

# EXPOSURE DRAFT

2022-2023-2024

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

## **Taxation (Multinational—Global and Domestic Minimum Tax) Bill 2024**

**No. , 2024**

*(Treasury)*

**A Bill for an Act to implement a multinational  
top-up tax, and for related purposes**

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1 **A Bill for an Act to implement a multinational**  
2 **top-up tax, and for related purposes**

3 The Parliament of Australia enacts:

4 **Part 1—Preliminary**  
5

6 **1 Short title**

7 This Act is the *Taxation (Multinational—Global and Domestic*  
8 *Minimum Tax) Act 2024*.

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## Part 1 Preliminary

### Section 2

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#### 1 **2 Commencement**

- 2 (1) Each provision of this Act specified in column 1 of the table  
3 commences, or is taken to have commenced, in accordance with  
4 column 2 of the table. Any other statement in column 2 has effect  
5 according to its terms.

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#### **Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	The day after this Act receives the Royal Assent.	

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- 6 Note: This table relates only to the provisions of this Act as originally  
7 enacted. It will not be amended to deal with any later amendments of  
8 this Act.

- 9 (2) Any information in column 3 of the table is not part of this Act.  
10 Information may be inserted in this column, or information in it  
11 may be edited, in any published version of this Act.

#### 12 **3 Interpreting this Act**

- 13 (1) Interpret a provision of this Act in a manner consistent with the  
14 following:  
15 (a) the GloBE Rules;  
16 (b) the Commentary;  
17 (c) Agreed Administrative Guidance;  
18 (d) *Safe Harbours and Penalty Relief: Global Anti-Base Erosion*  
19 *Rules (Pillar Two)* published by the OECD on 20 December  
20 2022;  
21 (e) a document, or part of a document, prescribed by the Rules  
22 for the purposes of this paragraph.
- 23 (2) However, for the purposes of subsection (1), disregard a document,  
24 or part of a document, prescribed by the Rules for the purposes of  
25 this subsection, to the extent prescribed by the Rules.

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- 1 (3) Subsection (1) does not affect the application of section 15AB of  
2 the *Acts Interpretation Act 1901* for the purposes of interpreting  
3 this Act.
- 4 (4) In this Act:
- 5 **Agreed Administrative Guidance** means:
- 6 (a) *Tax Challenges Arising from the Digitalisation of the*  
7 *Economy – Administrative Guidance on the Global Anti-Base*  
8 *Erosion Model Rules (Pillar Two)* published by the OECD  
9 on 2 February 2023; and
- 10 (b) *Tax Challenges Arising from the Digitalisation of the*  
11 *Economy – Administrative Guidance on the Global Anti-Base*  
12 *Erosion Model Rules (Pillar Two)*, July 2023 published by  
13 the OECD on 17 July 2023; and
- 14 (c) *Tax Challenges Arising from the Digitalisation of the*  
15 *Economy – Administrative Guidance on the Global Anti-Base*  
16 *Erosion Model Rules (Pillar Two)*, December 2023 published  
17 by the OECD on 18 December 2023; and
- 18 (d) any other Agreed Administrative Guidance (within the  
19 meaning of the GloBE Rules).
- 20 **Commentary** means *Tax Challenges Arising from the*  
21 *Digitalisation of the Economy – Commentary to the Global*  
22 *Anti-Base Erosion Model Rules (Pillar Two)* published by the  
23 OECD on 14 March 2022, as amended from time to time.
- 24 **GloBE Rules** means *Tax Challenges Arising from the*  
25 *Digitalisation of the Economy – Global Anti-Base Erosion Model*  
26 *Rules (Pillar Two)* published by the OECD on 20 December 2021.
- 27 (5) A reference in this Act to **this Act** (other than in this subsection and  
28 in Part 4) includes a reference to the Rules.

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## Part 2 Liability

### Section 4

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1 **Part 2—Liability**

2

3 **Division 1—IIR**

4 **4 Liability to tax—IIR**

5 (1) Tax is payable by an Entity for a Fiscal Year if it has one or more  
6 Top-up Tax Amounts for the Fiscal Year.

7 (2) The amount of tax payable by the Entity for the Fiscal Year is the  
8 sum of those Top-up Tax Amounts.

9 (3) Subsection (1) applies in relation to the 2024 Fiscal Year and later  
10 Fiscal Years.

11 **5 Meaning of *Top-up Tax Amount***

12 *Top-up Tax Amount* has the meaning given by the Rules.

13 **6 Liability for certain kinds of bodies**

14 (1) If a trust has one or more Top-up Tax Amounts for a Fiscal Year,  
15 the tax that is payable under section 4 because of those Top-up Tax  
16 Amounts is payable by the trustees of the trust (rather than by the  
17 trust).

18 (2) If a partnership has one or more Top-up Tax Amounts for a Fiscal  
19 Year:

20 (a) the tax that is payable under section 4 because of those  
21 Top-up Tax Amounts is payable by each partner in the  
22 partnership (rather than by the partnership), but may be  
23 discharged by any of the partners; and

24 (b) the partners are jointly and severally liable to pay that tax.

25 (3) If a Joint Venture, or a JV Subsidiary, has one or more Top-up Tax  
26 Amounts for a Fiscal Year and is not an incorporated Entity:



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- 1 (a) the tax that is payable under section 4 because of those  
2 Top-up Tax Amounts is payable by each Entity covered by  
3 subsection (4) (rather than by the Joint Venture or JV  
4 Subsidiary); and  
5 (b) those Entities are jointly and severally liable to pay that tax.
- 6 (4) This subsection covers the following Entities:  
7 (a) an Entity (other than a trust or partnership) that holds a  
8 Direct Ownership Interest in the Joint Venture or JV  
9 Subsidiary;  
10 (b) if a trust holds a Direct Ownership Interest in the Joint  
11 Venture or JV Subsidiary—the trustees of the trust;  
12 (c) if a partnership holds a Direct Ownership Interest in the Joint  
13 Venture or JV Subsidiary—each partner in the partnership.
- 14 (5) If the tax that is payable under section 4 because of paragraph  
15 (4)(c) is payable by each partner in a partnership:  
16 (a) the tax may be discharged by any of the partners in the  
17 partnership; and  
18 (b) the partners are jointly and severally liable to pay that tax.

## 19 **Division 2—DMT**

### 20 **7 Liability to tax—DMT**

- 21 (1) Tax is payable by an Entity for a Fiscal Year if it has one or more  
22 Domestic Top-up Tax Amounts for the Fiscal Year.
- 23 (2) The amount of tax payable by the Entity for the Fiscal Year is the  
24 sum of those Domestic Top-up Tax Amounts.
- 25 (3) Subsection (1) applies in relation to the 2024 Fiscal Year and later  
26 Fiscal Years.

### 27 **8 Meaning of *Domestic Top-up Tax Amount***

28 *Domestic Top-up Tax Amount* has the meaning given by the  
29 Rules.



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Liability **Part 2**  
UTPR **Division 2**

## Section 10

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1 (c) if a partnership holds a Direct Ownership Interest in the Joint  
2 Venture or JV Subsidiary—each partner in the partnership.

3 (6) If the tax that is payable under section 7 because of  
4 paragraph (5)(c) is payable by each partner in a partnership:

5 (a) the tax may be discharged by any of the partners in the  
6 partnership; and

7 (b) the partners are jointly and severally liable to pay that tax.

## 8 **Division 2—UTPR**

### 9 **10 Liability to tax—UTPR**

10 (1) Tax is payable by an Entity for a Fiscal Year if it has one or more  
11 UTPR Top-up Tax Amounts for the Fiscal Year.

12 (2) The amount of tax payable by the Entity for the Fiscal Year is the  
13 sum of those UTPR Top-up Tax Amounts.

14 (3) Subsection (1) applies in relation to the 2025 Fiscal Year and later  
15 Fiscal Years.

### 16 **11 Meaning of *UTPR Top-up Tax Amount***

17 *UTPR Top-up Tax Amount* has the meaning given by the Rules.

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## Part 3 Core Group and Entity concepts

### Section 12

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## Part 3—Core Group and Entity concepts

### 12 Meaning of *Applicable MNE Group*

- (1) An MNE Group is an *Applicable MNE Group* for a Fiscal Year (the *test year*) if:
- (a) for at least 2 of the 4 Fiscal Years immediately preceding the test year, the MNE Group’s annual revenue is equal to or greater than its GloBE Threshold for the Fiscal Year; or
  - (b) the conditions specified in the Rules for the purposes of this paragraph are met.
- (2) For the purposes of subsection (1), the annual revenue of an MNE Group for a Fiscal Year preceding the test year is the amount shown in the Consolidated Financial Statements for that Fiscal Year of the Ultimate Parent Entity of the MNE Group as the annual revenue of the MNE Group.
- (3) The *GloBE Threshold* of a Group for a Fiscal Year is:
- (a) if paragraph (b) does not apply—750 million Euros;
  - (b) if the Fiscal Year of the Group is a period other than 12 months—the amount of Euros computed as follows:
    - (i) first, divide the period of the Fiscal Year (expressed in months) by 12;
    - (ii) next, multiply the result of subparagraph (i) by 750 million.

### 13 Meaning of *Entity* and *Ultimate Parent Entity*

- (1) *Entity* means:
- (a) any legal person (other than a natural person); or
  - (b) an arrangement that is required to prepare separate financial accounts, such as a partnership or trust.
- (2) However, none of the following are an *Entity*:
- (a) the Commonwealth;

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- 1 (b) a State or Territory;  
2 (c) the government of a foreign country or of part of a foreign  
3 country;  
4 (d) an authority of a government covered by paragraph (a), (b) or  
5 (c) that carries out government functions.
- 6 (3) **Ultimate Parent Entity** means:  
7 (a) an Entity:  
8 (i) that holds a Controlling Interest in any other Entity; and  
9 (ii) in which a Controlling Interest is not held by another  
10 Entity; or  
11 (b) a Main Entity that is an Ultimate Parent Entity under  
12 subparagraph 15(1)(c)(iii).

## 13 **14 Meaning of MNE Group and Group**

- 14 (1) An **MNE Group** is a Group that includes at least one Entity or  
15 Permanent Establishment that is not located in the jurisdiction of  
16 the Ultimate Parent Entity of the Group.
- 17 (2) **Group** means:  
18 (a) a Group under subsection (3); or  
19 (b) a Group under subparagraph 15(1)(c)(i).
- 20 Note: A Group under subparagraph 15(1)(c)(i) will be an MNE Group.
- 21 (3) A **Group** under this subsection is comprised of:  
22 (a) an Ultimate Parent Entity; and  
23 (b) one or more other Entities, each of which is related through  
24 ownership or control such that the assets, liabilities, income,  
25 expenses and cash flows of the Entity:  
26 (i) are included in the Consolidated Financial Statements of  
27 the Ultimate Parent Entity; or  
28 (ii) are excluded from the Consolidated Financial  
29 Statements of the Ultimate Parent Entity solely on size  
30 or materiality grounds, or on the grounds that the Entity  
31 is held for sale.

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## Part 3 Core Group and Entity concepts

### Section 15

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1 (4) The Ultimate Parent Entity mentioned in paragraph (3)(a) is the  
2 Ultimate Parent Entity of the Group.

3 (5) Each Entity mentioned in paragraphs (3)(a) and (b) is a  
4 *Constituent Entity* of the Group.

#### 5 **15 Permanent establishments**

6 (1) If an Entity that is located in a jurisdiction is a Main Entity in  
7 respect of one or more Permanent Establishments that are located  
8 in other jurisdictions:

9 (a) for the purposes of this Act:

10 (i) each of those Permanent Establishments is taken to be  
11 separate from the Main Entity and from each other; and

12 (ii) the Main Entity is taken to hold a Controlling Interest in  
13 each of those Permanent Establishments; and

14 Note: The Main Entity is taken to hold a Direct Ownership Interest in  
15 each of those Permanent Establishments (see subsection 30(3)).

16 (b) if the Entity is included in a Group under subsection 14(3)—  
17 despite subsections 14(3) and (5), the Main Entity and each  
18 of those Permanent Establishments is a *Constituent Entity* of  
19 the Group; and

20 (c) if the Entity is not included in a Group under  
21 subsection 14(3):

22 (i) the Entity is a *Group* comprised of the Main Entity and  
23 each of those Permanent Establishments; and

24 (ii) the Main Entity and each of those Permanent  
25 Establishments is a *Constituent Entity* of the Group;  
26 and

27 (iii) the Main Entity is the *Ultimate Parent Entity* of the  
28 Group.

29 (2) *Permanent Establishment* means:

30 (a) a place of business (including a deemed place of business)  
31 that is situated in a jurisdiction and treated as a permanent  
32 establishment in accordance with an applicable Tax Treaty in  
33 force, if the jurisdiction taxes the income attributable to it in

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- 1 accordance with a provision similar to Article 7 of the OECD  
2 Model Tax Convention; or
- 3 (b) if there is no applicable Tax Treaty in force—a place of  
4 business (including a deemed place of business) in respect of  
5 which a jurisdiction taxes the income attributable to that  
6 place of business under its law on a net basis similar to the  
7 manner in which it taxes its own tax residents; or
- 8 (c) if a jurisdiction has no corporate income tax system—a place  
9 of business (including a deemed place of business) that is  
10 situated in that jurisdiction and that would be treated as a  
11 permanent establishment in accordance with the OECD  
12 Model Tax Convention, if the jurisdiction would have had  
13 the right to tax the income attributable to it in accordance  
14 with Article 7 of that Convention; or
- 15 (d) if paragraphs (a) to (c) do not apply—a place of business  
16 (including a deemed place of business) through which  
17 operations are conducted outside the jurisdiction where the  
18 Entity that would be the Main Entity if the place of business  
19 were a Permanent Establishment is located, if that  
20 jurisdiction exempts the income attributable to the operations  
21 conducted through the place of business.
- 22 (3) **Main Entity**, in respect of a Permanent Establishment, is the Entity  
23 that includes the Financial Accounting Net Income or Loss of the  
24 Permanent Establishment in its financial statements.

## 25 **16 Excluded Entities**

- 26 (1) Despite subsection 14(5), paragraph 15(1)(b) and subparagraph  
27 15(1)(c)(ii), an Excluded Entity is not a Constituent Entity of a  
28 Group.

29 *Meaning of Excluded Entity, etc*

- 30 (2) An **Excluded Entity** is an Entity that is any of the following:  
31 (a) a Governmental Entity;  
32 (b) an International Organisation;  
33 (c) a Non-profit Organisation;

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## Part 3 Core Group and Entity concepts

### Section 17

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- 1 (d) a Pension Fund;  
2 (e) an Investment Fund that is an Ultimate Parent Entity;  
3 (f) a Real Estate Investment Vehicle that is an Ultimate Parent  
4 Entity;  
5 (g) an Excluded Service Entity;  
6 (h) an Entity prescribed by the Rules for the purposes of this  
7 paragraph.
- 8 (3) An Entity is an *Excluded Service Entity* if:  
9 (a) at least 95% of the value of the Entity is owned (directly or  
10 through a chain of Excluded Entities) by one or more  
11 Excluded Entities mentioned in paragraphs (2)(a) to (f) (other  
12 than a Pension Services Entity); and  
13 (b) the Entity:  
14 (i) operates exclusively or almost exclusively to hold assets  
15 or invest funds for the benefit of the Excluded Entities;  
16 or  
17 (ii) only carries out activities that are ancillary to those  
18 carried out by the Excluded Entities.
- 19 *Election not to be Excluded Entity*
- 20 (4) However, an Entity is not an *Excluded Entity* throughout a Fiscal  
21 Year if an election under subsection (5) applies to the Entity and  
22 the Fiscal Year.
- 23 (5) A Filing Constituent Entity for the Applicable MNE Group may  
24 make an election under this section that applies to a specified  
25 Constituent Entity of the MNE Group.
- 26 (6) An election under subsection (5) is a Five-Year Election.

### 17 Joint Ventures

- 28 (1) An Entity is a *Joint Venture* if:  
29 (a) the Entity's financial results are reported under the equity  
30 method in the Consolidated Financial Statements of an



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- 1 Ultimate Parent Entity of an MNE Group for the Fiscal Year;  
2 and  
3 (b) the Ultimate Parent Entity’s Ownership Interest Percentage  
4 in the Entity is at least 50%.
- 5 (2) However, the Entity is not a **Joint Venture** if any of the following  
6 apply:  
7 (a) the Entity is the Ultimate Parent Entity of an Applicable  
8 MNE Group;  
9 (b) the Entity is an Excluded Entity mentioned in  
10 paragraph 16(2)(a), (b), (c), (d), (e) or (f);  
11 (c) if the Entity is another kind of Excluded Entity—the  
12 Ownership Interests in the Entity that are held by the MNE  
13 Group are Indirect Ownership Interests held through an  
14 Excluded Entity mentioned in paragraph (b) of this  
15 subsection;  
16 (d) the Entity is held by an MNE Group comprised exclusively  
17 of Excluded Entities;  
18 (e) the Entity is a JV Subsidiary of a Joint Venture.

## 19 **18 Meaning of *JV Group* and *JV Subsidiary***

- 20 (1) ***JV Group*** means a Joint Venture and its JV Subsidiaries.
- 21 (2) ***JV Subsidiary***, of a Joint Venture, means an Entity whose assets,  
22 liabilities, income, expenses and cash flows are consolidated by the  
23 Joint Venture under an Acceptable Financial Accounting Standard  
24 (or would have been consolidated had it been required to  
25 consolidate such items in accordance with an Acceptable Financial  
26 Accounting Standard).

## 27 **19 Multi-Parented MNE Groups**

28 This Act applies in relation to a Multi-Parented MNE Group in the  
29 way set out in the Rules.

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## Part 4 Rules

### Section 20

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1 **Part 4—Rules**  
2

3 **20 The Rules—general**

- 4 (1) The Minister may, by legislative instrument, make Rules  
5 prescribing matters:  
6 (a) required or permitted by this Act to be prescribed by the  
7 Rules; or  
8 (b) necessary or convenient to be prescribed for carrying out or  
9 giving effect to this Act.
- 10 (2) To avoid doubt, the Rules may not do the following:  
11 (a) create an offence or civil penalty;  
12 (b) provide powers of:  
13 (i) arrest or detention; or  
14 (ii) entry, search or seizure;  
15 (c) impose a tax;  
16 (d) set an amount to be appropriated from the Consolidated  
17 Revenue Fund under an appropriation in this Act;  
18 (e) directly amend the text of this Act.

19 **21 The Rules—powers and functions**

- 20 (1) The Rules may confer on a person or body any of the following  
21 powers or functions:  
22 (a) a power to determine, or a function of determining, any  
23 matter that may be dealt with by the Rules;  
24 (b) a power or function relating to the operation, application or  
25 administration of the Rules.
- 26 (2) If the Rules confer on a person or body a power or function, the  
27 Rules may:  
28 (a) provide that the power is to be exercised, or the function  
29 performed, by legislative instrument or notifiable instrument;  
30 and

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- 1 (b) provide for the person or body to delegate the power or  
2 function.
- 3 (3) Despite subsection (2), the Rules must not:
- 4 (a) confer a power to make a legislative instrument on a person  
5 other than the Minister; or
- 6 (b) confer a power to make a notifiable instrument on a person  
7 other than:
- 8 (i) the Minister; or  
9 (ii) the Secretary of the Department; or  
10 (iii) the Commissioner; or
- 11 (c) confer a power to delegate a power to make a legislative  
12 instrument; or
- 13 (d) confer a power to delegate a power to make a notifiable  
14 instrument to a person other than:
- 15 (i) the Secretary of the Department; or  
16 (ii) the Commissioner; or  
17 (iii) an SES employee or acting SES employee in the  
18 Department; or  
19 (iv) an SES employee or acting SES employee of the  
20 Australian Taxation Office.
- 21 (4) The Rules may:
- 22 (a) make provision in relation to a matter in a way that depends  
23 on the exercise of a discretion by a person; and
- 24 (b) specify matters that the person must or may take into  
25 account, or not take into account, in exercising that  
26 discretion; and
- 27 (c) specify the manner in which the person is to exercise the  
28 discretion; and
- 29 (d) confer a power on the person to delegate the power to  
30 exercise the discretion; and
- 31 (e) require the person to whom the power is delegated to comply  
32 with any written directions of the person who delegated the  
33 power; and

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## Part 4 Rules

### Section 22

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- 1 (f) provide that a person who is dissatisfied with a decision to  
2 exercise (or not exercise) the discretion may object against it  
3 in the manner set out in Part IVC of the *Taxation*  
4 *Administration Act 1953*.
- 5 (5) Despite paragraph (4)(d), the Rules must not provide for a person  
6 to delegate a power to a person other than:  
7 (a) the Secretary of the Department; or  
8 (b) the Commissioner; or  
9 (c) an SES employee or acting SES employee in the Department;  
10 or  
11 (d) an SES employee or acting SES employee of the Australian  
12 Taxation Office.

### 22 The Rules—incorporation by reference

- 14 (1) The Rules may make provision in relation to a matter by applying,  
15 adopting or incorporating (with or without modification) any  
16 matter contained in any other instrument or writing:  
17 (a) as in force or existing at a particular time; or  
18 (b) as in force or existing from time to time.

19 Note: Section 25 contains some examples of how the Rules may make such  
20 provision.

- 21 (2) Subsection (1) has effect despite subsection 14(2) of the  
22 *Legislation Act 2003*.

### 23 The Rules—retrospective application

24 Subsection 12(2) (retrospective application of legislative  
25 instruments) of the *Legislation Act 2003* does not apply in relation  
26 to the Rules.

### 24 The Rules—power to amend to ensure consistency with Pillar Two

- 29 (1) This section applies if the Minister decides, in writing, that the  
30 Minister considers it necessary for the Rules to make provision in

- 1 relation to a specified matter for the purpose of ensuring  
2 consistency of Parts 3 and 6 of this Act with the documents  
3 mentioned in subsection 3(1).
- 4 (2) The Rules may make provision in relation to the matter in  
5 accordance with the Minister’s decision.
- 6 (3) Rules made in accordance with subsection (2) prevail over the  
7 provisions of Parts 3 and 6 of this Act to the extent of any  
8 inconsistency.
- 9 (4) Rules made in accordance with subsection (2) must not be made  
10 after 31 December 2026.

## 11 **25 The Rules—miscellaneous**

- 12 (1) Without limiting the scope of sections 21, 22, 23 and 24, the Rules  
13 may:
- 14 (a) make provision in respect of a matter regardless of whether it  
15 relates to Australia; and
- 16 (b) make provision in respect of a matter by reference to the  
17 effects of a foreign legal system; and
- 18 (c) make provision in respect of a matter by reference to the  
19 contents of an instrument or publication of an International  
20 Organisation; and
- 21 (d) make provision in respect of a matter by reference to the  
22 operation of any of the following:
- 23 (i) accounting standards (whether Australian or otherwise);
- 24 (ii) financial reporting standards (whether Australian or  
25 otherwise);
- 26 (iii) generally accepted accounting principles (whether  
27 Australian or otherwise); and
- 28 (e) make provision for the making of a Five Year Election,  
29 Annual Election or other election by an Entity or Constituent  
30 Entity; and
- 31 (f) make provision in respect of a matter by reference to the  
32 contents of such an election; and
- 33 (g) make provision for the use of approved forms; and



1 **Part 5—Miscellaneous**  
2

3 **26 Keeping of records**

4 (1) A Constituent Entity of an MNE Group that is located in Australia  
5 must keep records that record and explain whether the Constituent  
6 Entity has complied with this Act.

7 Note: There is an administrative penalty if you do not keep or retain records  
8 as required by this section: see section 288-25 in Schedule 1 to the  
9 *Taxation Administration Act 1953*.

10 (2) A Constituent Entity that is required by subsection (1) to keep  
11 records must:

- 12 (a) keep the records in writing in the English language or so as to  
13 enable the records to be readily accessible and convertible  
14 into writing in the English language; and  
15 (b) keep the records so as to enable the Constituent Entity's  
16 liability under this Act to be readily ascertained.

17 (3) A Constituent Entity of an MNE Group that has possession of any  
18 records kept or obtained under or for the purposes of this Act must  
19 retain those records until the latest of the following:

- 20 (a) the end of 8 years after the records were prepared or  
21 obtained;  
22 (b) the completion of the transactions or acts to which those  
23 records relate;  
24 (c) if:  
25 (i) there is an assessment of the Constituent Entity, or  
26 another Constituent Entity of the MNE Group, of an  
27 amount payable under this Act to which those which  
28 those records relate; and  
29 (ii) the period of review for the assessment is extended  
30 under subsection 155-35(3) or (4) in Schedule 1 to the  
31 *Taxation Administration Act 1953*;  
32 the end of the period of review as so extended.

# EXPOSURE DRAFT

## Part 5 Miscellaneous

### Section 26

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1 (4) A person commits an offence of strict liability if the person  
2 contravenes subsection (1) or (3).

3 Penalty: 30 penalty units.



1 **Part 6—Interpretation**

2 **Division 1—Definitions**

3 **27 Definitions**

4 In this Act:

5 *Acceptable Financial Accounting Standard* means any of the  
6 following:

- 7 (a) an accounting standard (within the meaning of the  
8 *Corporations Act 2001*);  
9 (b) the IFRS;  
10 (c) the generally accepted accounting principles of any of the  
11 following:  
12 (i) Brazil;  
13 (ii) Canada;  
14 (iii) Member States of the European Union;  
15 (iv) Member States of the European Economic Area;  
16 (v) Hong Kong (China);  
17 (vi) Japan;  
18 (vii) Mexico;  
19 (viii) New Zealand;  
20 (ix) the People’s Republic of China;  
21 (x) the Republic of India;  
22 (xi) the Republic of Korea;  
23 (xii) Singapore;  
24 (xiii) Switzerland;  
25 (xiv) the United Kingdom;  
26 (xv) the United States of America.

27 *Agreed Administrative Guidance*: see subsection 3(4).

28 *Annual Election*: see section 29.

# EXPOSURE DRAFT

**Part 6** Interpretation  
**Division 1** Definitions

Section 27

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**Applicable MNE Group**: see subsection 12(1).

**Authorised Accounting Body** means the body with legal authority in a jurisdiction to prescribe, establish or accept accounting standards for financial reporting purposes.

**Authorised Financial Accounting Standard**, in respect of an Entity, means a set of generally acceptable accounting principles permitted by the Authorised Accounting Body in the jurisdiction where the Entity is located.

**Commentary**: see subsection 3(4).

**Consolidated Financial Statements** of an Entity means:

- (a) if the Entity is not the Ultimate Parent Entity of a Group under subparagraph 15(1)(c)(iii)—the financial statements prepared by the Entity in accordance with an Acceptable Financial Accounting Standard, in which the assets, liabilities, income, expenses and cash flows of that Entity and the Entities in which it has a Controlling Interest are presented as those of a single economic unit; or
- (b) if the Entity is the Ultimate Parent Entity of a Group under subparagraph 15(1)(c)(iii)—the financial statements of the Entity that are prepared in accordance with an Acceptable Financial Accounting Standard; or
- (c) if the Entity has prepared financial statements that are not covered by paragraph (a) or (b), but would be so covered if they were prepared in accordance with an Acceptable Financial Accounting Standard—those financial statements, adjusted to prevent any Material Competitive Distortions; or
- (d) if the Entity has not prepared financial statements that are covered by paragraph (a), (b) or (c)—the financial statements of the Entity that would have been prepared if the Entity were required to prepare such financial statements in accordance with an Authorised Financial Accounting Standard that is:
  - (i) an Acceptable Financial Accounting Standard; or
  - (ii) another financial accounting standard that is adjusted to prevent any Material Competitive Distortions.

# EXPOSURE DRAFT

- 1                   **Constituent Entity:** see subsection 14(5), paragraph 15(1)(b),  
2                   subparagraph 15(1)(c)(ii) and subsection 16(1).
- 3                   **Controlling Interest** means an Ownership Interest in an Entity  
4                   such that the holder of the Ownership Interest:  
5                   (a) is required to consolidate the assets, liabilities, income,  
6                   expenses and cash flows of the Entity on a line-by-line basis  
7                   in accordance with an Acceptable Financial Accounting  
8                   Standard; or  
9                   (b) would have been required to consolidate the assets, liabilities,  
10                  income, expenses and cash flows of the Entity on a  
11                  line-by-line basis if the holder of the Ownership Interest had  
12                  prepared Consolidated Financial Statements.
- 13                  Note:        A Main Entity is taken to hold a Controlling Interest in its Permanent  
14                  Establishments (see subparagraph 15(1)(a)(ii)).
- 15                  **Direct Ownership Interest:** see section 30.
- 16                  **Direct Ownership Interest Percentage:** see section 31.
- 17                  **Domestic Top-up Tax Amount:** see section 8.
- 18                  **Entity:** see section 13.
- 19                  **Excluded Entity:** see section 16.
- 20                  **Excluded Service Entity:** see subsection 16(3).
- 21                  **Filing Constituent Entity**, for an MNE Group, is a Constituent  
22                  Entity of the MNE Group that files a GloBE Information Return  
23                  for the MNE Group.
- 24                  **Financial Accounting Net Income or Loss** has the meaning given  
25                  by the Rules.
- 26                  **Fiscal Year** means:  
27                  (a) if paragraph (b) does not apply—an accounting period with  
28                  respect to which the Ultimate Parent Entity of an MNE  
29                  Group prepares its Consolidated Financial Statements; or

# EXPOSURE DRAFT

**Part 6** Interpretation  
**Division 1** Definitions

Section 27

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1 (b) if paragraph (d) of the definition of Consolidated Financial  
2 Statements applies in relation to the Ultimate Parent Entity—  
3 a calendar year.

4 **Five Year Election:** see section 28.

5 **Flow-through Entity** has the meaning given by the Rules.

6 **GloBE Information Return** has the meaning given by the *Income*  
7 *Tax Assessment Act 1997*.

8 **GloBE Rules:** see subsection 3(4).

9 **GloBE Threshold**, for a Fiscal Year: see subsections 12(3).

10 **Governmental Entity** means an Entity that meets all of the  
11 following criteria:

12 (a) it is part of or wholly-owned by a government (including any  
13 political subdivision or local authority thereof);

14 (b) it has the principal purpose of:

15 (i) fulfilling a government function; or

16 (ii) managing or investing that government's assets through  
17 the making and holding of investments, asset  
18 management, and related investment activities for that  
19 government's assets;

20 (c) it does not carry on a trade or business (other than an  
21 investment business described in subparagraph (b)(ii));

22 (d) it is accountable to that government on its overall  
23 performance and provides annual information reporting to  
24 that government;

25 (e) its assets vest in that government upon dissolution;

26 (f) to the extent it distributes net earnings, the net earnings are  
27 distributed solely to that government with no portion of its  
28 net earnings inuring to the benefit of any private person.

29 **Group:** see subsection 14(2).

30 **IFRS** means the International Financial Reporting Standards.

31 **Indirect Ownership Interest:** see section 30.

# EXPOSURE DRAFT

1

**Indirect Ownership Interest Percentage:** see section 31.

2

**International Organisation** means any of the following:

3

(a) an intergovernmental or supranational organisation that meets all of the following criteria:

4

5

(i) it is comprised primarily of governments;

6

7

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

8

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

13

14

(b) an Entity that meets all of the following criteria:

15

16

(i) it acts for, is part of or is wholly-owned by an organisation described in paragraph (a);

17

18

(ii) law or its governing documents prevent its income inuring to the benefit of private persons.

19

**Investment Fund** means an Entity that meets all of the following criteria:

20

21

(a) it is designed to pool assets (which may be financial and non-financial) from a number of investors, at least some of which are not connected;

22

23

24

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

25

26

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

27

28

29

(d) it is primarily designed to generate investment income or gains, or protect against a specific or general event or outcome;

30

31

32

(e) its investors have a right to return from its assets or income earned on those assets, based on the contributions made by those investors;

33

34

(f) it or its management is subject to a regulatory regime in the jurisdiction in which it is established or managed, including

# EXPOSURE DRAFT

**Part 6** Interpretation  
**Division 1** Definitions

Section 27

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- 1 appropriate anti-money laundering and investor protection  
2 regulations;
- 3 (g) it is managed by investment fund management professionals  
4 on behalf of its investors.
- 5 **Joint Venture**: see section 17.
- 6 **JV Group**: see subsection 18(1).
- 7 **JV Subsidiary**: see subsection 18(2).
- 8 **Main Entity**, in respect of a Permanent Establishment: see  
9 subsection 15(3).
- 10 **Material Competitive Distortion**, in respect of Consolidated  
11 Financial Statements, means an application of a specific principle  
12 or procedure, under the set of generally accepted accounting  
13 principles used in preparing the Consolidated Financial Statements,  
14 that results in an aggregate variation greater than 75 million Euros  
15 in a Fiscal Year as compared to the amounts that would have been  
16 determined by applying the corresponding IFRS principle or  
17 procedure.
- 18 **Minimum Rate** means 15%.
- 19 **MNE Group**: see subsection 14(1).
- 20 **Multi-Parented MNE Group** has meaning given by the Rules.
- 21 **Non-profit Organisation** means an Entity that meets all of the  
22 following criteria:
- 23 (a) it is established and operated in the jurisdiction where it is  
24 located:
- 25 (i) exclusively for religious, charitable, scientific, artistic,  
26 cultural, athletic, educational or other similar purposes;  
27 or
- 28 (ii) as a professional organisation, business league, chamber  
29 of commerce, labour organisation, agricultural or  
30 horticultural organisation, civic league or an

# EXPOSURE DRAFT

- 1 organisation operated exclusively for the promotion of  
2 social welfare;
- 3 (b) substantially all of its income from the activities mentioned  
4 in paragraph (a) is exempt from income tax in the jurisdiction  
5 where it is located;
- 6 (c) it has no shareholders or members who have a proprietary or  
7 beneficial interest in its income or assets;
- 8 (d) its income or assets may not be distributed to, or applied for  
9 the benefit of, a private person or non-charitable Entity other  
10 than:  
11 (i) pursuant to the conduct of its activities mentioned in  
12 subparagraph (a)(i); or  
13 (ii) as payment of reasonable compensation for services  
14 rendered or for the use of property or capital; or  
15 (iii) as payment representing the fair market value of  
16 property which it has purchased;
- 17 (e) upon its termination, liquidation or dissolution, all of its  
18 assets must be distributed or revert to a Non-profit  
19 Organisation or to the government (including any  
20 Governmental Entity) of the jurisdiction where it is located  
21 or any political subdivision thereof;
- 22 (f) it does not carry on a trade or business that is not directly  
23 related to the purposes for which it was established.
- 24 **OECD** means the Organisation for Economic Cooperation and  
25 Development.
- 26 **OECD Model Tax Convention** means the Model Tax Convention  
27 on Income and on Capital published (from time to time) by the  
28 Council of the OECD.
- 29 **Ownership Interest**: see section 30.
- 30 **Ownership Interest Percentage**: see section 31.
- 31 **Pension Fund** means any of the following:  
32 (a) an Entity that is established and operated in a jurisdiction  
33 exclusively or almost exclusively for the purpose of

# EXPOSURE DRAFT

**Part 6** Interpretation  
**Division 1** Definitions

Section 27

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- 1 administering or providing retirement benefits and ancillary  
2 or incidental benefits to individuals, if:
- 3 (i) the Entity's establishment and operations for that  
4 purpose are regulated by that jurisdiction or one of its  
5 political subdivisions or local authorities; or
  - 6 (ii) those benefits are secured or otherwise protected by  
7 national regulations and funded by a pool of assets held  
8 through a fiduciary arrangement or trust to secure the  
9 fulfilment of the corresponding pension obligations  
10 against a case of insolvency of the Entity, or of other  
11 Entities together with which the Entity comprise a  
12 Group;
- 13 (b) a Pension Services Entity.

14 ***Pension Services Entity*** means an Entity that is established and  
15 operated exclusively or almost exclusively:

- 16 (a) to invest funds for the benefit of Entities referred to in  
17 paragraph (a) of the definition of Pension Fund; or
- 18 (b) if the Entity and an Entity referred to in paragraph (a) of the  
19 definition of Pension Fund (the ***Pension Fund Entity***),  
20 together with one or more other Entities, comprise a Group—  
21 to carry out activities that are ancillary to such of the Pension  
22 Fund Entity's activities that are for the purpose mentioned in  
23 that paragraph.

24 ***Permanent Establishment***: see subsection 15(2).

25 ***Real Estate Investment Vehicle*** means an Entity that meets all of  
26 the following criteria:

- 27 (a) taxation of the Entity achieves a single level of taxation  
28 either in its hands or the hands of the holders of the  
29 Ownership Interests in the Entity (with at most one year of  
30 deferral);
- 31 (b) it holds predominantly immovable property;
- 32 (c) it is widely held.

33 ***Rules*** means Rules made under subsection 20(1).



# EXPOSURE DRAFT

1            ***Stateless Constituent Entity*** means a Constituent Entity of an  
2 MNE Group that is:

- 3            (a) a Stateless Constituent Entity under subsection 33(3) or  
4            34(3); or  
5            (b) of a kind specified in the Rules for the purposes of this  
6            paragraph.

7            ***Tax Treaty*** means an agreement for the avoidance of double  
8            taxation with respect to taxes on income and on capital.

9            ***this Act***: see subsection 3(5).

10           ***Top-up Tax Amount***: see section 5.

11           ***Ultimate Parent Entity***: see subsection 13(3).

12           ***UTPR Top-up Tax Amount***: see section 11.

## 13           **Division 2—Elections**

### 14           **28 Five Year Elections**

15            (1) This section applies if a provision of this Act permits a Filing  
16            Constituent Entity for an Applicable MNE Group to make a ***Five***  
17            ***Year Election***.

18            (2) The election must be made in the approved form.

19            (3) Unless the election is revoked, it applies to:

- 20            (a) the Fiscal Year for which the GloBE Information Return for  
21            the Applicable MNE Group that records the election is filed  
22            by the Filing Constituent Entity; and  
23            (b) each subsequent Fiscal Year.

24            (4) Unless the provision mentioned in subsection (1) otherwise  
25            provides, a Filing Constituent Entity for the MNE Group may  
26            revoke the election.

27            (5) The revocation must be made in the approved form.

# EXPOSURE DRAFT

## Part 6 Interpretation

### Division 2 Elections

#### Section 29

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- 1 (6) If the Filing Constituent Entity revokes the election, the election  
2 does not apply to:
- 3 (a) the Fiscal Year for which the GloBE Information Return for  
4 the Applicable MNE Group that records the revocation is  
5 filed by the Filing Constituent Entity; and  
6 (b) each subsequent Fiscal Year.
- 7 (7) However, the Filing Constituent Entity cannot revoke the election  
8 if doing so would result in the election not applying to:
- 9 (a) the Fiscal Year mentioned in paragraph (3)(a); or  
10 (b) any of the subsequent 4 Fiscal Years.
- 11 (8) If the Filing Constituent Entity revokes the election, a Filing  
12 Constituent Entity for the MNE Group cannot make another  
13 election under the provision mentioned in subsection (1) that  
14 applies to:
- 15 (a) the Fiscal Year mentioned in paragraph (6)(a); or  
16 (b) any of the subsequent 4 Fiscal Years.

#### 17 **29 Annual Elections**

- 18 (1) This section applies if a provision of this Act permits a Filing  
19 Constituent Entity for an Applicable MNE Group to make an  
20 ***Annual Election***.
- 21 (2) The election must be made in the approved form.
- 22 (3) Unless the election is revoked, it applies to the Fiscal Year for  
23 which the GloBE Information Return for the Applicable MNE  
24 Group that records the election is filed by the Filing Constituent  
25 Entity.

# EXPOSURE DRAFT

1 **Division 3—Ownership Interests and Ownership Interest**  
2 **Percentages**

3 **30 Meaning of *Ownership Interest*, *Direct Ownership Interest* and**  
4 ***Indirect Ownership Interest***

- 5 (1) An ***Ownership Interest*** in an Entity or in a Permanent  
6 Establishment is:  
7 (a) a Direct Ownership Interest in the Entity or Permanent  
8 Establishment; or  
9 (b) an Indirect Ownership Interest in the Entity or Permanent  
10 Establishment.
- 11 (2) A ***Direct Ownership Interest*** in an Entity is an interest (whether by  
12 way of shares, other security or otherwise) that:  
13 (a) carries rights to a share of the profits, capital or reserves of  
14 the Entity (whether on the making of a distribution of profits,  
15 winding up or otherwise); and  
16 (b) would be classified as equity under the financial accounting  
17 standard used in the preparation of the relevant Consolidated  
18 Financial Statements (disregarding any requirement in those  
19 Consolidated Financial Statements to consolidate the assets,  
20 liabilities, income, expenses and cash flows of the Entity).
- 21 (3) The Main Entity in respect of a Permanent Establishment is taken  
22 to hold a ***Direct Ownership Interest*** in the Permanent  
23 Establishment.
- 24 Note: The Main Entity's Direct Ownership Interest Percentage in the  
25 Permanent Establishment is 100% (see subsection 31(7)).
- 26 (4) An Entity (the ***first entity***) holds an ***Indirect Ownership Interest*** in  
27 another Entity or a Permanent Establishment (the ***other entity/PE***)  
28 if the first entity holds a Direct Ownership Interest in:  
29 (a) another Entity that holds a Direct Ownership Interest in the  
30 other entity/PE; or  
31 (b) another Entity that holds an Indirect Ownership Interest in  
32 the other entity/PE under one or more other applications of  
33 this subsection.

# EXPOSURE DRAFT

## Part 6 Interpretation

### Division 3 Ownership Interests and Ownership Interest Percentages

#### Section 31

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1     **31 Meaning of *Ownership Interest Percentage*, *Direct Ownership***  
2                    ***Interest Percentage* and *Indirect Ownership Interest***  
3                    ***Percentage***

- 4             (1) The ***Ownership Interest Percentage*** of an Entity (the ***holding***  
5                    ***entity***) in another Entity (the ***test entity***) is equal to the sum of:  
6                    (a) the holding entity's Direct Ownership Interest Percentage in  
7                            the test Entity; and  
8                    (b) the holding entity's Indirect Ownership Interest Percentages  
9                            in the test Entity.
- 10            (2) Compute the ***Direct Ownership Interest Percentage*** of an Entity  
11                    (the ***holding entity***) in another Entity (the ***test entity***) as follows:  
12                    (a) compute the sum of the following:  
13                            (i) the percentage of the profits of the test entity to which  
14                                    the holding entity is entitled because of the Direct  
15                                    Ownership Interests that it holds in the test entity;  
16                            (ii) the percentage of the capital of the test entity to which  
17                                    the holding entity is entitled because of the Direct  
18                                    Ownership Interests that it holds in the test entity;  
19                            (iii) the percentage of the reserves of the test entity to which  
20                                    the holding entity is entitled because of the Direct  
21                                    Ownership Interests that it holds in the test entity;  
22                    (b) if the test Entity issued Direct Ownership Interests that give  
23                            rise to only 1 of the kinds of entitlement mentioned in  
24                                    subparagraphs (a)(i), (ii) and (iii)—the ***Direct Ownership***  
25                                    ***Interest Percentage*** is the result of paragraph (a);  
26                    (c) if the test Entity issued Direct Ownership Interests that give  
27                            rise to only 2 of those kinds of entitlement—the ***Direct***  
28                                    ***Ownership Interest Percentage*** is the result of paragraph (a)  
29                                    divided by 2;  
30                    (d) if the test Entity issued Direct Ownership Interests that give  
31                            rise to all 3 of those kinds of entitlement—the ***Direct***  
32                                    ***Ownership Interest Percentage*** is the result of paragraph (a)  
33                                    divided by 3.

# EXPOSURE DRAFT

- 1 (3) Compute the ***Indirect Ownership Interest Percentage*** of an Entity  
2 (the ***holding entity***) in another Entity (the ***test entity***) by  
3 multiplying:  
4 (a) the holding entity's Direct Ownership Interest Percentage in  
5 another Entity (the ***intermediate entity***) at that time;  
6 by:  
7 (b) the sum of:  
8 (i) the intermediate entity's Direct Ownership Interest  
9 Percentage in the test entity; and  
10 (ii) the intermediate entity's Indirect Ownership Interest  
11 Percentage in the test entity (as worked out under one or  
12 more other applications of this section).
- 13 (4) Despite subsection (3), if there is more than one intermediate entity  
14 to which paragraph (3)(a) applies, the holding entity's ***Indirect***  
15 ***Ownership Interest Percentage*** in the test entity is the sum of the  
16 percentages worked out under subsection (3) in relation to each of  
17 those intermediate entities.
- 18 *Permanent Establishments*
- 19 (5) Treat a reference in this section to an Entity as being a reference to  
20 an Entity or a Permanent Establishment (unless the Entity is a  
21 holding entity mentioned in this section).
- 22 (6) Subsection (7) applies if, as a result of subsection (5):  
23 (a) the holding entity mentioned in subsection (2) is the Main  
24 Entity in respect of a Permanent Establishment; and  
25 (b) the test entity mentioned in that subsection is the Permanent  
26 Establishment.
- 27 Note: The Main Entity is taken to hold a Direct Ownership Interest in the  
28 Permanent Establishment (see subsection 30(3)).
- 29 (7) Despite paragraphs (2)(a), (b), (c) and (d), treat the holding entity's  
30 ***Direct Ownership Interest Percentage*** in the test entity as being  
31 100%.

# EXPOSURE DRAFT

## Part 6 Interpretation

### Division 4 Location of Entities and Permanent Establishments

#### Section 32

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1     **Division 4—Location of Entities and Permanent**  
2                     **Establishments**

3     **32 Location of an Entity that is not a Flow-through Entity**

4             (1) This section applies to an Entity if it is not a Flow-through Entity.

5             (2) For the purposes of this Act, the Entity is located in the following  
6                 jurisdiction:

7                 (a) if the Entity is an Australian entity (within the meaning of the  
8                     *Income Tax Assessment Act 1997*)—Australia;

9                 (b) if, for the purposes of a law of a jurisdiction relating to  
10                     foreign income tax (within the meaning of the *Income Tax*  
11                     *Assessment Act 1997*), the Entity is resident in the  
12                     jurisdiction based on its place of management, place of  
13                     creation or similar criterion—that jurisdiction;

14                 (c) if paragraphs (a) and (b) do not apply—the jurisdiction in  
15                     which the Entity was created.

16             Note:     If, under this section, the Entity is located in more than one  
17                     jurisdiction for a Fiscal Year, see section 35.

18     **33 Location of an Entity that is a Flow-through Entity**

19             (1) This section applies to an Entity if it is a Flow-through Entity.

20             (2) For the purposes of this Act, the Entity is located in the jurisdiction  
21                 in which the Entity was created if:

22                 (a) the Entity is an Ultimate Parent Entity; or

23                 (b) the Entity is required to apply a Qualified IIR.

24             (3) For the purposes of this Act, if:

25                 (a) subsection (2) does not apply to the Entity; and

26                 (b) the Entity is a Constituent Entity of an MNE Group;  
27                     the Entity is a *Stateless Constituent Entity* of the MNE Group.

# EXPOSURE DRAFT

1     **34 Location of a Permanent Establishment**

- 2             (1) This section applies to a Constituent Entity of an MNE Group if it  
3             is a Permanent Establishment.
- 4             (2) For the purposes of this Act, if paragraph 15(2)(a), (b) or (c)  
5             applies in relation to the Permanent Establishment, the Permanent  
6             Establishment is located in the jurisdiction mentioned in that  
7             paragraph.
- 8             (3) For the purposes of this Act, if paragraph 15(2)(d) applies in  
9             relation to the Permanent Establishment, the Permanent  
10            Establishment is a *Stateless Constituent Entity* of the MNE Group.

11     **35 Dual-located entities**

- 12            (1) This section applies if a Constituent Entity of an MNE Group  
13            would be located in more than one jurisdiction under section 32 for  
14            a Fiscal Year, disregarding this section.
- 15            (2) For the purposes of this Act, and despite section 32, the  
16            Constituent Entity is taken to be located, for the Fiscal Year, in the  
17            jurisdiction worked out in accordance with the Rules, unless it is a  
18            Stateless Constituent Entity.
- 19            (3) For the purposes of subsection (2), the Rules may specify a method  
20            for determining the jurisdiction in which the Constituent Entity is  
21            taken to be located for the Fiscal Year.

22     **36 Change of location during a Fiscal Year**

23             If the location of an Entity changes during a Fiscal Year, treat the  
24             Entity as being located, for the Fiscal Year, in the jurisdiction in  
25             which it was located at the beginning of the Fiscal Year.

26