Royal Decree 252/2025, of 1 April, approving the Top-Up Tax Regulation to ensure a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups.

I

Law 7/2024 of 20 December establishing a Top-Up Tax to guarantee a global minimum level of taxation for multinational enterprise (MNE) 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 regulations, incorporating a new tax, the Top-Up Tax, into our legal system, in compliance with the obligation to transpose 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.

The implementation of the new tax requires the approval of a regulation to develop certain aspects provided for in the law creating it and to facilitate its interpretation due to the eminently international nature of the new Top-Up Tax, whose interpretation and application must be carried out, as indicated in the explanatory memorandum of the law, in accordance with the Model Standards of the Organisation for Economic Cooperation and Development (hereinafter, OECD) and the criteria derived from the commentaries, administrative guides and other principles or criteria developed and publicly disclosed by that organisation or by the European Union.

Therefore, it is considered necessary for the Tax Act to be accompanied by a regulation that includes those interpretative criteria developed and publicly disclosed by the OECD or the European Union that allow for proper application of the main standard. Therefore, the regulation approved by this royal decree fulfils the dual function of developing the parameters established by the Tax Act and of clarifying and interpreting the rules contained therein.

II

This royal decree is structured as a single article and two final provisions.

The single article approves the Top-Up Tax Regulation to ensure a global minimum level of taxation for MNE groups and large-scale domestic groups.

Finally, the first final provision regulates the powers, while the second final provision provides for the entry into force of the royal decree, including certain specifics in relation to its entry into force and the effectiveness of certain rules contained in the regulation.

The Top-Up Tax Regulation consists of 32 articles, divided into six titles, three transition provisions and a final provision.

Title I, devoted to the subjective scope, clarifies, for the purposes of the consideration of an excluded entity, when an entity that carries out activities ancillary to those carried out by a non-profit organisation may, in turn, be considered an excluded entity. Moreover, this title clarifies the case in which a regulated mutual insurance company may choose to consider an investment entity or insurance investment entity as fiscally transparent, under the terms provided for in Article 44 of the Tax Act.

Title II sets out the rules for the determination of the tax base and the adjusted covered taxes of the Top-Up Tax.

Firstly, it establishes the rules to be applied in those cases in which the financial or tax years of the ultimate parent entity do not coincide with those of the constituent entities of the MNE or large-scale domestic group.

Title II regulates certain adjustments that may be made for the purpose of determining the qualifying income or loss for the period, whether adjustments for hedging net investment in foreign operations or for income from debt write-downs, whereby the reporting entity may elect to treat as excluded capital gain or loss foreign currency gain or loss reflected in the financial accounting net income or loss of a constituent entity in the tax period for a period of five years under certain circumstances or income from the accounting recognition of a debt write-down.

In relation to the substance-based income exclusion, Title II sets out certain rules for computing eligible tangible assets and eligible employees, in particular how such assets or employees are to be computed where they are used or employed in more than one jurisdiction or in more than one group.

In turn, the treatment of tax credits is also addressed, as it is essential given their impact on the calculation of the effective tax rate per

jurisdiction. Thus, they will count as income in the determination of qualifying income or loss or, conversely, as a reduction of covered taxes, depending on their qualification as eligible or ineligible refundable tax credits, respectively. It also clarifies the treatment of those tax credits which qualify as transferable tax credits in the market and which, given their configuration and specific characteristics, should be treated in the same way as eligible refundable tax credits.

With respect to the total amount of the deferred tax adjustment, it specifies that the starting point for determining the deferred tax expense or income of a constituent entity should be the financial accounting net income or loss thereof in the tax period, before any consolidation adjustment for elimination of intra-group transactions, in accordance with the appropriate financial accounting standard in accordance with the hierarchy envisaged in the provisions of Sections 1 and 2 of Article 9 of the Tax Act. Pursuant to the provisions of Article 9.1 of the Tax Act, in cases in which the individual annual accounts of the constituent entity have been prepared in accordance with an acceptable or authorised financial accounting standard other than that used in the preparation of the consolidated financial statements by the ultimate parent entity, the corresponding homogenisations necessary to prepare the consolidated accounts of the group must be made, without making any other consolidation adjustment. However, if the aforementioned reconciliation cannot be carried out in a reasonable manner, in accordance with the provisions of Article 9.2 of the Tax Act, the above-mentioned individual accounting figures must be taken as the starting point, without prejudice to the adjustment of permanent differences in excess of one million euros provided for in Article 9.2.c) of the Tax Act. In turn, this regulation clarifies what is meant by a deferred tax asset corresponding to a loss and the effects on the determination of the total amount of the deferred tax adjustment in the event that the qualifying loss election is reversed.

The regulation also clarifies the treatment to be given to negative adjusted covered taxes for the tax period in a jurisdiction with net qualifying income, in relation to the provisions of Article 6.3 of the Tax Act.

It is necessary to clarify application of capital gains or loss exclusion, because such gains or losses may not be excluded in determining the qualifying income or loss of the constituent entity in the case of flow-through entities, provided that certain circumstances are met. In this respect, different treatment applies for qualifying and non-qualifying holdings in a transparent entity and qualifying holdings in a transparent entity.

With regard to excluded dividends, it is specified how this exclusion operates in the case of certain compound financial instruments.

It is also necessary to develop certain special features for the purposes of determining the qualifying income or loss for insurance companies, in accordance with the provisions of Sections 2 and 11 of Article 10 of the Tax Act.

In line with the provisions of article 10.2 of the Tax Act, in order to avoid distortion in the calculation of the effective tax rate for the period, this regulation should include the option, for each constituent entity of the MNE or large-scale domestic group, of not applying the exclusion of capital gains or losses defined in article 10.1 of the same legal text, for a minimum period of 5 tax periods.

Title II continues by clarifying two relevant issues necessary for the correct application of the neutrality and distribution regimes regulated in Articles 40 and 42 of the Tax Act.

Title III devotes Article 15 to establishing a necessary rule for the correct calculation of Top-Up Tax, determining how the qualified income inclusion rule should be applied in cases in which a constituent entity can be included and excluded, in the same tax period, from an MNE or large-scale domestic group.

Title IV, dedicated to the Top-Up Tax information return, highlights the importance of said return, in terms of tax management, in order to guarantee not only the correct application and settlement of the said Tax, but also to successfully complete any exchange of information that the Spanish tax administration must carry out with any other jurisdictions that may be involved.

Within this title, Chapter I regulates the general provisions of the information return, such as its content, the filing deadline, as well as the reporting entity's communication to the tax administration. Finally, it provides that, in the case of MNE groups, the exchange of information will be carried out by virtue of the Multilateral Convention or the respective bilateral conventions or multilateral agreements that the Kingdom of Spain signs with other states or jurisdictions.

Chapter II regulates the information to be included in the information return relating to the identification of the reporting entity and general information on the group; the structure of the group and identification of the constituent entities of the group; and, finally, summary information on the jurisdiction(s) in which the MNE or large-scale domestic group has a presence.

Chapter III regulates the information to be included in the information return at the jurisdictional level, specifying, where applicable, the application of safe harbours or exclusions, as well as the information referring to the transitional non-applicability of the Top-Up Tax for MNE groups and large-scale domestic groups under certain circumstances.

Chapter IV regulates the information to be included in the information return necessary for the calculation of the Top-Up Tax, and includes jurisdictional information; the information necessary for the calculation of the effective tax rate of each jurisdiction, the breakdown of options exercised and/or revoked by jurisdiction or by constituent entity, as appropriate, as well as the information to be provided not only at jurisdictional level but also by each constituent entity.

Title V sets out the penalty system regulated in article 48 of the Tax Act, defining what is understood by a set of data for the purposes of applying said system.

Finally, Title VI regulates the self-assessment of taxes, particularly, the form and deadline for filing.

All of the above is completed by three transition provisions and a single final provision, which also includes a table of contents to facilitate the application of the regulation.

The first transition provision clarifies the starting date from which the five-year period referred to in the third transition provision of the Tax Act is to be calculated, which will start to run from the beginning of the first tax period in which the under-taxed profits rule becomes enforceable.

Pursuant to the provisions of Article 47 of the Tax Act, the second transition provision allows the MNE or large-scale domestic group to choose to file the information return in a simplified form in jurisdictions meeting certain requirements for tax periods ending before 1 July 2030.

The third transition provision regulates the deadlines for filing the first information return and the first self-assessment tax return for the 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.

Finally, the single final provision empowers the Minister of Finance to approve the forms for the Top-Up Tax information return and self-assessment and to determine the where and how to file, as well as to establish the documents or supporting documents that must accompany the aforementioned forms.

III

In accordance with the provisions of Article 129 of Law 39/2015, of 1 October, on the Common Administrative Procedure for Public Administrations, this regulation has been drafted according to the principles of need, efficacy, proportionality, legal certainty, transparency and efficiency.

Thus, the principle of necessity and effectiveness is fulfilled insofar as it is necessary to complete the drafting of the law responding to the obligation to fully transpose 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, also taking into account the need to incorporate certain criteria or principles issued by the OECD or the EU.

The principle of proportionality is also complied with, as the above-mentioned strictly required objectives have been exclusively 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.

The principle of transparency is ensured through compliance with the public consultation procedure. It is also ensured by publishing this regulatory text, as well as its Regulatory Impact Analysis Report, on the website of the Ministry of Finance, so that said text could be made known to all citizens during the public hearing and information process.

Finally, in relation to the principle of efficiency, the regulation was drafted so as to generate minimum administrative burdens for citizens, as well as the lowest possible indirect costs, promoting the rational use of public resources.

The regulatory implementation of the Top-Up Tax approved by this royal decree is carried out by virtue of the authorisations contained in the twenty-first and final provision of the aforementioned law, as well as in sections 2, 3, 4 and 6 of Article 47 and in the third transition provision, Section 5, of the Tax Act.

Accordingly, at the proposal of the First Vice President of the Government and the Minister of Finance, in accordance with the Council of State and after deliberation by the Council of Ministers at its meeting on 1 April 2025,

I HEREBY PROVIDE AS FOLLOWS:

Sole article. Approval of the Top-Up Tax Regulation to ensure a global minimum level of taxation for MNE groups and large-scale domestic groups.

The Top-Up Tax Regulation is adopted to ensure a global minimum level of taxation for MNE groups and large-scale domestic groups, the text of which is set out below.

Final provision one. Competence.

This royal decree is approved pursuant to the terms of Article 149.1.14 of the Spanish Constitution which assigns the State exclusive competence over general finances.

Final provision two. Entry into force.

1. This royal decree will come into force on the day following its publication in the "Official State Gazette".

2. The Top-Up Tax Regulation to ensure a global minimum level of taxation for MNE groups and large-scale domestic groups will apply to tax periods starting on or after 31 December 2023.

However, the provisions relating to the under-taxed profits rule will be effective for tax periods beginning on or after 31 December 2024, except for the case regulated in Article 28, Section 3 of the Tax Act, which will be effective for tax periods beginning on or after 31 December 2023, as provided for in the twenty-second and final provision of the Tax Act.

Given in Madrid, on 1 April 2025.

FELIPE R.

The First Vice-President of the Government and Minister of Finance,
MARÍA JESÚS MONTERO CUADRADO

TOP-UP TAX REGULATION TO ENSURE A GLOBAL MINIMUM LEVEL OF TAXATION FOR MNE GROUPS AND LARGE-SCALE DOMESTIC GROUPS

TITLE I

Subjective scope

Article 1. Activities ancillary to those carried out by non-profit organisations.

1. For the purposes of Article 7.1.b.ii of the Tax Act, an entity wholly owned, directly or indirectly, by one or more non-profit organisations shall be deemed to carry out activities exclusively ancillary to those carried out thereby when the net turnover of all the entities forming part of the MNE or large-scale domestic group, excluding that of the non-profit organisations and the entities referred to in Article 7.1, Section b, Subsections i and ii, and Section c of the Tax Act, is less than the lesser of the following two amounts:

a) EUR 750 million, in the tax period.

b) 25 % of the net turnover of the MNE or large-scale domestic group in the tax period.

2. For the purposes of the provisions of the previous section, the activities carried out by the permanent establishments of the entities referred to in Article 7.1, Sections b) and c) of the Tax Act must be taken into consideration together with the activities carried out by the main entities.

3. When the duration of the tax period is more or less than twelve months, for the calculation of the 750 million referred to in paragraph a) of section 1 above, the provisions of the second paragraph of article 6.1 of the Tax Act shall be taken into account.

4. Where a public body, as defined in Article 5.16 of the Tax Act, meets the definition of a non-profit organisation set out in Article 5.35 of said law, it may apply the provisions of this article in terms of the ancillary activities carried out by its subsidiary entities.

Article 2. Regulated mutual insurance company.

For the purposes of Article 44 of the Tax Act, a regulated mutual insurance company may apply the provisions of said article when it is a constituent entity-owner of another constituent entity that is an investment entity or an insurance investment entity and may choose to consider such investment entity or insurance investment entity as a flow-through entity under the terms provided for in that article.

An insurance company shall be considered a regulated mutual insurance company if its constituent entity is a regulated insurance company and it is wholly owned by its policyholders.

TITLE II

Adjustments in the determination of the tax base and the adjusted covered taxes

Article 3. Mismatch in the financial or tax years of the ultimate parent entity and of the constituent entities of the MNE or large-scale domestic group.

1. Where there are constituent entities in the MNE group or large-scale domestic group that maintain their financial statements with reference to a different financial year from that of the ultimate parent entity, such mismatch must be eliminated according to the method used to eliminate such discrepancy in the preparation of the group's consolidated financial statements for the purpose of determining the financial accounting net income or loss for the tax period serving as the starting point for quantifying the qualifying profits and losses of the constituent entities, as provided for in Article 9.1 of the Tax Act.

2. Where there are constituent entities in the MNE group or large-scale domestic group that maintain their financial statements with reference to a financial year other than that of the ultimate parent entity, and those financial statements are not included in the consolidated financial statements of the group, the provisions of Article 9.2 of the Tax Act may apply for the purpose of determining the financial accounting net income or loss of said constituent entities. The same applies to a joint venture or a joint venture group that maintains its financial statements with reference to a different financial year than that of the ultimate parent entity.

3. In the cases referred to in the section above, the calculations necessary to determine the financial accounting net income or loss, as provided for in Article 9.2 of the Tax Act, of the constituent entities and the joint venture or joint venture group shall be made taking into consideration the individual financial statements for the financial year ending in the financial year of the ultimate parent entity.

4. Where there are constituent entities in the MNE or large-scale domestic group whose tax year for the purpose of filing their domestic tax returns differs from the tax period of the MNE or large-scale domestic group, such mismatch shall be eliminated based on the method used to eliminate such discrepancy in the preparation of the group's consolidated financial statements for the purpose of calculating the adjusted covered taxes of such entities in the tax period, pursuant to the provisions of Article 17 of the Tax Act. The same paragraph shall apply in the case of a joint venture or joint venture group whose tax year for the purpose of filing its domestic tax returns differs from the group’s tax period.

Article 4. Adjustments for hedging net investment in foreign operations and income from debt write-downs.

1. For the purposes of Article 10, Sections 1 and 2, paragraph c of the Tax Act, the reporting entity may choose, for a period of five years, to consider foreign currency gains or losses reflected in the financial accounting net income or loss of a constituent entity in the tax period as an excluded capital gain or loss, under the terms provided for in Article 9.1 of the Law, provided that the following requirements are met:

a) Foreign currency gains or losses are attributable to hedging instruments that hedge the foreign currency risk of net investments in foreign operations through entities in which a significant interest is held;

b) the gains or losses referred to in the preceding paragraph are reported in the consolidated annual accounts of the MNE or large-scale domestic group under "other comprehensive income";

c) The hedge instrument is considered effective pursuant to the acceptable or authorised financial accounting standard used to prepare the consolidated financial statements of the ultimate parent entity.

If the reporting entity has exercised the option provided for in this section, any covered tax associated with such excluded gains shall also be excluded from the adjusted covered tax for the period pursuant to Articles 17.3.a and 18.5.a of the Tax Act.

2. For the purposes of the provisions of Article 10.2 of the Tax Act, the reporting constituent entity may disregard the income derived from debt write-downs reflected in a constituent entity’s financial accounting net income or loss in the tax period, as provided for in Article 9.1 of the said law, for the purposes of calculating the constituent entity’s qualifying income or loss for the period, to the extent that any of the following circumstances apply:

a) The debt write-down is to be carried out in insolvency proceedings under the applicable national insolvency law, provided that they are supervised by a court or other judicial body of the relevant jurisdiction or an independent insolvency administrator has been appointed. In such cases, both third-party and related-party debts discharged under the same agreement shall be excluded from the computation of qualifying income or loss;

b) The debt write-down results from an arrangement in which one or more creditors are not related to the debtor and it is reasonable to conclude that, without the waiver of third-party debts under the

arrangement, the debtor could have become insolvent within twelve months of the arrangement. In such cases, both third-party and related-party debts discharged under the same agreement shall be excluded from the computation of qualifying income or loss;

c) Where the total amount of the debtor's liabilities exceeds the market value of its assets, as determined immediately before the date of the debt write-down, only income from debt write-downs for debts owed to unrelated creditors, to the lesser of the following amounts, may be excluded from the computation of qualifying income or loss:

1. The excess of the debtor's liabilities over the market value of the debtor's assets determined immediately prior to the date of the write-down.

2. The amount of the negative off-balance sheet adjustment that would have had to be made to the debtor's personal taxation as a result of the write-down in accordance with the tax legislation of the jurisdiction in which it is located.

In the cases provided for in points a) and b) above, income from write-downs of debts owed to third parties or related parties may be excluded from the computation qualifying income or loss. In the case provided for in point c), only income corresponding to write-downs arising from debts owed to creditors not connected with the debtor may be excluded.

Point c) above shall apply only where the circumstances set out in points a) or b) above do not apply.

In the event that income derived from a write-down, as provided for in this section, has been excluded from the computation of qualifying income or loss for the period, any covered taxes associated with the excluded income shall also be excluded from the adjusted covered tax for the period, in accordance with Articles 17(3)(a) and 18(5)(a) of the Tax Law.

Article 5. Substance-based income exclusion.

1. For the purposes of the provisions of Article 14 of the Tax Law, the rules referred to in the following sections shall be taken into account when calculating the substance-based income exclusion.

2. An employee of a constituent entity shall count as an eligible employee for the purposes of section 14 of the Tax Law for the jurisdiction in which the constituent entity that is treated as the employer is located if the employee spends more than 50% of their working time in that jurisdiction.

3. For the purposes of determining eligible employees as provided for in Article 14(1)(a) of the Tax Law, both independent contractors who are natural persons and participate in the ordinary operating activities of the MNE or large-scale domestic group and the natural persons who are employees of a placement or employment agency but whose day-to-day activities are carried out under the direction and control of the MNE or large-scale domestic group shall be deemed eligible employees.

4. Where stock-based compensation has been agreed to, the payroll carve-out of a constituent entity, where applicable, shall not be affected by the election provided for in Article 10.3 of the same law, and the expense corresponding to such compensation recorded in the constituent entity's financial statements shall be taken into consideration.

5. An eligible tangible asset that does not qualify as real property shall count as an eligible tangible asset of the jurisdiction in which it is located for more than half of the tax period.

6. An eligible tangible asset located simultaneously in different jurisdictions shall count as an eligible tangible asset for the purposes of Article 14 of the Tax Law for those jurisdictions in which it is located, on a proportional basis, during the tax period.

7. For the purposes of Article 14(1)(c)(iii) of the Tax Law, the lessee's right to use tangible assets located in the jurisdiction in which the lessee is established is considered to be an eligible tangible asset. However, in the case of an operating lease, the right to use the leased tangible asset shall be treated as an eligible tangible asset at the lessee's location for the purposes of Article 14 of the law, provided that the lessee has recorded the right to use the asset in its financial statements and the tangible asset is located in the jurisdiction in which the lessee is located. In order to prevent the same tangible asset from being included in the calculation of the tangible asset carve-out referred to in Article 14.4 of the Tax Law for two different constituent entities belonging to the same MNE or large-scale domestic group, or to constituent entities that each belong to a different MNE or large-scale domestic group, the amount of the carve-out based on the substance generated by said asset shall be:

a) For the lessee, the average between the net book value of the right of use recorded in its financial statements at the beginning and end of the tax period.

b) For the lessor, the excess of the average between the net book value of the leased asset at the beginning and at the end of the tax period over the amount provided for in the preceding paragraph.

In the case of financial or operating leases between constituent entities of the same MNE or large-scale domestic group located in the same jurisdiction, the amount of the tangible asset carve-out must be determined after adjustments for eliminations; therefore, the eligible tangible asset for the purposes of Article 14.4 of the Tax Act shall be computed in its entirety by the lessor as the average of the net book value of the leased asset at the beginning and at the end of the tax period, provided that the asset is located in the jurisdiction in which the lessor is located.

8. For the purposes of Article 14(1)(c)(iv) of the Tax Law, concessions, licences or similar administrative instruments are deemed to be eligible tangible assets, irrespective of whether they are to be recorded for accounting purposes as intangible or financial assets to the extent that, in accordance with Article 14(1)(c) of the Tax Law, the concessionaire or licensee has incurred expenses to acquire the licence or similar right and has made significant investments in tangible assets to carry out the exploitation of the rights acquired.

However, if the concessionaire or licensee is required to recognise in its financial statements, on a stand-alone basis, a receivable other than the financial asset referred to in the preceding paragraph that arises from the operation of the underlying tangible asset, that receivable shall not be counted as an eligible tangible asset.

9. When an eligible tangible asset has been impaired, in accordance with the accounting criteria used to prepare the consolidated financial statements, the book value of the asset shall be reduced by the amount of the impairment and increased by the amount of any reversal of the impairment; however, as a result of such reversal, the book value of the eligible tangible asset shall not exceed its book value before the impairment.

10. Where a tangible asset or an employee of a constituent entity is computed as an eligible tangible asset or an eligible employee of the jurisdiction in which that entity is located for the purposes of section 14 of the Tax Law for less than or equal to 50% of the time in accordance with paragraphs 2 and 5 above, the constituent entity may calculate the substance-based income exclusion in proportion to the time during which the tangible asset or the employee is effectively located in that jurisdiction.

Article 6. Treatment of tax credits.

1. For the purposes of this article, a tax credit which can be used by its holder to reduce its covered taxes shall be treated as a market-transferable tax credit, provided that the following conditions are met:

a) Legal transferability standard: this requirement is met if the entity that has generated the tax credit is able to transfer it to an unrelated entity in the tax period in which the tax credit is generated or, where applicable, within 15 months after the end of that period. In the event that the acquirer of the credit transfers it again, the transferability standard shall be deemed to be met where the transfer can be made, on terms similar to those of the entity that generated the credit, in the same tax period in which the credit was acquired.

b) Market standard: this criterion shall be deemed to be met when the entity that generated the tax credit transfers it to an unrelated entity within 15 months of the end of the tax period in which it arose, at a price equal to or above the market minimum. The standard shall be deemed to be met for the acquirer of the credit if the credit was acquired from an unrelated entity at a price equal to or above the market minimum.

For the purposes of this paragraph, the entity generating the tax credit and the acquiring entity shall be deemed to be related if one of them owns, directly or indirectly, at least 50% of the capital and voting rights of the other, or if another person owns, directly or indirectly, at least 50% of the capital and voting rights of both entities. In any event, the two entities shall be related for the purposes of this article if one has control of the other or both are controlled by the same person or persons, according to the concurrent facts.

For the purposes of this section, the minimum market price for a tax credit shall mean 80% of the tax credit's current net value, determined by reference to the yield upon maturity of a debt instrument issued by the government of the jurisdiction granting the tax credit, with the same or a similar maturity, never to exceed five years, in the period in which the credit is transferred and, if not transferred, in the period in which the credit was generated.

2. A transferable tax credit is a tax credit that is transferable in the jurisdiction of the entity generating it but that does not qualify as a market-transferable tax credit and is not a market-transferable tax credit in the acquirer’s jurisdiction.

3. A market-transferable tax credit shall be treated as a qualified refundable tax credit for the purposes of Article 5(1) of the Tax Law, in accordance with the characteristics set out above. Both qualified refundable tax credits and transferable tax credits in the market shall count as income for the purpose of calculating the constituent entity’s qualifying income or loss.

If only part of a tax credit can be considered to be refundable or transferable, it should be examined whether that part qualifies as a

qualified refundable credit or a transferable credit in the market. If so, the provisions of the preceding paragraph shall apply in that proportion.

If the qualified refundable tax credit arises from the acquisition, manufacture or construction of an asset and the constituent entity generating the tax credit has, for accounting purposes, reduced the value of the asset by that tax credit or recognised the credit as deferred income over the useful life of the asset, it shall follow the same accounting treatment for that qualified refundable tax credit for the purpose of determining the qualifying income or loss of the constituent entity generating the credit.

4. The amount of the market-transferable tax credit to be computed as income for the purpose of calculating a constituent entity’s qualifying income or loss for the taxable period shall be:

a) For the entity generating the credit, the nominal value of the credit unless it transferred the credit within fifteen months of the end of the tax period in which it was generated, in which case it shall be the transfer price. However, if it has been transferred after the end of that fifteen-month period, the difference between the credit’s nominal value which would have been treated as income in accordance with this section and the transfer price shall be treated as a loss for the purpose of determining the constituent entity’s qualifying income or loss in the tax period in which the credit is transferred.

b) For the entity acquiring the credit which, as a result, has reduced its covered taxes, the income shall be the difference between the credit’s nominal value and its acquisition price, in the proportion that corresponds to the reduction of its covered taxes, unless the entity re-transfers the credit, in which case the income shall be the gain or loss arising from that transaction.

5. Notwithstanding the provisions of Article 17.2 of the Tax Law, a constituent entity's covered taxes in the tax period shall be increased by the portion of the qualified refundable tax credit or market-transferable tax credit that has reduced the current tax expense for the period.

6. Non-qualified refundable tax credits as referred to in Article 5.2 of the Tax Law, as well as the transferable tax credits referred to in this article, shall not count as income for the purpose of calculating a constituent entity’s qualifying income or loss. If such credits had been recorded as income in a constituent entity's financial statements, such income must be eliminated for the purpose of calculating the tax base for top-up tax.

7. Without prejudice to the provisions of Article 17.3 of the Tax Law, a constituent entity's covered taxes in a tax period shall be reduced by:

a) Any amount of non-qualified refundable tax credit that was not recorded as a reduction to the current tax expense.

b) Any amount of covered taxes refunded or credited to a constituent entity that was not treated as an adjustment to the current tax expense in the profit and loss account, unless it relates to a qualified refundable tax credit or a market-transferable tax credit.

8. The amount to be treated as a reduction in the covered taxes of a constituent entity in a tax period in relation to point b) of the preceding section shall be:

a) For the entity generating the credit, the amount of the credit that has been used to reduce the tax liability for the fiscal year in its domestic taxation, ending within the tax period, as well as, in the case of a transfer of the credit, all amounts received during the tax period.

b) For the acquiring entity, any excess of the credit's value over its acquisition price, in the proportion used to reduce the tax liability for the fiscal year in its domestic taxation, ending within the tax period.

c) For the acquiring entity, the amount of any gain arising from the transfer, where the tax credit is transferred in the tax period. Any losses arising from the transfer must also be included in the computation of its qualifying income and loss for that tax period.

9. The provisions of the two preceding paragraphs shall apply without prejudice to the provisions of Article 21.1 of the Tax Law.

Article 7. Total deferred tax adjustment amount.

1. For the purposes of Article 18.2 of the Tax Law, the amount of a constituent entity's deferred tax expense or income shall be determined on the basis of the constituent entity's financial accounting net income 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, in accordance with Article 9.1 of the law.

2. The provisions of the previous section shall also apply in the cases provided for in Article 9.2 of the Tax Law.

3. For the purposes of Article 18.4 of the Tax Law, a deferred tax asset corresponding to a loss shall mean:

a) A deductible temporary difference;

b) The right to carry forward tax losses.

4. For the purposes of Article 18.5.c) of the Tax Law, a valuation adjustment or accounting recognition adjustment with respect to a deferred tax asset shall mean the recognition of a deferred tax asset that had not been previously recognised because the accounting recognition criteria were not met.

5. In the case provided for in Article 19.4 of the Tax Law, once the remaining qualifying loss deferred tax asset is reduced to zero, the amount of the jurisdiction's deferred tax assets and liabilities, if any, shall be the amount that would have been calculated had the provisions of transition provision one and Article 18 of the Tax Law been applicable in the previous tax periods.

Article 8. Treatment of negative adjusted covered taxes for the tax period in a jurisdiction that obtains net qualifying income.

In line with Article 17.5 of the Tax Law, in the tax period in which the jurisdiction obtains net qualifying income and the amount of the jurisdiction's adjusted covered taxes is negative, the amount of the negative adjusted covered taxes will not be taken into account when calculating the jurisdiction's effective tax rate for that tax period, but will be carried forward to subsequent tax periods and reduce the adjusted covered taxes of the subsequent tax period up to zero. The excess, if any, shall be carried forward to subsequent tax periods.

Article 9. Election to include equity gains or losses and treatment of qualifying holdings in flow-through entities.

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

a) "Gain or loss arising from a significant non-qualifying holding in a flow-through entity": any gain or loss arising from an ownership interest in another entity which is significant within the meaning of Article 10(1)(b)(i) of the Tax Law and which does not meet the definition of a qualifying holding in a flow-through entity as set out in the following paragraph.

b) "Qualifying holding in a flow-through entity": an investment in a flow-through entity that is treated for tax purposes as, or would have

been treated as, an equity or capital interest in accordance with the authorised financial accounting standard in the jurisdiction in which the flow-through entity is located; provided that:

1. The assets, liabilities, income, expenses and cash flows of the flow-through entity are not consolidated on a line-by-line basis in the consolidated financial statements prepared by the ultimate parent entity of the MNE or large-scale domestic group; and,

2. The investment shall be wholly or partially recovered through the allocation of tax credits that are not deemed to be qualified refundable tax credits under the terms of Article 5.1 of the Tax Law.

2. For the purposes of determining qualifying income or loss in the case of a significant non-qualifying holding in a flow-through entity, as referred to in paragraph 1(a) above, the filing constituent entity may choose to:

a) Include any of the following gains or losses, after making the adjustments provided for in Article 10.2 of the Tax Law, except for the adjustment included in letter c) of the aforementioned article:

1. Accounting gains or losses which result from applying fair value or impairment accounting in respect of the holding, provided that the owner of the holding has been taxed on the changes in the aforementioned amounts, recording a current tax expense or income in the profit and loss account; or, provided that the owner applies the realisation principle in their personal taxation, recording a deferred tax expense or income in the profit and loss account corresponding to the changes at fair value with changes in profit and loss of those amounts or to the impairment of the value of the holding.

The provisions of the previous paragraph shall apply taking into consideration the provisions of article 7.3 of these regulations.

2. Gains or losses arising from the transfer of the holding which was accounted for using the equity method; and,

3. Gains or losses deriving from the transfer of the holding, included in the tax base for personal income tax of the transferor, excluding those amounts that have benefited from an exemption, deduction of tax liability or similar mechanism; and,

b) Include all current and deferred taxes related to the amounts in the previous letter in the amount of adjusted covered taxes for the tax period,

without prejudice to the provisions of Article 17(3)(a) and Article 18(5)(a) of the Tax Law.

The election provided for in this section shall be made by the filing constituent entity, for a period of five years, per jurisdiction. Such an election may not be revoked where the significant non-qualifying holding in a flow-through entity would have generated a loss which would have been computed in the qualifying income or loss in a tax period in which the election provided for in this article was in effect.

3. Tax credits generated in the tax period by a flow-through entity shall be attributed to the direct or indirect owners of the tax transparent entity's holdings through a tax transparent structure, in accordance with the treatment provided for such credits in the Tax Law, according to their nature.

4. The qualifying holding in a flow-through entity shall be reduced, up to zero, by the following amounts:

a) The amount of tax credits attributed to the owner of the holding, other than those provided for in the following letter.

b) The amount of the negative tax bases attributed to the owner of the holding, multiplied by the tax rate applicable to the owner.

c) The amount of distributions or other refunds to the owner of the holding.

d) The amount resulting from the sale, in whole or in part, of the holding.

5. The amounts referred to in points (a) or (b) of the preceding paragraph which were not qualified refundable tax credits and were attributed to the owner of a qualifying holding in a flow-through entity, whether held directly or indirectly through a tax-transparent structure, shall count as adjusted covered taxes of the owner of the holding in the tax period, to the extent that such amounts would have reduced the tax expense for accounting purposes.

6. Any of the amounts listed in paragraph 4(a), (b), (c) or (d) which have been recorded or received after the qualifying holding in an entity has been cancelled shall not count as adjusted covered taxes of the owner of the holding.

However, the amounts provided for in points (c) and (d), as well as any amount of qualified refundable credits, shall not count as adjusted covered taxes of the owner of the holding, only to the extent that the amount

attributed to said owner would have previously counted as adjusted covered taxes.

Article 10. Adjustment for excluded capital gains or losses and excluded dividends.

1. For the purposes of the provisions of Article 10.1.b) of the Tax Law, in respect of a compound financial instrument, only the amount corresponding to the equity component of the compound financial instrument shall be deemed an excluded dividend.

2. For the purposes of Article 10.1.b) of the Tax Law, in the event that both the issuer and the investor of a financial instrument form part of the same group, the investor must grant the same rating as that granted by the issuer to the financial instrument in question.

A dividend resulting from a financial instrument issued by a constituent entity whose distribution generates an expense in another constituent entity that would have been included in the qualifying income or loss for the tax period of the latter entity, when both entities belong to the same group, shall not be treated as an excluded dividend.

Article 11. Adjustments to determine the qualifying income or loss of insurance entities.

1. For the purposes of Article 10.2.b) of the Tax Law, a change in the reserves of an insurance constituent entity that is equivalent to an excluded dividend, net of management fee, on a security held on behalf of the policyholder shall not be treated as an expense for the purpose of determining the qualifying income or loss of said entity.

2. For the purposes of Article 10.2.c) of the Tax Law, a change in the reserves of an insurance constituent entity that is equivalent to an excluded capital gain or loss on a security held on behalf of the policyholder shall not be treated as an expense for the purpose of determining the qualifying income or loss of said entity.

3. The provisions of Article 10.11 of the Tax Law also apply to instruments that are Restricted Tier 1 capital.

For the purposes of this section, Restricted Tier 1 capital means an instrument issued by a constituent entity under prudential regulatory requirements of the insurance industry that can be converted into equity or written down if the pre-agreed event occurs, and which has other features designed to help absorb losses in the event of a financial crisis.

Article 12. International shipping income exclusion.

For the purposes of Article 11.1.a).v) of the Tax Law, joint ventures shall mean the joint operation of passenger or cargo transport by ships in international maritime traffic in which the constituent entity participates.

Article 13. Ultimate parent entity that is a flow-through entity.

For the purposes of Article 40(2)(b) of the Tax Law, the aggregate amount of the adjusted covered taxes of the ultimate parent entity shall mean the aggregate amount of the adjusted covered taxes paid by the ultimate parent entity and by the other entities that are part of the tax-transparent structure.

Article 14. Eligible distribution tax systems.

After applying the provisions of Article 42.7 of the Tax Law, the amounts of the jurisdiction's deemed distribution tax recapture account, the jurisdiction's qualifying income and loss, the jurisdiction's adjusted covered taxes and jurisdiction’s substance-based income exclusion, for each year in which the jurisdiction had a deemed distribution tax recapture account, shall be multiplied by the amount resulting from subtracting from the unit the quotient referred to in the second paragraph of the aforementioned section.

TITLE III

Calculating Top-Up Tax

Article 15. Application of the income inclusion rule in the case of constituent entities that are included in and excluded from an MNE group or large-scale domestic group.

The provisions of Article 36.1.g) of the Tax Law shall also apply when a constituent entity dependent on two or more groups in the tax period of acquisition is a parent entity other than the ultimate parent entity, in which case it shall apply the income inclusion rule separately in proportion to its share of the top-up tax attributable to the low-tax entities of each of those groups, as provided for in Article 6.3 of the Tax Law.

TITLE IV.

Top-Up Tax Information Return

CHAPTER I

General Provisions

Article 16. Authorisation.

The information return template provided for in Article 47 of the Tax Law shall be approved by ministerial order by the head of the Treasury.

Article 17. Contents.

1. The Top-Up Tax information return shall include the information referred to in both Article 47.4 of the Tax Law and the information provided for in the following articles.

2. Notwithstanding the above, when a constituent entity is located in Spanish territory and the ultimate parent entity is located in a third jurisdiction that applies rules that have been assessed as equivalent, under the terms of Article 54 of the Tax Law, the constituent entity or the designated local entity shall file a Top-Up Tax information return containing the information referred to in Article 47.5 of the Tax Law.

Article 18. Notification of the filing entity and deadline for filing the information return and other communications.

1. Any constituent entity located in Spanish territory that is part of an MNE or large-scale domestic group that must file the information return must notify the tax administration of the identification of the ultimate parent entity, the start and end date of its tax period and the country or territory in which it is based, where said entity must file the return; if the ultimate parent entity does not need to file the return, it must notify the tax administration of the identification of the entity designated to file the return and the country or territory in which it is based, as well as the identification of the jurisdiction for filing the return and identification of the taxpayer substitute referred to in Article 6.5 of the Tax Law, before the last three months prior to the end of the deadline for filing the information return provided for in Article 47 of the Tax Law.

The obligation provided for in the previous paragraph shall be deemed to be fulfilled by submitting a single notification that includes the information relating to all those constituent entities located in Spanish territory that are part of an MNE group or large-scale domestic group that must file the information return.

A ministerial order issued by the head of the Treasury shall approve the notification form.

2. In accordance with the provisions of Article 47.6 of the Tax Law, the information return and any other communication other than that provided

for in the previous section must be filed with the tax administration by the last day of the fifteenth month following the last day of the tax period.

3. Both the information return and any other communications shall be filed electronically.

Article 19. Exchange of information for MNE groups.

The exchange of information in the case of MNE groups will be carried out under the Multilateral Convention or the respective bilateral or other multilateral agreements that the Kingdom of Spain signs with other States or jurisdictions in order to guarantee the automatic exchange of the information referred to in Article 47 of the Tax Law.

CHAPTER II

Information on MNE groups or large-scale domestic groups

Article 20. Identification of the filing entity and general group information.

1. The information return shall include information relating to the MNE or large-scale domestic group, as well as the identification of the filing entity and general group information.

2. First, the filing entity must be identified, with its name, tax identification number, the jurisdiction in which it is located and its categorisation in accordance with the provisions of the Tax Law.

3. The return must contain general information on the MNE or large-scale domestic group, in particular the group name and the tax period referred to in the tax return.

4. The information return must include the group's accounting information, specifying the type of consolidated financial statements prepared by the ultimate parent entity in accordance with Article 5(20) of the Tax Law, as well as the financial accounting standards and the functional currency used to prepare the group's consolidated financial statements.

Article 21. Information on the group’s structure and identification of the group's constituent entities.

1. The information return shall include information on the MNE or large-scale domestic group and its structure.

2. The group's ultimate parent entity should be identified, with its name, its tax identification number(s), the jurisdiction in which it is located—specifying whether it is a jurisdiction that has implemented the OECD Model Rules or, if applicable, whether it is a jurisdiction referred to in Article 8(4), (5) and (6) of the Tax Law—and its categorisation in accordance with the provisions of the Tax Law.

3. The information return should identify the group's constituent entities other than the ultimate parent entity and joint ventures or joint venture affiliates, as referred to in Article 38 of the Tax Law, providing their name, their tax identification number(s), the jurisdiction in which they are located (specifying whether it is a jurisdiction that has implemented the OECD Model Rules), their categorisation in accordance with the provisions of the Tax Law, as well as the identification of their respective owners, identifying their categorisation, tax identification number(s) and the percentage ownership interest they hold. It should be specified whether any of the entities referred to in this paragraph have changed with respect to the tax period prior to the one for which the return is being made.

4. The return should specify whether the entities listed in this part are treated as intermediate parent entities or partially-owned parent entities. In such cases, the following information must be added:

a) For intermediate parent entities, where the exception provided for in Article 6(3)(ii) of the Tax Law or an equivalent exception applies, the ultimate parent entity or the other intermediate parent entity referred to in that paragraph shall be identified.

b) For partially-owned parent entities, where the exception provided for in Article 6.3.iii) of the Tax Law or equivalent exception applies, the other partially-owned parent entity referred to in that paragraph shall be identified.

5. If the under-taxed profits rule may apply in the jurisdiction concerned, the following information should be specified:

a) Whether the circumstance set forth in transition provision three, section 3, of the Tax Law or any other equivalent circumstance applies, as well as the information necessary to calculate the corresponding top-up tax.

b) The share of top-up tax attributable to each parent entity which is a member of the joint venture as provided for in Article 38(2) and (4) of the Tax Law.

c) Whether there is a remaining amount of top-up tax for the joint venture group referred to in the second paragraph of Article 38.4 of the Tax Law.

6. Excluded entities must be identified, specifying at least their full business name and the type of entity in accordance with the provisions of the Tax Law. It should be specified whether any of the entities referred to in this paragraph have changed with respect to the tax period prior to the one for which the return is being made.

7. Where there have been changes in the structure of the group during the tax period being reported on, information should be provided on the constituent entity affected, its tax identification number and categorisation, and the percentage ownership interest the group holds in the entity, identifying the situation before and after the change.

8. If the changes in the group structure have not affected the calculation of the effective tax rate, the calculation of the Top-Up Tax or the apportionment of the Top-Up Tax, this will be indicated and the changes do not have to be included in the information return.

Article 22. Summary information for each jurisdiction.

1. The information return shall include summary information for each jurisdiction in which the group has a presence within the meaning of this article.

2. The name of the jurisdiction should be identified, as well as, if applicable, the existence of any entity or set of entities in that jurisdiction that require calculations at a lower level than the jurisdictional level, distinguishing:

a) The constituent entities.

b) The minority ownership subgroup.

c) Minority-owned constituent entities not included in the previous point.

d) Investment entities.

e) Joint ventures and their affiliates.

f) Stateless constituent entities.

3. If the jurisdiction is a low-tax jurisdiction, the jurisdiction(s) entitled to claim the top-up tax generated in that jurisdiction by applying the

income inclusion rule or the under-taxed profits rule, in whatever form, should be identified.

4. It should be specified whether one of the safe harbours listed in the following chapter applies to the jurisdiction.

5. If the application of the substance-based income exclusion, as provided for in Article 14 of the Tax Law or in similar terms, would have resulted in no top-up tax existing, this must be specified.

6. The information return should identify the range of values for both the effective tax rate and the top-up tax, in any of its three forms, that are applied in other jurisdictions in which the MNE group is present.

CHAPTER III

Safe harbours and other cases of non-applicability of top-up tax

Article 23. Safe harbours and other cases of non-applicability of top-up tax for MNE groups and large-scale domestic groups.

1. The information return shall contain information regarding the safe harbours and exclusions applicable in each jurisdiction where the group has a presence.

2. First, the jurisdiction should be identified and the constituent entities that are located in such jurisdiction, as well as, if applicable, the type of entity or set of entities in that jurisdiction that require calculations at a lower level than the jurisdictional level, distinguishing:

a) The constituent entities.

b) The minority ownership subgroup.

c) Minority-owned constituent entities not included in the previous point.

d) Investment entities.

e) Joint ventures and their affiliates.

f) Stateless constituent entities.

g) The group of entities covered by the rule of non-applicability of the top-up tax referred to in transition provision four of the Tax Law.

3. The election to apply the de minimis exclusion in the period must be disclosed, when the circumstances provided for in Article 33 of the Tax Law are met, together with the relevant information for its application, such as the qualifying revenue, qualifying income and losses, net revenue or financial accounting net income or loss of the constituent entities in a jurisdiction in the current and previous two tax periods, as well as the average of these amounts.

4. In relation to applicable safe harbours, the one or ones chosen to be applied in the jurisdiction should be indicated, together with the relevant information for their application, taking into account the type of the applicable safe harbours.

5. For these purposes, the non-applicability of top-up tax according to the qualifying country-by-country information provided for in transition provision four of the Tax Act or equivalent qualifying country-by-country information relating to another jurisdiction shall be deemed to be a safe harbour.

Article 24. Other cases of transitional non-applicability of top-up tax for MNE groups and large-scale domestic groups.

1. The information return shall include information relating to the transitional non-applicability of top-up tax for MNE groups and large-scale domestic groups when the circumstances referred to in transition provision three of the Tax Law apply.

2. The information provided must specify the first day of the tax period in which the MNE group or large-scale domestic group first comes within the scope of the Tax Law, together with information relevant to its application.

CHAPTER IV

Calculating top-up taxes accrued and due in the different jurisdictions where the group operates

Article 25. Jurisdictional information of the MNE group or large-scale domestic group.

1. The information return shall contain the information relating to and necessary for the calculation of the top-up tax and shall relate to jurisdictional information.

2. The return must contain the identification of the jurisdiction, as well as the type of entity or set of entities, as referred to in Article 21(2) and (7), which may exist in that jurisdiction that require calculations at a level

below the jurisdictional level, together with their identification, distinguishing:

a) The constituent entities.

b) The minority ownership subgroup.

c) Minority-owned constituent entities not included in the previous point.

d) Investment entities.

e) Joint ventures and their affiliates.

f) Stateless constituent entities.

3. In the event that one or more of the safe harbours provided for in the previous chapter have been elected and where this means that the calculations provided for in this chapter do not have to be carried out in relation to any jurisdiction in which the group operates, only the information not affected by the application of the relevant safe harbour must be completed.

Article 26. Information on calculating the jurisdictional effective tax rate.

1. The information return shall include the information relating to and necessary for calculating top-up tax in its various forms, and shall provide the information necessary for calculating the effective tax rate in each jurisdiction.

2. The information needed to calculate the net qualifying income or loss of the constituent entities located in the jurisdiction shall be provided. In particular, reference should be made to the aggregate jurisdictional financial accounting net income or loss of the constituent entities in the tax period, taking into account the allocation and attribution of the qualifying income and loss of certain entities, as provided for in Articles 9, 12 and 13 of the Tax Law, and the adjustments necessary to determine the aggregate jurisdictional net qualifying income or loss.

3. The information needed to calculate the adjusted covered taxes of the constituent entities located in the jurisdiction shall be provided. In particular, reference shall be made to the aggregate jurisdictional covered taxes, after any allocation provided for in Article 20 of the Tax Law, as well as reference to the adjustments needed to determine the amount of adjusted covered taxes.

4. Specific information must be provided when circumstances equivalent to those provided for in Article 17.5 of the Tax Law are present or covered taxes arising from the application of certain tax regimes of controlled foreign companies must be allocated.

5. All information relating to the total deferred tax adjustment amount, the qualifying loss election and the mechanism for recovering deferred tax liabilities shall be disclosed separately, in terms equivalent to those set out in Articles 18 and 19 of the Tax Law.

6. The information to be provided in accordance with this article shall include a breakdown of the tax treatment of deferred tax assets and liabilities and of assets transferred during the transition tax period, in terms equivalent to the provisions of transition provision one of the Tax Law.

Article 27. Information on elections by jurisdiction.

1. The information return shall include a breakdown of the elections made and/or revoked, if applicable, at the jurisdictional level or by constituent entity, and shall differentiate between whether they are annual or five-yearly, in terms equivalent to the provisions of Article 49, paragraphs 1 and 2, of the Tax Law.

2. The election provided for in Article 19.5 of the Tax Law may only be made in the first top-up tax information return for the MNE group or large-scale domestic group, as referred to in Article 47 of the Tax Law, corresponding to the tax period that includes the jurisdiction for which the election is made for the first time, i.e. the first tax period in which the MNE group or large-scale domestic group has a constituent entity located in that jurisdiction.

3. In addition to the elections provided for in the Tax Law, the information return must include a breakdown of the elections made and/or revoked, where applicable, provided for in Articles 4.1, 4.2 and 9.2 of these regulations.

Article 28. Individual information by constituent entity.

1. The information set out in Article 26 shall be provided not only at the jurisdictional level but also by constituent entity.

2. For the purposes of the provisions of the previous paragraph, the top-up tax information return shall include information relating to:

a) The amount of the financial accounting net income or loss of the constituent entity for the tax period, together with the adjustments

needed to determine the qualifying income or loss for the period, all as provided for in Articles 9 and 10 of the Tax Law.

b) The allocation and attribution of the qualifying income or loss, where applicable, in terms equivalent to those provided for in Articles 12 and 13 of the Tax Law.

c) A breakdown of the adjustments in respect of the covered taxes for the period in terms equivalent to those provided for in Articles 17 and 18 of the Tax Law.

d) A breakdown of any applicable reductions, where appropriate, in terms equivalent to those provided for in Articles 40 and 41 of the Tax Law.

e) A breakdown of covered taxes allocated to other constituent entities and of covered taxes allocated by other constituent entities in terms equivalent to those provided for in Article 20 of the Tax Law.

f) A breakdown of the constituent entity's income calculation when the income exclusion derived from international maritime transport is applicable in terms equivalent to the provisions of Article 11 of the Tax Law.

g) Other additional information that may be relevant, such as information about the eligible distribution tax system, if applicable, or identification of the accounting standard used to determine the constituent entity's financial accounting net income or loss if it was not used by the ultimate parent entity to prepare the group's consolidated financial statements.

Article 29. Information on calculating the top-up tax generated in low-tax jurisdictions.

1. The information return shall include the information relating to and necessary for the calculation, at the jurisdictional level, of the top-up tax generated in low-tax jurisdictions, and shall refer to the specific calculations needed to determine the amount of top-up tax generated at the jurisdictional level in low-tax jurisdictions.

2. The information return shall include aggregate information for the jurisdiction on the effective tax rate, the amount of the substance-based income exclusion, the tax base, additional top-up tax and the qualified domestic top-up tax.

Article 30. Information on calculating the top-up tax levied on the various constituent entities of the MNE group or large-scale domestic group.

1. The information return shall include the relevant information needed to calculate the top-up tax to be levied on the group's different constituent entities, and shall refer to the specific calculations needed to determine the amount of top-up tax generated in low-tax jurisdictions to be paid by the group's different constituent entities on the basis of the income inclusion rule or the under-taxed profits rule.

2. The information return shall include information on the top-up tax generated by each low-tax constituent entity of the MNE group or large-scale domestic group on the basis of the percentage of its qualifying income in relation to the other qualifying income in the low-tax jurisdiction, as well as on the basis of the percentage interest held by the group's various parent entities in the low-tax constituent entity and the amount of top-up tax to be paid by each parent entity under the income inclusion rule.

3. The information return shall include the specific calculations needed to determine the amount of the domestic top-up tax to be levied on the different constituent entities of the MNE group or large-scale domestic group located in Spain.

4. The information return shall include detailed information, with sufficient breakdown, on the amount of top-up tax generated in each of the low-tax jurisdictions in which the MNE group operates to be levied on those other jurisdictions with an effective tax rate above or equal to the minimum tax rate, taking into account the percentage of the under-taxed profits rule in each of these jurisdictions, together with the specific calculations needed to determine the amount of top-up tax to be levied on the group's various constituent entities in each of these jurisdictions.

TITLE V

Offences and penalties

Article 31. Development of the penalty system.

1. For the purposes of Article 48.1 of the Tax Law, the information referred to in each of the following sections of the articles of these regulations, listed below in the following letters, constitutes different sets of data:

a) Article 20(2), (3) and (4);

b) Article 21(2), (3), (4), (5), (6) and (7);

c) Article 22(2), (3), (4), (5) and (6);

d) Article 23(2), (3) and (4);

e) Article 24(2);

f) Article 25(2);

g) Article 26(2), (3), (4), (5) and (6);

h) Each of the letters in Article 28(2);

i) Article 29(2);

j) Article 30(2) and (3).

2. For the information in all of the letters in Article 28(2) and Article 30(2) and (3), there shall be as many data sets as there are constituent entities to which the information relates.

3. For the purpose of computing the data set to determine the penalty, each piece of information shall only be taken into account once.

TITLE VI

Self-assessment

Article 32. Self-assessment.

1. The self-assessment(s) must be filed and paid to the tax administration within 25 calendar days following the fifteenth month after the end of the tax period, in accordance with the terms set out in Article 50 of the Tax Law.

The self-assessment(s) shall be filed electronically in the manner determined by the head of the Treasury, regardless of whether the resulting tax liability is positive or zero.

2. The amount of Top-Up Tax for the period may not be negative; therefore, the self-assessment(s) for the period may not give rise to any refund.

3. The self-assessment(s) will identify the information return containing the data that has been used to determine the tax liability for the period, whether it was filed in Spain or in another jurisdiction, and the date it was filed.

Likewise, the self-assessment(s) shall identify the taxpayer substitute, in accordance with the provisions of Article 6.5 of the Tax Law.

Transition provision one. Transitional non-applicability of the top-up tax for MNE groups and large-scale domestic groups.

For the purposes of section 4 of transition provision three of the Tax Law, the five-year period referred to in section 2 of transition provision three shall start to run from the beginning of the first tax period in which the under-taxed profits rule becomes applicable, taking into account the provisions of final provision twenty-two and transition provision six, both of the Tax Law.

Transition provision two. Simplified information return.

1. For the purposes of Article 47 of the Tax Law, and for tax periods commencing before 31 December 2028, or after that date, provided that they end before 1 July 2030, MNE groups or large-scale domestic groups may choose to submit the information relating to the following jurisdictions in simplified form, on the information return itself:

a) Jurisdictions that do not generate any top-up tax, either because they are not low-tax jurisdictions or because the top-up tax generated in those jurisdictions is zero due to the application of a safe harbour.

b) Those jurisdictions which do generate top-up tax but do not require an individualised calculation by constituent entity because the calculation made at the jurisdictional level is sufficient.

2. If a group files the information referring to the jurisdictions mentioned in letters a) and b) of the previous section in simplified form, they do not need to include the content provided for in Article 28 in the information return.

3. An MNE group or large-scale domestic group that makes the election offered in this transition provision shall comply with the following requirements:

a) Have an accounting system that allows it to accurately and reliably perform the calculations needed to compute the top-up tax generated in each jurisdiction, including the identification of the various constituent entities that contributed to its generation, and to apply the top-up tax rules for each entity where relevant to calculate the effective tax rate and top-up tax; and

b) Have a reliable accounting system that allows it to trace accounting information and attribute the corresponding information to each jurisdiction, as well as aggregate such information to prepare the period's consolidated financial statements; and

c) Have a system in place to identify the relevant adjustments made in each jurisdiction for the purpose of determining the qualifying income or loss or adjusted covered taxes for the period, as well as to identify the different constituent entities that would have caused such adjustments to be made.

d) It must keep at the disposal of the tax administration, in accordance with the principles of proportionality and sufficiency, the documentation supporting the determination of the top-up tax in the jurisdictions referred to in paragraph 1(a) and (b) above. Likewise, the tax administration may request all the information and documentation it deems relevant to verify the calculations made to quantify the top-up tax of said jurisdictions.

4. The election provided for herein shall be made by the filing entity in the information return itself, for each jurisdiction for which such election is made.

Transition provision three. Deadlines for filing the first information return and the first self-assessment.

1. In accordance with transition provision five of the Tax Law, the information return and any other communication other than that provided for in Article 18(1) of these regulations must be filed with the tax administration within two months before the last day of the eighteenth month following the end of the tax period in which an MNE group or large-scale domestic group first comes within the scope of top-up tax in accordance with a qualified income inclusion rule or a qualified under-taxed profits rule.

In any event, the information return and any other communication other than that provided for in Article 18(1) which relate to tax periods ending before 31 March 2025 shall be submitted to the tax administration within two months before 30 June 2026, irrespective of the length of the 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.

In the case provided for in the previous paragraph, the notification provided for in Article 18.1 must be submitted to the tax administration within the two months prior to 30 June 2026.

2. Without prejudice to Article 32, the self-assessment must be filed with the tax administration within 25 calendar days following the eighteenth month after the end of the 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.

In any event, no self-assessment, regardless of the tax period to which it refers, may be submitted before 30 June 2026, and the period of twenty-five days referred to in the previous paragraph shall run from that date.

Sole final provision. Authorisation of the head of the Treasury.

The head of the Treasury is authorised to:

a) Approve the notification, information return and self-assessment forms for this tax and determine the places and form in which they may be filed.

b) Establish the documents or proof that must accompany the notification, information return and self-assessment.