of article 27 is amended to read as follows:

‘8. The assets in which the investment reserve referred to in paragraph 4(A) and (C) was materialised and those acquired pursuant to paragraph 4(D) must remain in operation in the acquirer's company for at least five years without being transferred, leased or ceded to third parties for their use. If it has been in operation for less than that period, this requirement shall not be deemed not met if another asset is acquired to replace it at its net book value, prior to or within six months of its removal from the balance sheet. This new asset must meet the requirements to apply the reduction provided for in this Article and remain in operation for the time necessary to complete that period. This new acquisition cannot be deemed the materialisation of the amounts allocated to the reserve for investments in the Canary Islands, except for the amount that exceeds the net book value of the asset being replaced, which was deemed the materialisation of the reserve regulated in this article. For the acquisition of land, the period shall be ten years.

If the asset is lost, it must be replaced in accordance with the terms set out in the previous paragraph.

Taxpayers whose economic activity is leasing or transferring fixed assets to third parties for their use may benefit from the investment reserve scheme, provided that there is no direct or indirect relationship with the lessees or transferees of said assets, in the terms defined in article 18, section 2, of Law 27/2014, of 27 November, on Corporation Tax, and provided that the transactions are not financial leasing transactions. For these purposes, leasing property shall be deemed an economic activity only when the circumstances provided for in section 2 of Article 27 of Law 35/2006 are met.

In cases involving leasing property, in addition to the conditions set out in the previous paragraph, the taxpayer must qualify as a tourism company in accordance with the provisions of Law 7/1995, of 6 April, on the Regulation of Tourism in the Canary Islands; or the lease must concern subsidised housing leased by the development company; or be the lease of rehabilitated subsidised housing to persons registered in the Public Register of Applicants for Subsidised Housing of the Canary Islands; or real estate used to carry out industrial activities included in divisions 1 to 4 of the first section of the rates of the Economic Activities Tax, approved by Legislative Royal Decree 1175/1990, of 28 September, approving the rates and instructions for the Economic Activities Tax; or commercial areas located in zones whose tourism supply is in decline and therefore require integrated urban-area rehabilitation interventions, as defined in the General Planning Guidelines of the Canary Islands, approved by Law 19/2003, of 14 April.

In the case of the securities referred to in paragraph 4(D), they must remain in the taxpayer's assets for five years in a row, and the rights of use or enjoyment associated with them may not be transferred to third parties.”

Final provision five. Amendment of the Special Taxes Regulation, approved by Royal Decree 1165/1995, of 7 July.

With effect from 1 January 2025, the Special Taxes Regulation, approved by Royal Decree 1165/1995 of 7 July, is amended as follows:

One. Article 1(4) and (5) now read as follows:

‘4. Electronic administrative document. The electronic document established by Council Directive 2020/262/EU of 19 December 2019 laying down the general arrangements for excise duty and by Commission Delegated Regulation (EU) 2022/1636 of 5 July 2022 to cover the intra-Community movement of excise goods under a duty suspension arrangement, excluding the Tax on Liquids for Electronic Cigarettes and other Tobacco-Related Products.

The electronic administrative document, with the adaptations and exceptions provided for in this regulation and in the implementing legislation, shall also be used to cover the movement of goods subject to manufacturing excise taxes under a duty suspension arrangement or where an exemption or a reduced rate applies, where the origin and destination are in domestic territory.”

‘5. Simplified electronic administrative document. The electronic document established by Directive 2020/262/EU to cover the intra-Community movement of excise goods, excluding the Tax on Liquids for Electronic Cigarettes and other Tobacco-Related Products, according to the guaranteed deliveries procedure.”

Two. Article 4(2), (4) and (5) now read as follows:

‘2. In the case of the exemption relating to purchases made by the armed forces referred to in Article 9(1)(c) and (g) of the law, regarding products subject to the taxes on alcohol and alcoholic beverages, the tax on tobacco products, fuels included in the scope of the hydrocarbon tax or products subject to the tax on liquids for electronic cigarettes and other tobacco-related products, the procedure for applying the benefit shall begin with a request to the Ministry of Defence for proof of compliance with the conditions established in the respective international conventions signed by Spain within the scope of NATO or in the applicable provisions of Union Law, as applicable in each case. Once this accreditation has been obtained, the beneficiary of the exemption shall request that it be applied by the managing office. This application, which shall be accompanied by the abovementioned accreditation, shall specify the type and quantity of products to be purchased with exemption, in accordance with expected needs.

The managing office shall issue the supply authorisation with the excise duty exemption, for the quantity appropriate to the consumption needs that have been justified. The exemption certificate shall specify the nature and quantity of the excise products which may be supplied with an exemption, the value of the products and the identity of the exempt consignee.”

‘4. The supply of the products referred to in paragraphs 2 and 3 above shall be carried out as follows:

(a) In the case of imported products or products whose customs status is non-Union goods, from the customs office for release for free circulation or, where appropriate, from a free area or customs warehouse.

(b) For products located in the domestic territory, from a factory or bonded warehouse.

(c) Data entries in the accounts of the establishments referred to in points (a) and (b) above shall be supported by the corresponding supply authorisations and copies of the transfer document referred to in point (e) below.

(d) Except for products subject to the tax on liquids for electronic cigarettes and other tobacco-related products, where products are supplied from the territory of other Member States, the beneficiaries of the exemptions may receive them directly under duty suspension arrangements. In this case, the supply authorisations shall be issued in the form of an "exemption certificate" specifying the nature and quantity of the excise goods to be delivered, the value of the products and the identity of the exempt consignee. This form shall be established by the head of the Treasury and shall accompany the document on which the ARC is recorded. The beneficiary of the exemption shall complete the electronic notification of receipt.

(e) Where, in the cases provided for in points (a) and (b) above, the products move from their origin to their destination in domestic territory, their movement from the place of dispatch to their destination shall be covered by an electronic administrative document. The beneficiary of the exemption shall formalise the notification of receipt. At the request of the beneficiary, the managing office may authorise notification by means other than electronic means."

'5. Regarding the exemptions referred to in Article 9(1)(e) and (f) of the law, in relation to excise duties on alcohol and alcoholic beverages, the tax on tobacco products and the tax on liquids for electronic cigarettes and other tobacco-related products, the destination shall be accredited in accordance with the provisions of the customs regulations in force.

The head of the Treasury shall determine the maximum quantity of alcoholic beverages, tobacco products, liquids for electronic cigarettes, nicotine pouches or other nicotine products with which ships and aircraft engaged in international maritime or air navigation may be supplied, exempt from duty, taking into account the duration of such navigation and the number of crew and passengers.

Three. Article 19(2), (3) and (7) shall be amended as follows:

'2. Products subject to excise taxes which are imported under the exemptions referred to in Articles 21(2), 51(5) and (6), 61(2) and 64 octies (1)(a) of this law shall not require a document covering their movement.

3. When private individuals acquire products subject to excise taxes within their own territory for their own consumption and they transport them themselves, they shall not require a document covering their movement provided that they are not intended for commercial purposes in accordance with the following rules:

(a) Acquisitions made in other Member States.

When the goods purchased:

1. Do not exceed the quantities listed in section 15(9) of the law for alcoholic beverages, tobacco, liquids for electronic cigarettes, nicotine pouches or other nicotine products, or 5 litres for undenatured alcohol or completely denatured alcohol.

2. Do not circulate via atypical forms of transport, as defined in section 10 of article 15 of the law, in the case of hydrocarbons and without prejudice to the provisions of paragraph 3 below.

3. Do not exceed 40 kilograms net content in the case of liquefied petroleum gases in cylinders or 20 kilograms in the case of kerosene.

(b) Goods acquired from retailers in domestic territory. When the goods purchased:

1. Do not exceed the quantities listed in section 15(9) of the law in the case of alcoholic beverages, tobacco, liquids for electronic cigarettes, nicotine pouches or other nicotine products. However, alcoholic beverages and tobacco products must be appropriately sealed.

2. Do not exceed 5 litres in the case of undenatured alcohol or completely denatured alcohol.

3. Do not exceed 200 litres or kilograms and are not carried by atypical forms of transport, as defined in section 10 of Article 15 of the law, in the case of hydrocarbons and without prejudice to the provisions of the following number.

4. Do not exceed 40 kilograms net content in the case of liquefied petroleum gases in cylinders or 20 kilograms in the case of kerosene."

'7. The movement of products subject to excise taxes other than liquids for electronic cigarettes, nicotine pouches or other nicotine products, outside of duty suspension arrangements, which starts and ends domestically but crosses through another Member State's territory shall be covered by a simplified electronic administrative document. In addition, the consignor and consignee of the excise goods must notify the managing offices whose jurisdiction they fall under of the dispatch and receipt of the goods."

Four. Section 16 is added to article 43, with the following wording:

'16. Sections 1 to 11 of this article shall not apply to manufacturers, owners of bonded warehouses or registered consignors of products subject to the tax on liquids for electronic cigarettes and other tobacco-related products, who must provide a guarantee of 6,000 euros, except in the case of duty-free shops, which shall be exempt from providing such guarantee."

Five. Section 3 of article 44 is amended to read as follows:

'3. The settlement periods and deadlines for filing the self-assessment and, where applicable, simultaneous payment of the tax debt shall be as follows:

a) Taxes on Hydrocarbons, on Tobacco Products, and on Liquids for Electronic Cigarettes and other Tobacco-Related Products.

Settlement period: One calendar month.

Period: The first 20 calendar days following the end of the month in which the tax accrued."

Six. Chapter IX shall be added to Title I and shall read as follows:

“CHAPTER IX

Tax on Liquids for Electronic Cigarettes and other Tobacco-Related Products

Article 130. Destruction of the products subject to tax.

1. In order to have the effects provided for in Article 64 ter of the law, the taxpayer must request destruction of the products subject to tax from the management offices corresponding to the factories or bonded warehouses.

2. The request shall state the reasons why destruction is advisable, the types and quantities of products to be destroyed and the proposed procedure for carrying out such operations.

3. The managing office shall, where appropriate, authorise destruction by notifying the applicant and the auditing service, so that the latter may witness the operations and take the corresponding steps to justify the appropriate entries in the regulatory account books.

4. The managing offices may authorise destruction of the products located in factories or bonded warehouses outside these facilities when there are reasons that make it impossible to carry out destruction within these facilities and have the effects set out in section 1 above. In such cases, destruction shall also be carried out under the supervision of the auditing services.

5. Compliance with the provisions of the previous paragraphs shall not be necessary when the quantities to be destroyed, together with the losses incurred in the factory or bonded warehouse, do not exceed the regulatory loss percentages.

Article 131. Scientific or quality analysis.

1. Application of the exemption provided for in Article 64 octies(1)(d) of the law shall be requested from the factory or bonded warehouse's auditing service, indicating in the request the centre where the analyses are to be carried out, the nature of the analyses and the type and quantity of the products to be sent for analysis.

2. The establishment’s auditor shall, where appropriate, authorise the dispatch of the necessary products, which shall be covered by a transfer note indicating the authorisation granted.

3. Compliance with the provisions of the previous sections shall not be necessary when the quantities required for the analysis, together with the losses incurred in the factory or bonded warehouse, do not exceed the regulatory loss percentages.

Article 132. Exemption for duty-free shops.

The exemption referred to in Article 64 octies (2) of the law shall be applied in accordance with the following rules:

1. Duty-free shops, which must be registered in the regional registers of the relevant managing offices as tax warehouses, shall require purchasers of taxable products to show their air or sea transport document that lists an airport or port outside domestic territory as their final destination.

2. These shops must keep proof of sales of the products to which the exemption has been applied, stating the date of sale, the number of the flight or sea crossing, the final destination port or airport and the quantity of products sold.

Article 133. Recycling and destruction.

The refund benefit referred to in letters a) and b) of Article 64 nonies of the law shall be applied in accordance with the following procedure:

1. The owner of the products shall apply for the benefit at the management office corresponding to the establishment where the products are located. The following points shall be included in their application:

(a) Identification information for the applicant and the establishment where the products are located.

(b) Type and quantity of products for which the refund is requested.

(c) The reason the destruction or return of the goods is being requested.

(d) Details regarding the products’ supplier and the date on which it was purchased, together with photocopies of the relevant transfer document and invoice.

(e) Identification details of the authorised warehousekeeper to whom, if applicable, the products are to be returned, as well as the factory or bonded warehouse where they are to be sent, attaching a document accrediting the authorised warehousekeeper's conformity with regard to the return of the products.

(f) Proposed procedure for destruction, as well as the premises where the destruction could be carried out.

2. When the return of the products to the factory for recycling has been requested, the management office will carry out the checks it deems appropriate and will resolve the request, authorising, where applicable, the return of the products to the factory indicated in the request, determining the amount to be refunded. The destination establishment’s management office shall be notified of this authorisation.

3. The authorised warehousekeeper shall add the products received to their accounting of stock, justifying the entry with the agreement from the managing office that authorised the return. Such warehousekeeper may deduct from the tax liability for the tax period in which the entry of the returned goods took place the amount of the tax liability for which a refund has been agreed.

4. The authorised warehousekeeper shall pay the refund amount to the applicant.

5. When the applicant has chosen to destroy the products, once authorised by the managing office, such destruction shall take place in the presence of the auditing service, who shall draw up the corresponding report. The managing office shall, where appropriate, determine the amount to be refunded and agree upon its payment.

Article 134. Special management rules.

1. Persons who are taxpayers in accordance with the provisions of Article 64 quinquies (1) must register in the regional register of the management office corresponding to their tax address or establishment, in accordance with the terms of Article 40.

2. Taxpayers do not need to file a self-assessment in settlement periods in which no tax is payable.

Article 134 bis. Special provisions.

1. The following shall not apply to the Tax on Liquids for Electronic Cigarettes and other Tobacco-Related Products:

(a) The provisions relating to refunds set out in Articles 8, 9, 10 and 23 of this regulation.

(b) The regulation of bonded and tax warehouses contained in Articles 12 and 13 of this regulation.

(c) Article 14(9) of this regulation shall not apply to exports covered by electronic administrative documents for taxable goods.

(d) The provisions relating to intra-Community movement laid down in Articles 16A, 17, 29A, 31A and 33 to 33 septies of this regulation.

2. For the purposes of Article 6 of the law, the head of the Treasury may establish the admissible loss percentages."

Final provision six. Amendment of Law 58/2003, of 17 December, on General Taxation.

With effect for tax periods beginning on or after 31 December 2023, Article 150(1) of Law 58/2003 of 17 December on General Taxation shall read as follows:

'Article 150. Deadline for inspections.

1. The inspection procedure shall be concluded within a period of:

(a) 18 months, as a general rule.

(b) 27 months, when any of the following circumstances apply to any of the tax obligations or periods subject to inspection:

1. The annual turnover of the party liable for the tax payment is equal to or greater than the amount required to audit its accounts.

2. The party liable for the tax payment is part of a group subject to the tax consolidation system or the special system for groups of entities that is being inspected.

3. The purpose of the procedure is to verify or investigate top-up tax.

When inspection procedures are carried out with various related persons or entities in accordance with the provisions of article 18 of Law 27/2014, of 27 November, on Corporation Tax, if any of the circumstances provided for in this letter apply to any such persons or entities, this period shall be applied to the inspection procedures carried out for all of them.

The duration of the procedure referred to in this paragraph may be extended as provided for in paragraphs 4 and 5."

Final provision seven. Amendment of Law 35/2006, of 28 November, on Personal Income Tax and partially amending the Laws on Corporation Tax, Non-Resident Income Tax and Wealth Tax.

With effect from 1 January 2025, the following amendments are made to Law 35/2006, of 28 November, on Personal Income Tax and partially amending the laws on Corporation Tax, Non-Resident Income Tax and Wealth Tax.

One. Article 66 is amended to be worded as follows:

'Article 66. Tax rates on savings.

1. The part of the net tax base of savings which exceeds the amount of the personal and family minimum referred to in Article 56 of this law shall be taxed as follows:

1. The rates indicated in the following schedule shall apply to the net tax base of savings:

Net tax base of savings – Up to euros	Total tax liability – Euros	Remainder tax base of savings – Up to euros	Applicable rate – Percentage
0	0	6,000	9.5
6,000.00	570	44,000	10.5
50,000.00	5,190	150,000	11.5
200,000.00	22,440	100,000	13.5
300,000.00	35,940	From there on	15

2. The resulting amount shall be reduced by the amount derived from applying the schedule set out in number 1 above to the part of the net tax base of savings corresponding to the personal and family minimum.

2. For taxpayers whose usual place of residence is abroad due to one of the circumstances referred to in Articles 8(2) and 10(1) of this law, the part of the net tax base of savings which exceeds the amount of the personal and family minimum referred to in Article 56 of this law shall be taxed in the following manner:

1. The rates indicated in the following schedule shall apply to the net tax base of savings:

Net tax base of savings – Up to euros	Total tax liability – Euros	Remainder tax base of savings – Up to euros	Applicable rate – Percentage
0	0	6,000	19
6,000.00	1,140	44,000	21
50,000.00	10,380	150,000	23
200,000.00	44,880	100,000	27

Net tax base of savings – Up to euros	Total tax liability – Euros	Remainder tax base of savings – Up to euros	Applicable rate – Percentage
300,000.00	71,880	From there on	30

2. The resulting amount shall be reduced by the amount derived from applying the schedule set out in number 1 above to the part of the net tax base of savings corresponding to the personal and family minimum."

Two. Article 76 is amended to be worded as follows:

'Article 76. Tax rate on savings.

The part of the net tax base of savings that exceeds the amount of the personal and family minimum resulting from the increases or decreases referred to in Article 56.3 of this law shall be taxed in the following manner:

1. The rates indicated in the following schedule shall apply to the net tax base of savings:

Net tax base of savings – Up to euros	Total tax liability – Euros	Remainder tax base of savings – Up to euros	Applicable rate – Percentage
0	0	6,000	9.5
6,000.00	570	44,000	10.5
50,000.00	5,190	150,000	11.5
200,000.00	22,440	100,000	13.5
300,000.00	35,940	From there on	15

2. The resulting amount shall be reduced by the amount resulting from applying the schedule provided for in number 1 above to the part of the net tax base of savings corresponding to the personal and family minimum resulting from the increases or decreases referred to in Article 56.3 of this Act.

Three. Article 93(2)(e)(2) is amended to read as follows:

"2. The rates indicated in the following schedule shall be applied to the part of the net tax base corresponding to the income referred to in Article 25.1.f) of the consolidated text of the Non-Resident Income Tax Act:

Net tax base of savings – Up to euros	Total tax liability – Euros	Remainder of tax base of savings – Up to euros	Applicable rate – Percentage
0	0	6,000	19
6,000.00	1,140	44,000	21
50,000.00	10,380	150,000	23
200,000.00	44,880	100,000	27
300,000.00	71,880	From there on	30”

Four. An additional sixtieth provision is added to Law 35/2006, of 28 November, on Personal Income Tax and partially amending the laws on Corporation Tax, Non-Resident Income Tax and Wealth Tax, which reads as follows:

“Additional provision sixty. Income from artistic activities obtained on an exceptional basis.

1. When the total earned income obtained in the tax period from the production of literary, artistic or scientific works referred to in Article 17.2 d) of this law and from the special employment relationship of artists working in the performing, audiovisual and musical arts, as well as of persons performing technical or auxiliary activities necessary for the development of such activity, exceeds 130 percent of the average amount of said income reported in the three previous tax periods, and the reduction provided for in Article 18.2 of this law does not apply, the aforementioned excess shall be reduced by 30 percent.

The amount to which this reduction can be applied may not exceed 150,000 euros per year.

2. When the net earnings from economic activities obtained in the tax period from the activities included in groups 851, 852, 853, 861, 862, 864 and 869 of the second section and in groups 01, 02, 03 and 05 of the third section of the Rates of the Economic Activities Tax, approved together with the instructions for their application by Legislative Royal Decree 1175/1990, of 28 September, or from the provision of professional services which, due to their nature, if they were carried out as an employee would be included in the scope of the special employment relationship of artists working in the performing, audiovisual and musical arts, as well as of persons performing technical or auxiliary activities necessary for the development of such activity, exceeds 130 percent of the average amount of said net earnings reported in the three previous tax periods, and the reduction provided for in Article 32.1 of this law does not apply, the aforementioned excess shall be reduced by 30 percent.

For the purposes of calculating the net earnings from economic activities to which this reduction is applicable, as well as those of the three previous tax periods, the following rules shall be taken into account:

1) Deductible expenses which are common to other earnings from economic activities shall be allocated proportionally according to the amount of the various earnings from economic activities computed in that financial year.

2) If in any of the three previous financial years the net earnings were negative, those earnings shall be computed as 0 for the purposes of calculating this average.

The amount to which this reduction can be applied may not exceed 150,000 euros per year.

The reduction shall apply after the reductions provided for in Article 32(2) and (3) of this law, where applicable.

Final provision eight. Amendment of Law 27/2014, of 27 November, on Corporation Tax.

One. With effect for tax periods beginning on or after 1 January 2024, Article 15(b) is amended to read as follows:

“b) Those derived from accounting Corporation Tax and Top-Up Tax. Income from such accounting will not be considered income.”

Two. With effect for tax periods beginning on or after 1 January 2025, Article 25(1) is amended to read as follows:

‘Article 25. Capitalisation reserve.

1. Taxpayers who pay tax at the rate provided for in Article 29(1) or (6) of this law shall be entitled to a reduction in the taxable base of 20 percent of the amount of the increase in their equity, provided that the following requirements are met:

a) The amount of the increase in the entity's equity must be maintained for a period of 3 years from the end of the tax period to which this reduction corresponds, except where the entity experiences accounting losses.

(b) A reserve is set aside for the amount of the reduction, which must be shown in the balance sheet with absolute separation and under the appropriate heading; such reserve shall not be available for the period provided for in the preceding paragraph.

For these purposes, the aforementioned reserve shall not be deemed to have been drawn down in the following cases:

a) When the member or shareholder exercises his right to withdraw from the entity.

b) When the reserve is totally or partially eliminated as a result of transactions to which the special tax system established in Chapter VII of Title VII of this law applies.

(c) Where the entity is required by law to apply the reserve.

Without prejudice to the foregoing, the taxpayer shall be entitled to a reduction in the taxable base, under the terms provided for in this section, of 23 percent of the amount of the increase in equity, provided that the taxpayer's total average workforce has increased in the tax period by at least 2 percent but not more than 5 percent with respect to the total average workforce of the immediately preceding tax period. If the increase in the taxpayer's total average workforce in the tax period is between 5 and 10 percent compared to the total average workforce in the immediately preceding tax period, the taxpayer is entitled to a reduction in the taxable base of 26.5 percent of the amount of the increase in equity. If the increase is more than 10 percent, the taxpayer shall be entitled to a reduction of 30 percent.

This increase in the workforce must be maintained for a period of 3 years from the end of the tax period to which the reduction applies.

In no case shall the reduction provided for in this paragraph exceed the following amount:

i) 20 percent of the positive taxable base for the tax period prior to this reduction, the consolidation referred to in Article 11(12) of this law and the offsetting of negative taxable bases.

ii) 25 percent of the positive taxable base for the tax period prior to this reduction, the consolidation referred to in Article 11(12) of this law and the offsetting of negative taxable bases, in the case of taxpayers whose net revenue is less than 1 million euros during the 12 months prior to the date on which the tax period to which this reduction corresponds begins.

However, if there is an insufficient taxable base to apply the reduction, the outstanding amounts may be applied in the tax periods ending in the two years immediately following the end of the tax period in which the taxpayer was entitled to the reduction, together with any reductions which may be applicable pursuant to the provisions of this article in the corresponding tax period, and subject to the limit provided for in (i) and (ii) above."

Three. With effect for tax periods beginning on or after 1 January 2025, Article 29(1) and (2) shall be amended to read as follows:

'Article 29. The tax rate.

1. The general rate of taxation for taxpayers of this tax shall be 25 percent, except for entities whose net revenue for the immediately preceding tax period is less than 1 million euros, in which case the rates indicated in the following schedule shall apply, unless they must pay tax at a rate different from the general rate pursuant to this article:

a) For the part of the taxable base between 0 and 50,000 euros, at the rate of 17 percent.

b) For the remaining part of the taxable base, at the rate of 20 percent.

Where the tax period is less than one year, the part of the taxable base taxed at the rate of 17 percent shall be the result of applying to 50,000 euros the proportion of the number of days of the taxable period divided by 365 days, or the taxable base of the tax period if this is less.

For these purposes, the net revenue shall be determined in accordance with the provisions of Article 101(2) and (3) of this law.

However, entities that comply with the provisions of Article 101 of this law shall be taxed at the rate of 20 percent, unless they are required to pay tax at a rate other than the general rate in accordance with the provisions of this article.

Finally, newly-created entities that carry out economic activities will be taxed in the first tax period in which their taxable base is positive and in the following period at the rate of 15 percent, unless they must pay tax at a lower rate in accordance with the provisions of this article.

For these purposes, an economic activity shall not be deemed to have commenced:

a) When the economic activity had been carried out previously by other related people or entities in the sense of article 18 of this law and transferred to the newly-created entity by any legal title.

b) When the economic activity had been practiced in the year prior to the constitution of the entity by an individual who holds direct or indirect stock of more than 50 percent in the capital or equity of the newly-created entity.

Entities that form part of a group under the terms of Article 42 of the Code of Commerce, irrespective of residence and the obligation to prepare consolidated annual financial statements, shall not be considered newly-created entities.

The tax rates of 20 percent, 17 percent and 15 percent provided for in this section shall not apply to entities that are deemed to be investment entities, in accordance with the terms established in section 2 of Article 5 of this law.

2. Tax-sheltered cooperative societies shall be taxed at the tax rates resulting from reducing the tax rates provided for in the previous section by three percentage points, provided that the resulting rate does not exceed 20 percent, except in the case of extra-cooperative income, which shall be taxed at the rates provided for in the previous paragraph.

Credit cooperatives and rural savings banks shall be taxed at the rates set out in the previous section, except in the case of extra-cooperative income, which shall be taxed at the rate of 30 percent.”

Four. With effect for tax periods beginning on or after 1 January 2025, Article 30 bis(1) is amended to read as follows:

“Article 30 bis. Minimum taxation.

1. For taxpayers whose net revenue is at least 20 million euros during the 12 months prior to the date on which the tax period begins or who pay tax under the tax consolidation regime regulated in Chapter VI of Title VII of this law, regardless of their net revenue, the net tax liability may not be less than the result of applying 15 percent to the taxable base, reduced or increased where applicable and as appropriate by the amounts derived from Article 105 of this law and reduced by the Investment Reserve regulated in Article 27 of Law 19/1994, of 6 July, amending the Economic and Tax System of the Canary Islands. This liability shall have the character of a minimum net tax liability.

The provisions of the preceding paragraph shall not apply to taxpayers who pay tax at the rates provided for in sections 3, 4 and 5 of Article 29 of this law or to the entities referred to in law 11/2009, of 26 October, which regulates real estate investment trusts.

For the purposes of determining the minimum net tax liability referred to in the first paragraph of this section, the percentage indicated therein shall be 10 percent for newly-created entities taxed at the rate of 15 percent in accordance with the provisions of Article 29(1) of this law, and 18 percent for entities taxed at the rate of taxation provided for in the first paragraph of Article 29(6) of this law.

For entities whose net revenue for the immediately preceding tax period is less than 1 million euros, for the purposes of determining the minimum net tax liability referred to in the first paragraph of this section, the percentage indicated therein shall be the result of multiplying the schedule provided for in Article 29(1) of this law by fifteen twenty-fifths, rounded up. For entities which comply with the provisions of Article 101 of this law, the percentage indicated in the first paragraph of this section shall be the result of multiplying the tax rate provided for in Article 29(1) of this Law by fifteen twenty-fifths, rounded up.

In the case of cooperatives, the minimum net tax liability may not be less than the result of applying 60 percent to the gross tax liability calculated in accordance with the provisions of Law 20/1990, of 19 December, on the tax system for cooperatives.

In Canary Islands Special Zone entities, the positive taxable base to which the percentage referred to in this section is applied shall not include the part of the taxable base corresponding to transactions materially and effectively carried out within the geographical area of the Zone which are taxed at the special tax rate regulated in Article 43 of Law 19/1994, of 6 July, amending the Economic and Tax System of the Canary Islands."

Five. With effect for tax periods beginning on or after 1 January 2024 that have not ended upon the entry into force of this law, an additional fifteenth provision is added, which shall read as follows:

"Additional provision fifteen. Limits applicable to large companies in tax periods starting on or after 1 January 2024.

Taxpayers whose net revenue is at least 20 million euros during the 12 months preceding the date on which the tax period begins, shall apply the following special provisions:

1. The limits laid down in Article 11(12), the first paragraph of Article 26(1), Article 62(1)(e) and Article 67(d) and (e) of this law shall be replaced by the following:

– 50 percent, when the net revenue in these 12 months is between 20 million euros and 60 million euros.

– 25 percent, when the net revenue in these 12 months is at least 60 million euros.

2. The amount of the deductions to avoid international double taxation provided for in Articles 31, 32 and section 10 of Article 100, as well as those deductions to avoid double taxation referred to in transition provision twenty-three of this law, may not exceed, jointly, 50 percent of the taxpayer's gross tax liability."

Six. With effect for tax periods beginning on or after 1 January 2024 that have not ended upon the entry into force of this law, additional provision nineteen is amended to read as follows:

"Additional provision nineteen. Temporary measures for determining taxable base in the tax consolidation regime.

1. With effect for the tax periods beginning in 2023, 2024 and 2025, the taxable base of the tax group shall be determined in accordance with the provisions of Article 62 of this law, although in relation to the provisions of the first subparagraph of section 1(a) of said article, the sum shall refer to the positive taxable bases and 50 percent of the individual negative tax bases corresponding to each and every one of the entities making up the tax group, taking into account the special provisions contained in Article 63 of this law.

However, for tax periods beginning in 2024 and 2025, the limitation on integrating negative tax bases provided for in the previous section shall not apply in the case of the individual tax bases corresponding to those foundations that are subject to the general system of this law and which form part of the tax group.

2. With effect for subsequent tax periods, the amount of individual negative tax bases not included in the tax group's taxable base under the provisions of the preceding paragraph shall be included in the tax group's taxable base in equal parts in each of the first ten tax periods commencing:

(a) From 1 January 2024, where the provisions of the preceding paragraph apply with effect for tax periods beginning in 2023.

(b) From 1 January 2025, where the provisions of the preceding paragraph apply with effect for tax periods beginning in 2024.

(c) From 1 January 2026, where the provisions of the preceding paragraph apply with effect for tax periods beginning in 2025.

The provisions of this section shall apply even if any of the entities with individual negative tax bases referred to in the preceding paragraph are excluded from the group.

3. In the event of loss of the tax consolidation system or of the termination of the tax group, the amount of the individual negative tax bases referred to in the first section which is pending inclusion in the group's taxable base shall be included in the last tax period in which the group is taxed under the tax consolidation system."

Seven. With effect for tax periods beginning on or after 1 January 2024 and which have not ended upon the entry into force of this law, a section 3 is inserted in transition provision sixteen, which shall read as follows:

'3. In any event, the reversal of impairment losses on securities representing shares in the capital or equity of entities that were deductible for tax purposes in the taxable base for corporation tax purposes in tax periods commencing prior to 1 January 2013 shall be included, at least in equal parts, in the taxable base corresponding to each of the first three tax periods commencing on or after 1 January 2024.

If a higher amount has been reversed because paragraph 1 or 2 of this provision was applied, the remaining balance shall be divided at least equally between the remaining tax periods.

The limits established in section 1 of the fifteenth additional provision of this law shall not apply to the amount of income corresponding to the reversal of impairment losses included in the taxable base of the aforementioned tax periods due to application of the provisions of this section, provided that the negative taxable bases to be offset originated in tax periods commencing prior to 1 January 2021.

However, in the event of assignment of securities representing a share in the capital or equity of entities during the aforementioned tax periods, the amounts pending reversal shall be included in the taxable base for the tax period in which the assignment takes place, up to the limit of the positive income resulting from the assignment."

Eight. With effect for tax periods beginning on or after 1 January 2025, transition provision forty-four shall be added and shall read as follows:

"Transition provision forty-four. Transitional application of the general tax rate for micro-enterprises and small entities.

1. With effect for tax periods beginning in 2025, for the purposes of the provisions of Article 29.1 of the LIS, the following special provisions shall apply:

a) Entities whose net revenue for the immediately preceding tax period is less than 1 million euros shall apply the following schedule, unless they are taxed at a rate other than the general rate:

(i) For the part of the taxable base between 0 and 50,000 euros, at the rate of 21 percent.

(ii) For the remaining part of the taxable base, at the rate of 22 percent.

Where the tax period is less than one year, the part of the taxable base taxed at the rate of 21 percent shall be the result of applying to 50,000 euros the proportion of the number of days of the taxable period divided by 365 days, or the taxable base of the tax period if this is less.

For these purposes, the net revenue shall be determined in accordance with the provisions of Article 101(2) and (3) of this law.

(b) Entities which comply with the provisions of Article 101 of this law shall be taxed at 24 %, unless they are taxed at a rate other than the general rate.

2. With effect for tax periods beginning in 2026, for the purposes of the provisions of Article 29.1 of the LIS, the following special provisions shall apply:

a) Entities whose net revenue for the immediately preceding tax period is less than 1 million euros shall apply the following schedule, unless they are taxed at a rate other than the general rate:

(i) For the part of the taxable base between 0 and 50,000 euros, at the rate of 19 percent.

(ii) For the remaining part of the taxable base, at the rate of 21 percent.

Where the tax period is less than one year, the part of the taxable base taxed at the rate of 19 percent shall be the result of applying to 50,000 euros the proportion of the number of days of the taxable period divided by 365 days, or the taxable base of the tax period if this is less.

For these purposes, the net revenue shall be determined in accordance with the provisions of Article 101(2) and (3) of this law.

(b) Entities which comply with the provisions of Article 101 of this law shall be taxed at 23%, unless they are taxed at a rate other than the general rate.

3. With effect for tax periods beginning in 2027, for the purposes of Article 29.1 of the LIS, entities that comply with the provisions of Article 101 of this law will be taxed at 22%, unless they are taxed at a rate other than the general rate.

4. With effect for tax periods beginning in 2028, for the purposes of Article 29.1 of the LIS, entities that comply with the provisions of Article 101 of this law will be taxed at 21%, unless they are taxed at a rate other than the general rate."

Final provision nine. Tax on net interest income and commissions of certain financial institutions.

With effect for tax periods beginning on or after 1 January 2024, the tax on net interest income and commissions of certain financial institutions is hereby created, which shall be governed by the following:

One. Nature and purpose.

The tax on net interest income and commissions of certain financial institutions is a direct tax on the net interest income and commissions obtained by credit institutions, branches of foreign credit institutions and financial credit establishments resulting from their activity in Spanish territory, in the manner and under the conditions laid down in this provision.

Two. Scope of application.

1. The tax on net interest income and commissions of certain financial institutions will apply throughout Spain.

2. The provisions of the previous number shall be understood without prejudice to the regional tax systems of economic agreement and economic convention in force, respectively, in the Historical Territories of the Autonomous Community of the Basque Country and in the Autonomous Region of Navarre.

Three. Treaties and conventions.

This provision shall be without prejudice to the provisions of international treaties and conventions that have become part of the domestic legal system, in accordance with Article 96 of the Spanish Constitution.

Four. Taxable event.

The taxable event is obtaining positive net income from interest and commissions in Spanish territory.

For these purposes, the net interest and commission income obtained in Spanish territory shall be the result of computing all the interest and commission income and expenses of the taxpayers referred to in section five(a) and (b), excluding that attributable to branches located abroad. For the taxpayers referred to in section five(c), the interest and commission income obtained in Spanish territory shall be the result of computing the interest and commission income and expenses attributable to said taxpayers in accordance with the provisions of Article 16 of the consolidated text of the Non-Resident Income Tax Act, approved by Legislative Royal Decree 5/2004, of 5 March.

Five. Taxpayers.

The following are taxpayers for this tax:

(a) Credit institutions established in Spain as referred to in Article 1.2 (a), (b) and (c) of Law 10/2014 of 26 June on the organisation, supervision and solvency of credit institutions.

(b) The financial credit institutions referred to in Article 6 of Law 5/2015 of 27 April on promoting business financing.

(c) Branches of foreign credit institutions established in Spanish territory.

Six. Tax period.

1. The tax period shall coincide with the taxpayer's financial year and may not exceed 12 months.

2. In any event, the tax period shall end:

(a) When the entity ceases to exist.

(b) When the entity ceases to be established in Spain.

(c) When the entity loses the status of taxpayer due to changes in its corporate structure, the modification of its articles of incorporation or legal regime or due to any other cause.

(d) When the branches cease their activity in Spanish territory or when the branch is transferred to a third party.

Seven. Accrual of tax.

1. The tax shall accrue on the day following the end of the tax period.

2. Notwithstanding the provisions of the previous number, in the cases provided for in section six, number 2, the tax shall accrue on the last day of the tax period.

Eight. Taxable base.

1. The taxable base shall consist of the positive balance resulting from integrating and offsetting the net interest income and commission income and expenses resulting from the activity carried out in Spain under the terms of section four, which appear in the taxpayer's profit and loss statement or, where appropriate, in the taxpayer's income statement for the tax period, in accordance with the provisions of the applicable accounting regulations.

If the result of the integration and offsetting referred to in the previous paragraph is negative, the taxable base shall be zero.

2. The taxable base will be determined by the direct estimation method and, alternatively, by the indirect estimation method, in accordance with the provisions of Law 58/2003 of 17 December on General Taxation.

3. Under the direct estimation method, the taxable base shall be calculated on the basis of the items of interest income and expenses and commission income and expenses determined in accordance with the rules laid down in the Code of Commerce, in the other laws relating to such determination and in the provisions issued in implementation of the aforementioned rules.

Nine. Net tax base.

The net tax base shall be the result of reducing the taxable base by the amount of 100 million euros; in no case may the net tax base be negative.

Where the taxpayer's tax period is less than 12 months, the 100 million euro reduction will be pro-rated according to the length of the tax period.

Ten. Tax rates and gross tax liability.

The rates indicated in the following schedule will be applied to the taxable base to obtain the gross tax liability:

Net tax base – Up to millions of euros	Total tax liability – Millions of euros	Remaining net tax base – Up to millions euros	Tax rate – Percentage
0	0	750	1
750	7.5	750	3.5
1500	33.75	1500	4.8
3000	105.75	2000	6
5000	225.75	From there on	7

Eleven. Net tax liability.

1. The net tax liability will be the result of reducing the gross tax liability by 25 percent of the taxpayer's net corporation tax or non-resident income tax liability for the same tax period.

When the taxpayer is part of a tax group that pays tax under the tax consolidation regime provided for in Chapter VI of Title VII of Law 27/2014, of 27 November, on Corporation Tax, the net corporation tax liability shall be the proportion of the tax liability represented by the taxpayer's individual taxable base, determined in accordance with articles 62 and 63 of Law 27/2014, after the corresponding eliminations and additions provided for in articles 64 and 65 of said law and prior to offsetting negative taxable bases, divided by the tax group's taxable base prior to offsetting negative taxable bases.

For the purposes of the previous paragraph, if the taxpayer's taxable base is negative, the deduction provided for in this section shall not apply.

2. The net tax liability may not be negative as a result of the reduction provided for in this section.

Twelve. Extraordinary deduction.

1. Where the indicator of the taxpayer's return on total assets is lower than the reference value of 0.7 percent, the net tax liability shall be reduced by a percentage of the tax liability corresponding to the proportion represented by the decrease in said indicator in relation to said reference value, in accordance with the formula provided for in number 3.

2. The indicator of return on total assets referred to in the previous paragraph shall be calculated as the quotient resulting from dividing the financial accounting net income or loss for the tax period, excluding the expense corresponding to this tax, by the total assets at the end of the tax period, multiplied by one hundred.

For the purposes of the previous paragraph, the taxpayer's financial accounting net income or loss and total assets shall be determined in accordance with the provisions of applicable accounting regulations, with such special provisions as may be established, where appropriate, by order of the head of the Ministry of Economy, Trade and Enterprise.

3. The percentage deduction shall be calculated according to the following formula:

$$\text{Porcentaje de deducción} = \left(1 - \frac{\text{indicador de la rentabilidad sobre el activo total}}{0{,}7}\right) \times 100$$

4. The amount of the deduction shall be the result of applying said percentage to the net tax liability, but may not exceed the amount of said tax liability.

5. This deduction shall be taken into account to determine the amount of the payments by instalments provided for in section 14.

Thirteen. Non-deductibility of tax.

This tax will not be deductible in corporation tax or non-resident income tax.

Fourteen. Instalments.

Within the first 20 calendar days of the second month following the end of the tax period, taxpayers must make an instalment payment as an advance payment of the tax corresponding to said tax period, in the manner and under the conditions determined by the head of the Treasury.

The amount of the instalment payment shall be the result of multiplying the net tax liability for the tax period or, where applicable, the net tax liability less the extraordinary deduction provided for in paragraph twelve, by 40 percent.

In the event that the net tax liability for the tax period is not definitively known within the deadline for self-assessment and payment of the instalment payment, its amount shall be provisionally estimated in accordance with a reliable calculation method. In particular, estimates resulting from the duly prepared financial statements or, failing that, the estimate resulting from the audit work carried out to draw up and formulate the financial statements shall be deemed to be reliable.

There shall be no obligation to submit a self-assessment of the instalment payment when, in accordance with the rules governing the tax, the net tax liability is not positive.

Fifteen. Self-assessment and payment of the tax debt.

1. Within the first 20 calendar days of the ninth month following the end of the tax period, taxpayers must self-asses the tax and pay the tax debt, in the manner and under the conditions determined by the head of the Treasury.

2. Those taxpayers whose net tax base is not positive do not need to submit the corresponding self-assessment.

Sixteen. Refund.

1. When the instalment payment exceeds the amount of the tax liability resulting from the self-assessment, the tax administration shall make a provisional settlement, if appropriate, within 6 months of the end of the period established for filing the return.

When the return is filed after the deadline, the 6 months referred to in the previous paragraph shall be calculated from the date it is filed.

2. When the amount resulting from the self-assessment or, where applicable, from the provisional settlement is lower than the instalment payment made, the tax administration will automatically refund the excess over the aforementioned amount, without prejudice to subsequent provisional or final settlements, as appropriate.

3. If the provisional settlement has not been made within the period established in number 1 above, the tax administration will automatically refund the excess of the self-assessed tax liability, without prejudice to any subsequent provisional or definitive settlements that may be appropriate.

4. Once the period established in number 1 has elapsed without the payment of the refund having been ordered for reasons not attributable to the taxpayer, interest for late payment shall be applied to the amount pending refund in the amount and manner established in articles 26.6 and 31 of Law 58/2003, of 17 December, on General Taxation.

5. The refund procedure will be that provided for in articles 124 to 127, inclusive, of Law 58/2003, of 17 December, on General Taxation, and in its implementing regulations.

Seventeen. Infringements and penalties.

Tax offences relating to this tax shall be classified and sanctioned in accordance with the provisions of Law 58/2003, of 17 December, on General Taxation, and other generally applicable regulations.

Eighteen. Powers of the Administration.

For the purposes of determining the taxable base, the tax administration shall apply the rules referred to in paragraph eight.

Nineteen. Validity.

This tax will be applicable for the first three consecutive tax periods beginning on or after 1 January 2024.

Twenty. First instalment payment.

The instalment payment to be made in the year 2025 in accordance with section fourteen shall be made within the first 20 calendar days of the sixth month following the end of the tax period.

Twenty-one.

Without prejudice to section two, number 2 of this provision, the revenue obtained shall be distributed to the Autonomous Communities under joint government in the calendar year following that in which the tax is to be self-assessed, on the basis of their regional Gross Domestic Product, as at 1 January of the calendar year in which the tax is to be self-assessed.

The amount collected shall be made available annually to the Autonomous Communities under joint government by means of treasury operations, the procedure for which shall be determined by regulation, and shall be carried out in the financial year following that in which the tax is collected.

Final provision ten. Amendment of Royal Decree 1514/2007 of 16 November, approving the General Accounting Plan.

A new transition provision eight is added with the following content:

“Transition provision eight. Mandatory temporary exception for the recognition and reporting of deferred tax assets and liabilities derived from the implementation of the law establishing a top-up tax and other national regulations enacted to ensure a minimum level of global taxation for MNE groups or large-scale domestic groups.

As an exception to the requirements of the General Accounting Plan, an entity shall not recognise deferred tax assets and liabilities arising from the implementation of the law establishing a top-up tax and other national regulations enacted to ensure a minimum level of global taxation for MNE groups or large-scale domestic groups, nor shall it include such information in the notes to the annual financial statements.

However, the entity must provide the following information:

1. That it has applied the exemption to the recognition of deferred tax assets and liabilities arising from the implementation of the aforementioned legislation.

2. It shall report the current tax expense (income) arising from implementing the aforementioned legislation separately.

3. For financial years in which the law establishing a top-up tax and other national regulations enacted to ensure a minimum level of global taxation for MNE groups or large-scale domestic groups has been enacted or is about to be enacted, but is not yet effective, entities must include known or reasonably estimable qualitative and quantitative information that helps understand the entity's exposure to top-up tax at the end of the financial year. This information does not have to reflect all the specific requirements of this legislation and can be provided in the form of an indicative range.

To the extent that an entity does not know or cannot reasonably estimate such information, it shall instead publish a statement to that effect and report on its progress in assessing its exposure.”

Final provision eleven. Amendment of Royal Decree 1159/2010, of 17 September, approving the Rules for the Formulation of Consolidated Annual Accounts and amending the General Accounting Plan approved by Royal Decree 1514/2007, of 16 November, and the General Accounting Plan for Small and Medium Enterprises approved by Royal Decree 1515/2007, of 16 November.

A seventh transition provision is introduced, with the following content:

“Transition provision seven. Mandatory temporary exception for the recognition and reporting of deferred tax assets and liabilities derived from the implementation of the law establishing a top-up tax and other national regulations enacted to ensure a minimum level of global taxation for MNE groups or large-scale domestic groups.

As an exception to the requirements of the rules for the formulation of consolidated annual accounts and in the General Accounting Plan, an entity shall not recognise deferred tax assets and liabilities arising from the implementation of the law establishing a top-up tax and other national regulations enacted to ensure a minimum level of global taxation for MNE groups or large-scale domestic groups, nor shall it include such information in the notes to the consolidated annual accounts.

However, the entity must provide the following information:

1. That it has applied the exemption to the recognition of deferred tax assets and liabilities arising from the implementation of the aforementioned legislation.

2. It shall report separately the current tax expense (income) related to the top-up tax resulting from implementation of the aforementioned legislation.

3. For financial years in which the law establishing a top-up tax and other national regulations enacted to ensure a minimum level of global taxation for MNE groups or large-scale domestic groups have been enacted or are about to be enacted, but are not yet effective, entities must include known or reasonably estimable qualitative and quantitative information that helps understand the entity's exposure to said legislation at the end of the financial year. This information does not have to reflect all the specific requirements of this legislation and can be provided in the form of an indicative range.

To the extent that an entity does not know or cannot reasonably estimate such information, it shall instead publish a statement to that effect and report on its progress in assessing its exposure."

Final provision twelve. Amendment of Law 56/2007, of 28 December, on Measures to Promote the Information Society.

A new additional provision twenty-one is added to Law 56/2007, of 28 December, on Measures to Promote the Information Society, which reads as follows:

"Additional provision twenty-one. Public Electronic Invoicing Solution.

1. The Tax Agency shall develop and manage, under the terms established in regulations, a public electronic invoicing solution which, for the purposes of the provisions of Article 2 bis of this law, provides electronic invoicing services for those business persons or professionals who choose to use such service, and serves as a universal and mandatory repository for all electronic invoices issued, sent or received in accordance with this law.

2. The invoicing platforms, solutions or systems used by business persons or professionals who must issue and receive electronic invoices and who do not use the public electronic invoicing solution, must send a true electronic copy of each invoice to the aforementioned public solution at the time the invoice is issued, under the terms set out in the regulations.

3. Business persons or professionals to whom electronic invoices are sent must electronically notify the public electronic invoicing solution when invoices are paid in full or if they are rejected, under the terms determined by regulation.

4. The data stored in the public electronic invoicing solution shall be of a reserved nature and shall be subject to the same measures required to guarantee their confidentiality and appropriate use as provided for in Article 95 of Law 58/2003, of 17 December, on General Taxation, for data with tax implications. Such data may only be used for the purposes provided for in this law and for the effective application of the tax and customs system and to manage the other resources entrusted to the Tax Agency and, by means of the corresponding transfer in accordance with Article 95 of Law 58/2003, of 17 December, on General Taxation, for the effective application of the taxes or resources whose management is the responsibility of the tax administrations of the Historical Territories of the Autonomous Community of the Basque Country and of the Autonomous Region of Navarre and the other tax administrations. Apart from the above case, data may only be transferred or disclosed to

third parties in the cases and under the conditions provided for in Article 95 of Law 58/2003, of 17 December, on General Taxation.

Aside from the cases set forth in the previous paragraph, only invoice issuers and recipients or the persons or entities authorised by them may access the electronic invoices stored in the public electronic invoicing solution and the payment or rejection information pertaining thereto.

The State Observatory for Private Default will also have access to information stored in the public electronic invoicing solution, so that it can exercise the functions provided for in final provision six of Law 18/2022, of 28 September, on the creation and growth of companies; the Ministries of the Economy, Trade and Enterprise and of Industry and Tourism will also have access to such information, so that they can exercise their functions of monitoring, analysing and proposing measures in the area of commercial default.

5. Electronic invoices and the information relating to them stored in the public electronic invoicing solution shall be kept on said platform for the storage period provided for in Law 58/2003, of 17 December, on General Taxation and its implementing regulations, but in no case for more than 12 years.

6. Personal data processing resulting from managing the public electronic invoicing solution provided for in this provision shall be subject to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC and to Organic Law 3/2018 of 5 December on the Protection of Personal Data and the guarantee of digital rights.

The Tax Agency shall be the data controller for the personal data processing carried out in the performance of its function of managing the public electronic invoicing solution.

The Tax Agency shall adopt the appropriate guarantees to protect the rights and freedoms of data subjects, particularly to ensure respect for the personal data minimisation principle given the purposes pursued by the public electronic invoicing solution indicated in section 1 of this provision. In particular, it shall adopt the appropriate measures to prevent the disclosure of the data provided for in Article 9 of Regulation (EU) 2016/679 to third parties other than the invoice issuer or recipient and the persons or entities authorised by them, as a result of the provisions of paragraph 4 of this provision, unless one of the exceptions provided for in paragraph 2 of that provision applies.

When invoices are sent to the public electronic invoicing solution in compliance with the duty imposed in section 2 of this provision, the issuer of the invoice shall be responsible for complying with the duty to provide information set out in article 13 of Regulation (EU) 2016/679, expressly informing the recipient of the invoice that it will be sent to the public electronic invoicing solution.

The Tax Agency may totally or partially restrict, in a proportionate manner, the exercise of the rights of access, rectification and limitation of processing referred to in Articles 15, 16 and 18 of Regulation (EU) 2016/679 or the communication of a data security breach referred to in Article 34(1) of Regulation (EU) 2016/679 when it hinders administrative actions aimed at ensuring compliance with tax obligations or when it jeopardises an ongoing tax investigation.

When the Tax Agency restricts the rights provided for in the preceding paragraph, it shall adopt the following measures:

(a) It will inform the data subject, in response to their request, of the restriction applied and the main reasons for applying it, as well as of the possibility of lodging a complaint with the Spanish Data Protection Agency. Such information may be deferred or omitted where the communication of such information would harm the purposes of the restriction.

(b) It will record the reasons for the restriction and, where it has failed to provide the communication referred to in point (a) above, the reasons why providing such information would harm the purposes of the restriction.

When the information stored is provided to the judicial authorities or the Public Prosecutor's Office under the terms provided for in Article 7 of Organic Law 7/2021 of 26 May on the protection of personal data processed for the purposes of preventing, detecting, investigating and prosecuting criminal offences and the executing criminal penalties, the data subject shall not be informed of the transfer of his or her data to said authorities, nor that said authorities were given access to them in any other way.

7. By virtue of their regional regime, the provisions of this additional provision shall be applied in accordance with the Economic Agreement with the Autonomous Community of the Basque Country and the Economic Agreement between the State and the Autonomous Region of Navarre to the businesspersons or professionals subject to the tax regulations of said regions; to that end, the appropriate agreements shall be established between the Regional Tax Authorities and the Tax Agency in accordance with the principle of collaboration regulated in said agreements."

Final provision thirteen. Amendment of Legislative Royal Decree 8/2015, of 30 October, approving the consolidated text of the General Social Security Law.

Section 2 of Article 198 of Legislative Royal Decree 8/2015, of 30 October, approving the consolidated text of the General Social Security Law, is amended to read as follows:

'Article 198.

[...]

2. Lifelong pensions in the event of absolute permanent disability or severe disability shall not prevent the exercise of activities—whether for profit or not—which are compatible with the disabled person's condition and which do not represent a change in their working capacity for the purposes of review.

If the pensioner carries out work or an activity that gives rise to inclusion in a social security scheme, the managing body shall suspend payment of the pension. The managing body shall resume payment of the pension when the person ceases this work or activity. This is without prejudice to any review of the degree of permanent disability.

Without prejudice to the provisions of the preceding paragraph, the severe disability allowance intended to enable the beneficiary to pay the person caring for him or her shall not be suspended for work incompatible with the pension."

Final provision fourteen. Amendment of Law 38/2022 of 27 December establishing temporary energy taxes and taxes on credit institutions and financial establishments, creating a temporary solidarity tax for large fortunes, and modifying certain tax regulations.

Article 1 of Law 38/2022 of 27 December establishing temporary energy taxes and taxes on credit institutions and financial establishments, creating a temporary solidarity tax for large fortunes, and modifying certain tax regulations is repealed.

Final provision fifteen. Safeguarding the status of regulatory provisions.

The provisions included in regulatory rules that are amended by this law may be amended by rules of the regulatory rank corresponding to the rule in which they appear.

Final provision sixteen. Procedure to be followed by the Tax Agency to determine the eligibility and, if applicable, process refunds based on the jurisprudence established by the Supreme Court related to the second transition provision of Law 35/2006, of 28 November, on Personal Income Tax and partial modification of the laws on Corporation Tax, Non-Resident Income Tax and Wealth Tax, concerning the tax periods 2019 to 2022.

1. The Tax Agency may recognise refunds resulting from applying the transition provision two of Law 35/2006, of 28 November, on Personal Income Tax and partial modification of the laws on Corporation Tax, Non-Resident Income Tax and Wealth Tax, according to the case law established by the Supreme Court, in relation to tax periods 2019 to 2022, by initiating the procedure to rectify a self-assessment, or refund initiated by self-assessment, which shall be processed in accordance with the rules on tax actions and procedures set out in Law 58/2003, of 17 December, on General Taxation, in the terms indicated in this provision.

2. For these purposes, the Tax Agency will analyse the eligibility of the procedures that it has received express authorisation to initiate through the authorisation form that it made available to taxpayers at its Electronic Office in the manner established in the Order approving the Personal Income Tax return template for the 2024 financial year.

3. The authorisation form corresponding to the 2019 tax period and previous non-statute barred periods made available to the taxpayer in accordance with the provisions of the previous section will also be used to request the refund corresponding to contributions to mutual societies for the 2020, 2021 and 2022 tax periods, even if such a request was submitted prior to the entry into force of this provision.

4. The Tax Agency shall not admit any other self-assessment or, as the case may be, request for rectification of self-assessment submitted by taxpayers in order to obtain the refunds referred to in this provision, when they do not comply with the provisions hereof.

5. This provision renders the authorisations made prior to 22 December 2024 ineffective, as well as the actions of the Tax Agency carried out on the basis of said authorisations, provided that the corresponding refunds were pending payment. Likewise, procedures in progress to rectify the self-assessment, or for refunds initiated by self-assessment, whose refund has not been agreed to by 22 December 2024, will be rendered null and void.

The provisions of the preceding paragraph shall be without prejudice to any interruptive effects of the statute of limitations.

6. From 22 December 2024 until the date this provision enters into force, the statute of limitations on the right to request refunds resulting from application of transition provision two of Law 35/2006, of 28 November, on Personal Income Tax and partial amendment of the laws on Corporation Tax, Non-

Resident Income Tax and Wealth Tax, according to the case law established by the Supreme Court, in relation to the tax periods 2019 and prior non-statute barred tax periods, as well as 2020 to 2022, shall be deemed suspended.

Final provision seventeen. VAT on short-term rental housing.

The Government will promote the amendment of the harmonised VAT Directive in the European Union to allow Member States to tax short-term rentals in those areas where this type of accommodation makes access to housing difficult for citizens or promotes overtourism in the region. The transposition of the Directive will be carried out as a matter of urgency so as to involve the digital platforms that provide these leases in charging and collecting VAT.

Final provision eighteen. Competence.

This law is passed under the provisions of Article 149.1.14 of the Spanish Constitution, which grants the State exclusive authority in matters of general finance.

Final provision nine. Incorporation of European Union Law.

This law transposes into Spanish law Council Directive (EU) 2022/2523 of 15 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union.

Final provision twenty. Authorisation of the General State Budget Act.

The General State Budget Act may:

(a) Modify the determination of the effective tax rate, or the top-up tax rate or amount, in any of its components.

(b) Modify the quantitative limits, coefficients and fixed percentages contained in this law.

(c) Modify the cases where the top-up tax regulated in this law does not apply.

Final provision twenty-one. Regulatory authorisation.

1. The Government is authorised to issue such provisions as may be necessary to develop and implement the provisions of this law.

2. In accordance with Article 12.3 of Law 58/2003 of 17 December on General Taxation, the Taxation General Directorate of the Treasury is authorised to issue interpretative or clarifying provisions regarding this law, which may include, where appropriate, the interpretative criteria derived from the Commentaries, Administrative Guides and other principles or criteria drawn up and publicly disseminated by the OECD or by the European Union.

Final provision twenty-two. Entry into force.

This law shall enter into force on the day following its publication in the “Official State Gazette” and shall be effective for tax periods beginning on or after 31 December 2023.

However, the provisions relating to the under-taxed profits rule shall be effective for tax periods starting on or after 31 December 2024, except for the case regulated in Article 28(3) of this law, which shall be effective for tax periods starting on or after 31 December 2023.

Therefore,

I command all Spaniards, individuals and authorities, to keep and enforce this law.

Madrid, 20 December 2024.

FELIPE R.

The President of the Government,

PEDRO SÁNCHEZ PÉREZ-CASTEJÓN