

Decreto sull'imposizione minima globale (Pillar Two) - Finalità, disegno e tematiche applicative

PwC TLS
March 2024



Agenda

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Regulatory Context
and status of
implementation of
QDMTT

GMT(P2) Rules

What? On December 15, 2022 the EU Directive providing for the mandatory introduction of Pillar II (and thus the minimum ETR of 15 percent jurisdiction by jurisdiction) in EU member countries, including Italy, was formally approved. The EU Directive has been transposed into Italian domestic law by D.Lgs. 209/2023.

Overall design of Pillar II:

- Establishes a minimum **ETR of 15%** determined by leveraging from "data" (so-called data points) that can be primarily be retrieved from the existing process of preparing consolidated financial statements to which various adjustments can be made to determine both the numerator and denominator of the ETR.
- It introduces an additional tax, **the Top-up-Tax (TuT)** to fill (if any) possible ETR gaps.
- The TuT is levied through three (innovative) domestic interconnected and coordinated rules, the **Qualified Domestic Minimum TuT (QDMTT)**, **Income Inclusion Rule (IIR)** and **Undertaxed Profit Rules (UTPR)**.

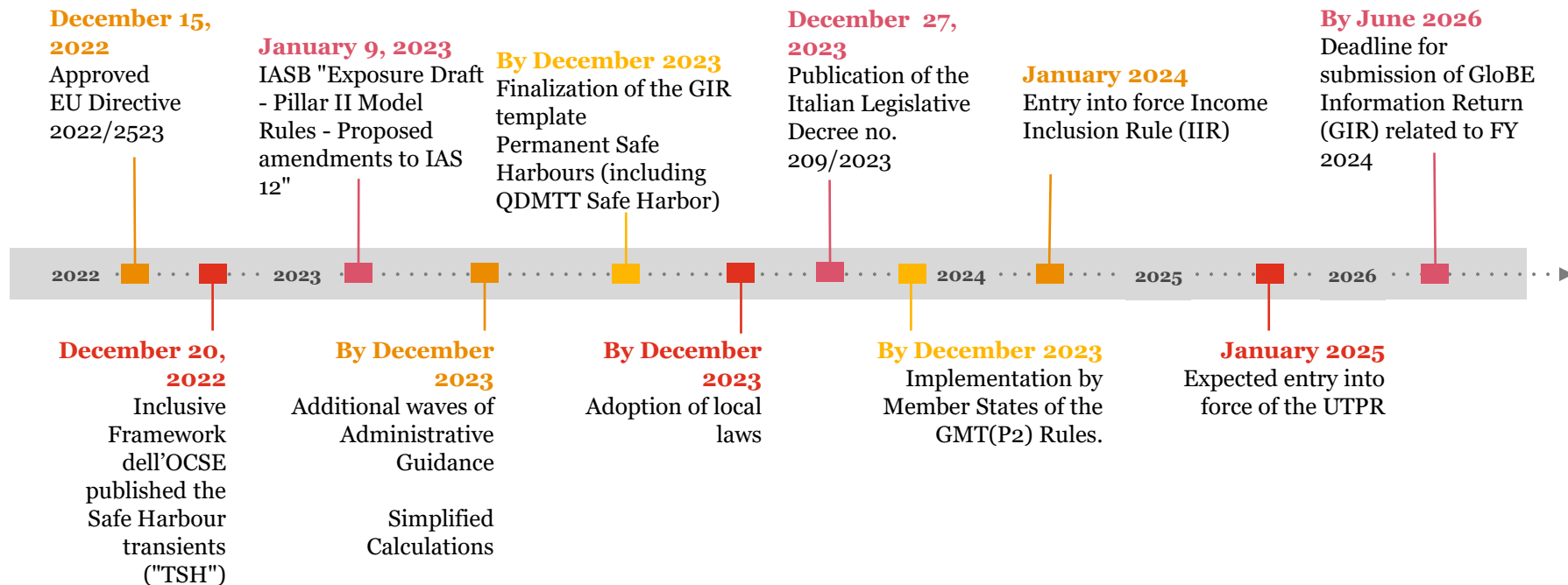
Why? To prevent cross country tax competition through the establishment of a minimum level of effective taxation on income produced in each jurisdiction by Groups.

Who? Multinational (and EU Domestic) Groups with annual consolidated revenues of at least 750 million euros in at least two of the previous four fiscal years.

When? For not publicly listed Companies, TuT (if any) should be accounted for in the consolidated financial statements of the Group and, if necessary based on local GAAP, in the separate financial statements of the entities of the Group related to the 2024 accounting period - i.e. in principle by Q1 2025 the Group should have a reasonable estimation of the TuT related to 2024.

For publicly listed Companies TuT (if any) shall be calculated for financial reporting purposes (Q1, Q2, Q3) and, in the consolidated financial statements of the Group (Year End), for FY 2024.

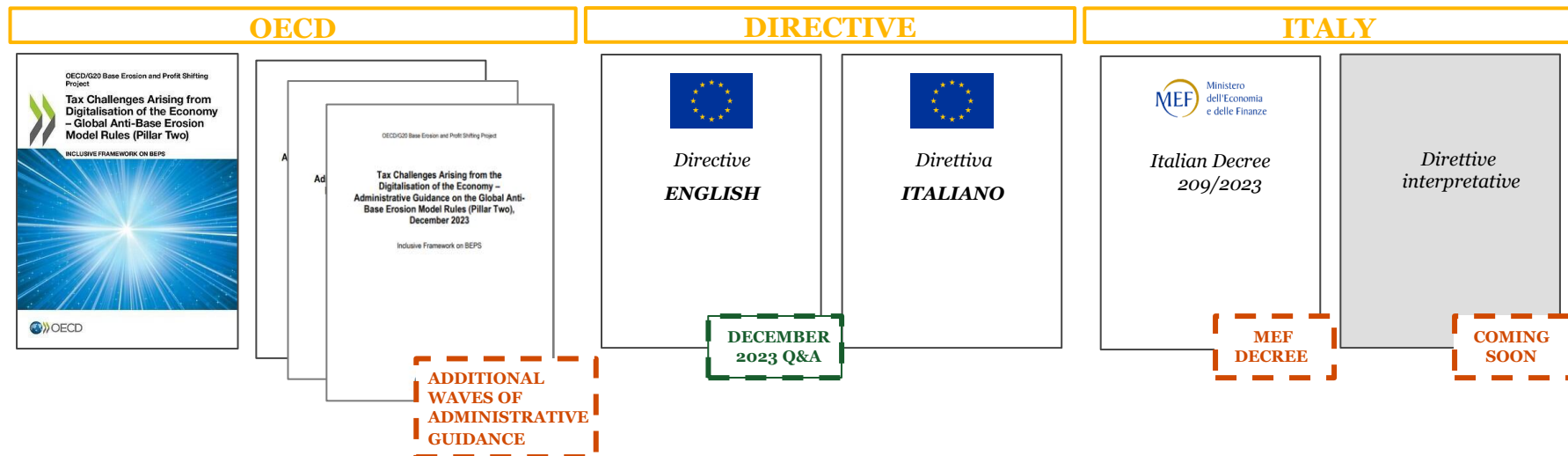
GMT(P2) Rules (timeline)



The Italian regulatory context

Art. 9, para. 3

*“Le disposizioni del presente titolo sono interpretate ed applicate tenendo conto del **Commentario alle regole OCSE** adottate l’11 marzo 2022 “Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti Base Erosion Model Rules (Pillar Two)”, e successive modificazioni, e delle **Guide Amministrative** previste nell’articolo 8.3 delle suddette regole OCSE. Con decreto del Ministro dell’economia e delle finanze sono adottate le disposizioni attuative dei contenuti del Commentario, delle Guide Amministrative e del loro aggiornamento. Il Dipartimento delle finanze emana apposite direttive interpretative secondo quanto previsto all’articolo 11, comma 1, lettera f) del decreto del Presidente del Consiglio dei Ministri 26 giugno 2019, n. 103.”*



Accounting Standards for a QDMTT Safe Harbour

*The **QDMTT Accounting Standard** which requires a QDMTT to be computed based on the UPE's Financial Accounting Standard or a Local Financial Accounting Standard subject to certain conditions.*

A QDMTT meets the **QDMTT Accounting Standard** if the QDMTT legislation adopts one of the following:

- (a) provisions that are equivalent to Articles 3.1.2 and 3.1.3 of the GloBE Model Rules; or
- (b) the **Local Financial Accounting Standard Rule**.

art. 18 par. 2



Under the **Local Financial Accounting Standard Rule**:

- (a) the QDMTT shall be computed based on the **Local Financial Accounting Standard** of the QDMTT jurisdiction where all of the Constituent Entities located in that jurisdiction have financial accounts based on that standard and:
 - i. are required to keep or use such accounts under a domestic corporate or tax law; **or**
 - ii. such financial accounts are subject to an external financial audit;
- (b) the **Local Financial Accounting Standard** is a financial accounting standard permitted or required in the QDMTT jurisdiction by the Authorised Accounting Body or pursuant to the relevant domestic legislation that is an:
 - i. Acceptable Financial Accounting Standard; or
 - ii. Authorised Financial Accounting Standard adjusted to prevent Material Competitive Distortions; and
- (c) in case where not all Constituent Entities located in the jurisdiction meet the requirements of subparagraph (a) or the Fiscal Year of such accounts is different to the Fiscal Year of the Consolidated Financial Statements of the MNE Group, the QDMTT shall be computed based on the provisions that are equivalent to Articles 3.1.2 and 3.1.3 of the GloBE Model Rules.

art. 18 par. 2



art. 18 par. 2



art. 18 par. 3



Consistency Standard for a QDMTT Safe Harbour

The **Consistency Standard** which requires the QDMTT computations to be **the same as** the computations required under the GloBE Rules **except where** the Commentary to the QDMTT definition in Article 10.1 as modified by the Administrative Guidance (hereafter the QDMTT Commentary) explicitly requires a QDMTT to depart from the GloBE Rules or where the Inclusive Framework decides that an optional variation that departs from the GloBE Rules still meets the standard.

Mandatory variations

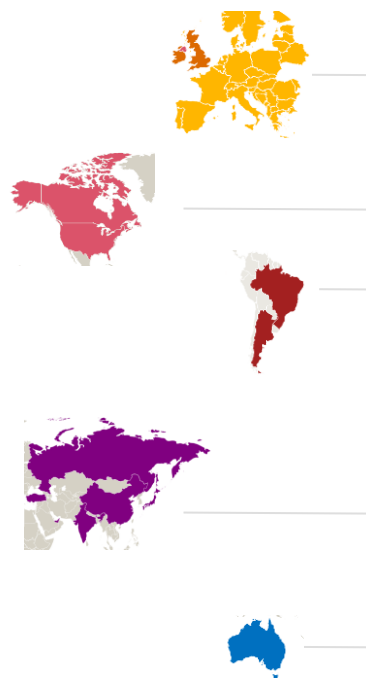
- No pick up of push down of (cross-border) Covered Taxes; **art. 18 co. 1(b)** ✓
- Use of local currency **art. 18 co. 4** ✓

Optional variations

- No, or a more limited, Substance-based Income Exclusion; ✗
- No, or a more limited, De Minimis Exclusion; ✗
- A minimum tax rate above 15% for purposes of computing the Top-up Tax Percentage for the jurisdiction. ✗

Switch-off rule [to be adopted] ✗

GMT - Status of implementation in local laws



JURISDICTION	Scenario 1 - Italia	Scenario 2 - IIR	Scenario 3 - QDMTT	Scenario tra 3 e 4 - QDMTT	Scenario 4 - QDMTT Safe Harbour
ITALY	X				
CZECH REPUBLIC			X		
Rest of EUROPE				X	X
UK					X
U.S.A.		X			
CANADA					X
ARGENTINA		X			
BRAZIL		X			
INDIA		X			
CHINA		X			
SINGAPORE		X			
HONG KONG		X (2024)			X (2025)
JAPAN		X (2024)		X (2025)	
TURKEY		X			
U.A.E.		X			
AUSTRALIA				X	

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Source of data for
Transitional Safe
Harbours

GMT(P2) Perimeter



1. Identify the relevant entities

Ordinary CEs - all the entities consolidated line-by-line in the CFS of the UPE

NMCEs - Entities controlled but not consolidated line-by-line for materiality reasons

HfSE - Entities controlled but not consolidated line-by-line because held for sale

Permanent Establishments of the entities above

Entities not controlled by the UPE and:

- which financial results are reported in the CFS of the UPE under the Equity Method, and
- in which the UPE has a direct or indirect Ownership Interest of at least 50%.

Further analysis is needed for JV Groups

Ownership Interest



2. Characterize CEs

Flow-Through Entities - Tax Transparent
Flow-Through Entities - Reverse Hybrid

Investment Entities

Double Tax Relief method adopted for PEs - branch exemption / tax credit

Partially Owned Parent Entities

Minority Owned Sub-Groups

CFCs



3. Identify location of each Constituent Entity

Tax Residency of the CEs and JVs different from PEs

Jurisdiction where the PE is situated

Flow-Through entities are stateless

Special rules apply under specific (and rare) circumstances

CbCR TSHs tests

N.B.: on a jurisdictional basis !



De Minimis Test

- Jurisdiction with
 - Total Revenue < EUR 10M, and
 - Profit (Loss) before Income tax < EUR 1M for the FY



Effective Tax Rate Test

- The simplified ETR \geq the Transition Rate in the Jurisdiction for the FY
- Transition Rates :
 - 15% for FY beginning in 2024
 - 16% for FY beginning in 2025
 - 17% for FY beginning in 2026



Routine Profits Test

- Profit (Loss) before Income tax \leq Substance-based Income Exclusion (SBIE) amount as calculated under GloBE Rules

A jurisdiction qualifies for the CbCR TSHs if at least one test is passed

The effect of CbCR TSHs is to:

- avoid performing detailed (full) GloBE calculations, and
- use "ready available" data (extracted from qualified sources: Qualified CbCR and Qualified Financial statement).

If the conditions of the safe harbors are not met, then the general rules apply, and any potential liability to Top-up Tax must be computed under the ordinary GloBE Rules.

Transitional period: FYs 2024-2026

OECD Approach → **once out, always out**

Minor Adjustments: limited adjustments may be required to the jurisdictional CbCR PBT and financial statement income tax expense

Goodwill impairment adjustment → any reduction to the Constituent Entity's income attributable to an impairment of goodwill related to transactions entered into after 30 November 2021 must be **added back to the PBT**: (a) for purposes of applying the routine profits test; and (b) for purposes of applying the simplified ETR test, but only if the financial accounts do not also have a reversal of deferred tax liability or recognition or increase of a deferred tax asset in respect of the impairment of goodwill

Qualified CbCR & Qualified Financial Statements

Qualified CbCR means a “Country-by-Country Report prepared and filed using Qualified Financial Statements”

Qualified Financial Statement means:

- a) the accounts used to prepare the Consolidated Financial Statements of the UPE (~~to mirror the requirement under Article 3.1.2 GloBE Rules~~);
- b) separate financial statements of each Constituent Entity provided they are prepared in accordance with either an Acceptable Financial Accounting Standard or an Authorised Financial Accounting Standard if the information contained in such statements is maintained based on that accounting standard and it is reliable; or
- c) in the case of a Constituent Entity that is not included in an MNE Group's Consolidated Financial Statements on a line-by-line basis solely due to size or materiality grounds (i.e. **NMCE**), the financial accounts of that Constituent Entity that are used for preparation of the MNE Group's CbC Report.

Qualified Financial Statements for Permanent Establishments

- A PE must use its own Qualified Financial Statements to determine the amounts used for purposes of the Transitional CbCR
- Safe Harbour computations in the Tested Jurisdiction if it has them. However, given that a PE is a tax and not an accounting concept, PE-specific revenue and profit data is rarely directly available from the UPE's Consolidated Financial Statements or the Main Entity's local financial accounts.
- If Qualified Financial Statements are not available for a PE, the MNE Group may determine the portion of the Main Entity's Total Revenue and PBT that is attributable to the PE using separate financial statements prepared by the Main Entity for the PE for financial reporting, regulatory, tax reporting, or internal management control purposes.

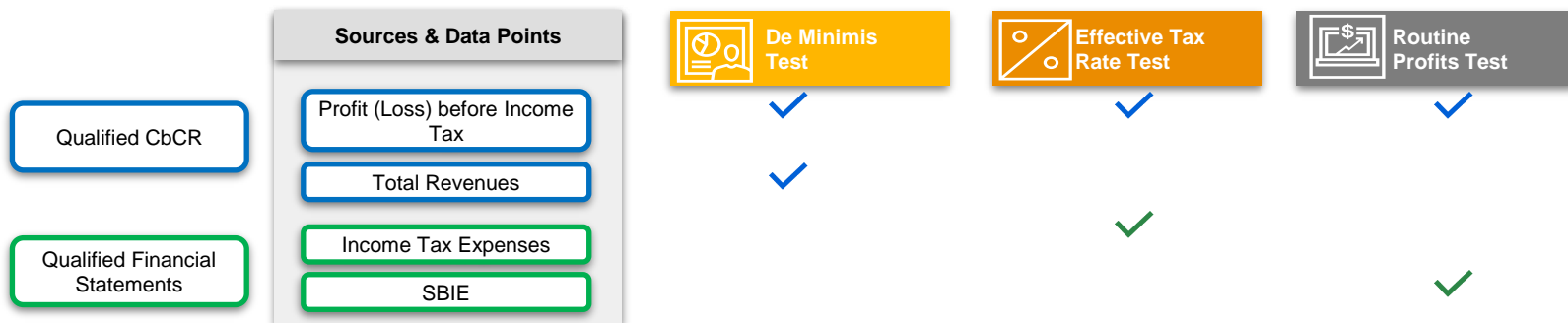
Transitional Safe Harbours

Data Point collection

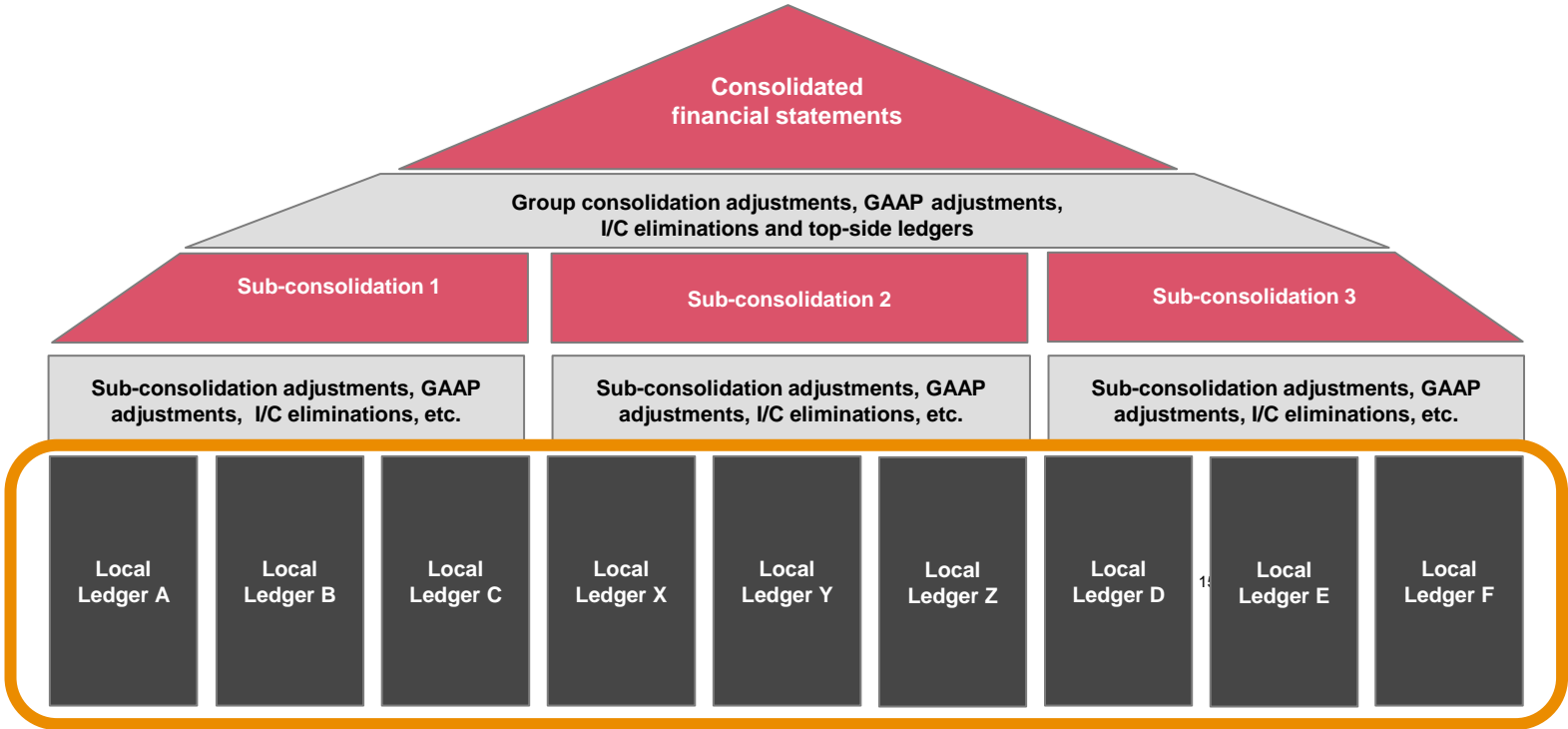
CbCR TSHs rely on **Qualified** CbCR data as basis for calculating an MNE revenue and income on a jurisdictional basis → **CbCRs** are not necessarily **Qualified CbCR** for TSHs purposes.

MNE Groups that are in scope of the GloBE Rules but not required to file CbCR are still eligible for the Transitional CbCR Safe Harbour if they complete section 2.2.1.3(a) of the GIR

Entity	Source of Information	Entity	Source of Information
<div>UPE</div> <div>CE</div> <div>PE</div> <div>NMCE</div>	<ul style="list-style-type: none"> Consolidation reporting packages (<i>i.e.</i>, <i>FANIL</i> used in preparing CFS); Separate entities statutory FS; Regulatory FS; or Internal management accounts. 	<div>UPE/CE</div> <div>PE</div> <div>NMCE</div>	<ol style="list-style-type: none"> UPE Reporting Package for the preparation of CFS; CE Separate FS prepared in accordance with: <ul style="list-style-type: none"> Acceptable Financial Accounting Standard; or Authorized Financial Accounting Standard. <p>If Qualified Financial Statements are not available for a PE, the MNE Group may determine the portion of the Main Entity's Total Revenue and PBT that is attributable to the PE using separate financial statements prepared by the Main Entity for the PE for financial reporting, regulatory, tax reporting, or internal management control purposes.</p> <p>FS used for preparation of the MNE Group's CbCR</p>



Financial statement consolidation process



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December Administrative Guidance

Purchase Price Accounting

PPA adjustments in Qualified Financial Statements

Article 3.1.2 and the related Commentary requires a Constituent Entity to remove the effect of PPA adjustments from the computation of its Financial Accounting Net Income or Loss for all transactions, unless the MNE Group lacks sufficient records to determine the amount of the adjustments in respect of a transaction that occurred before 1 December 2021.

? Can a Constituent Entity use its financial accounts - used in the preparation of the Consolidated Financial Statements (the reporting package) or its separate financial statements - to prepare a **Qualified CbCR** if those financial accounts **include the effect of PPA adjustments in the computation of Profit (or Loss) before Tax**?

A Constituent Entity may use financial accounts that include the effect of PPA adjustments in the computation of Profit (or Loss) before Tax **under certain conditions**

Where the MNE Group allocated and incorporated the PPA adjustments into the financial accounts of the acquired CE that are used in the preparation of the CFS (i.e. the reporting package of the CE incorporates PPA adjustments) or the separate financial statements of that CE, those financial accounts or separate financial statements **will be considered Qualified Financial Statements**, if the condition in paragraph **17.4 is met** and the **adjustment** required by paragraph **17.5 is made**.

17.4 Consistent reporting Conditions

The MNE Group has not submitted a CbC Report for a fiscal year beginning after 31 December 2022 that was based on the Constituent Entity's reporting package or separate financial statements without the PPA adjustments, except where the Constituent Entity was required by law or regulation to change its reporting package or separate financial statements to include PPA adjustments.

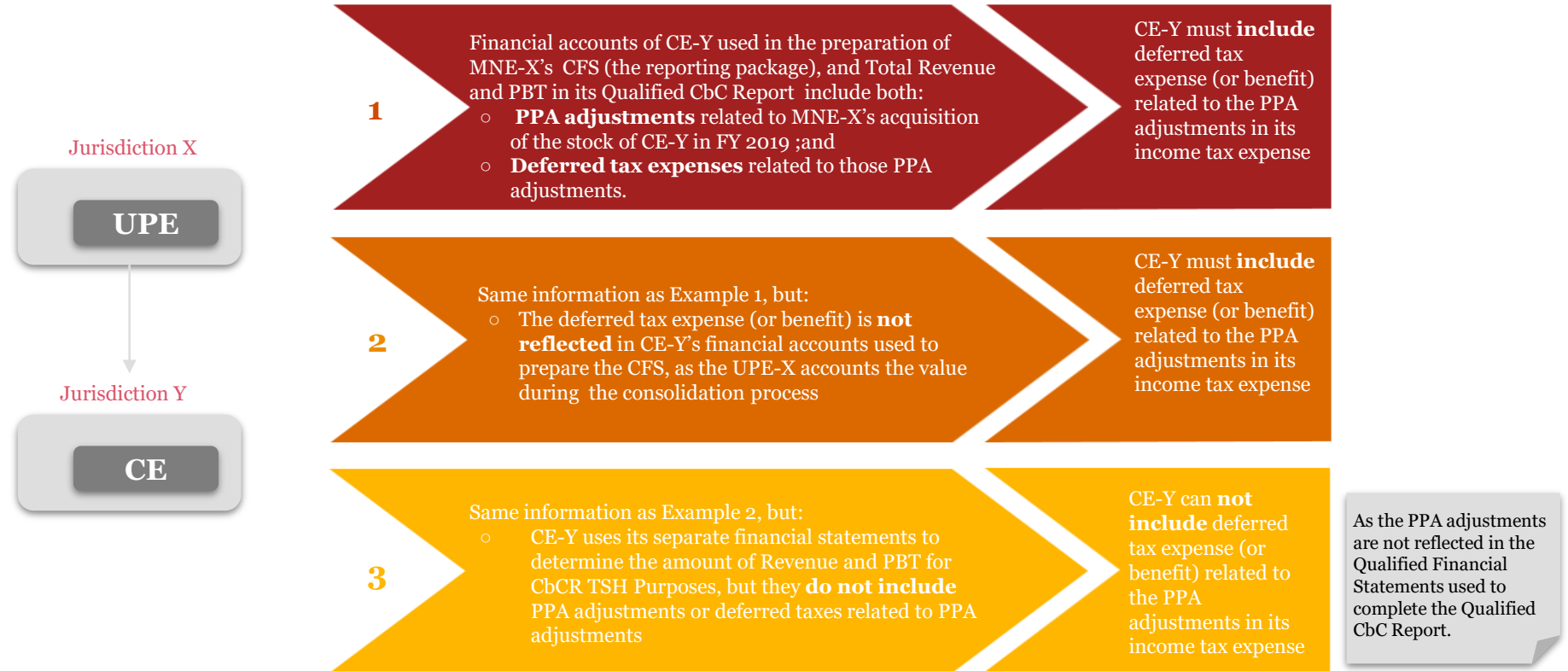
17.5 Goodwill impairment adjustment

Any reduction to the Constituent Entity's income attributable to an impairment of goodwill related to transactions entered into after 30 November 2021 must be added back to the PBT:

- a) for purposes of applying the routine profits test; and
- b) for purposes of applying the simplified ETR test, but only if the financial accounts do not also have a reversal of deferred tax liability or recognition or increase of a deferred tax asset in respect of the impairment of goodwill.

Purchase Price Accounting

PPA adjustments in Qualified Financial Statements



Dividends

For Transitional CbCR Safe Harbour computation, MNE Group's **Total Revenue** and **Profit (Loss) before Income Tax** for each jurisdiction is **extracted** directly from the **Qualified CbCR**.

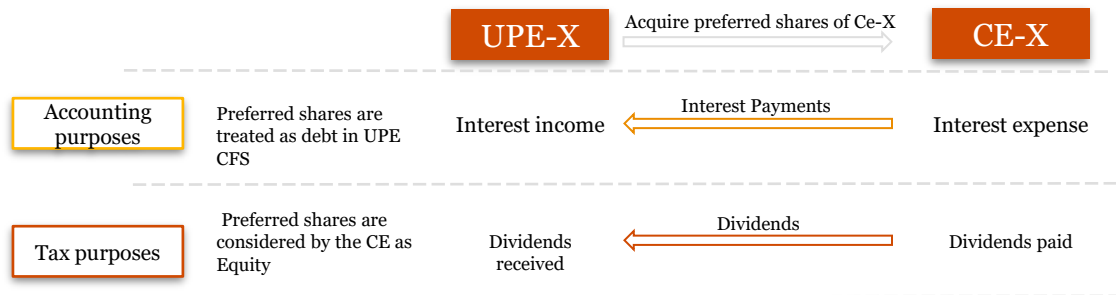
In CbCR an intra-group payment treated as a dividend in the payer's tax jurisdiction, should be excluded from the Revenue and PBT of the recipient ⇐

Question 7.1 in
Chapter 2 of the Oct.
2022 Guidance on
the Implementation
of CbCR

?

For purposes of the Transitional CbCR Safe Harbour, should an **intra-group payment** that is treated as income of the recipient in its Qualified Financial Statements and expense of the payer in its Qualified Financial Statements be **excluded from** the recipient's **Total Revenue and PBT if it was treated as a dividend in the payer's jurisdiction for tax purposes?**

- ✓ The information reflected in the Qualified Financial Statements shall **not be adjusted** in the safe harbour computations **based on the tax treatment of the transaction.**
- ✓ An **intra-group payment** treated as income in the Qualified Financial Statements of the recipient and expense in the Qualified Financial Statements of the payer shall be **included in Total Revenues and PBT** for the purpose of the safe harbour computations **without further adjustments**, irrespective of the treatment of that transaction for tax purposes in the jurisdiction of the recipient or the payer and the treatment of that transaction in the CbC Report



For **CbCR** purposes :
on the Implementation of Country-by-Country Reporting document, **UPE-X excluded the payment from its Revenue and PBT** in its CbC report **because it is treated as a dividend in Tested Jurisdiction X (Tax jurisdiction of the payer)**

For **CbCR TSH** purposes :
because the payment is treated as an expense for CE-X, **UPE-X must treat the payment as income** in determining its Total Revenues and PBT for purposes of the computations under the Transitional CbCR Safe Harbour, **notwithstanding the treatment in the CbCR**

Treatment of hybrid arbitrage arrangements under CbCR TSH

A **Hybrid Arbitrage Arrangement** is alternatively:

a deduction / non inclusion arrangement

A CE directly or indirectly **provides credit** or **makes an investment in another CE** that results in an expense (loss) in the financial statements of a CE to the extent that:

- there is **no commensurate increase in the revenue** or gain in the financial statements of the counterparty CE ; or
- the counterparty CE is **not** reasonably **expected** over the life of the arrangement to have a **commensurate increase in its taxable income**.*

a duplicate loss arrangement

An **arrangement** that results in an **expense or loss** being included in the financial statement of a CE to the extent that:

- the expense or loss is also being included as an expense or loss in the financial statement of another Constituent Entity; or
- the arrangement also **gives rise to a duplicate amount** that is **deductible** for purposes of determining the taxable income of another Constituent Entity in another jurisdiction.

a duplicate tax recognition arrangement

An **arrangement** that results in **more than one CE** including part or all of **the same income tax expense** in its:

- Adjusted Covered Taxes**; or
- Simplified ETR** for purposes of applying the Transitional CbCR Safe Harbour,

unless such arrangement also results in the income subject to the tax being included in the relevant financial statements of each such Constituent Entity.
**

Where a Constituent Entity has entered into an hybrid arbitrage arrangements, the Constituent Entity's eligibility for the safe harbour should be determined on the assumption that it has treated the relevant item of income, expense or taxes in the same way as the counterparty



Whether the Transitional CbCR Safe Harbour is available to MNE Groups that would only qualify as a result of one or more hybrid arbitrage arrangements.

For the purposes of determining whether a Tested Jurisdiction qualifies for the Transitional CbCR Safe Harbour, adjustments must be made to the Tested Jurisdiction's PBT and income tax expense with respect to any Hybrid Arbitrage Arrangements entered into **after 15 December 2022**.

- ✓ excluding any expense or loss arising as a result of a deduction/non-inclusion arrangement or duplicate loss arrangement from the Tested Jurisdiction's PBT;
- ✓ excluding any income tax expense arising as a result of a duplicate tax recognition arrangement from the Tested Jurisdiction's income tax expense.

*An arrangement will not be a deduction / non-inclusion arrangement to the extent that the relevant expense or loss is solely with respect to Additional Tier One Capital.

**An arrangement will not be a duplicate tax recognition arrangement if it arises solely because the Simplified ETR of a Constituent Entity does not require adjustments for income tax expenses which would be allocated to another Constituent Entity in determining the first Constituent Entity's Adjusted Covered Taxes.

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Speakers



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