

LEGAL NOTICE NO. 189

THE INCOME TAX ACT

(Cap. 470)

THE INCOME TAX (MINIMUM TOP UP TAX) REGULATIONS,
2026

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THE INCOME TAX ACT

(Cap. 470)

IN EXERCISE of the powers conferred by section 130 of the Income Tax Act, the Cabinet Secretary for the National Treasury makes the following Regulations—

THE INCOME TAX (MINIMUM TOP UP TAX) REGULATIONS,
2026

PART I—PRELIMINARY PROVISIONS

1. These Regulations may be cited as the Income Tax (Minimum Top Up Tax) Regulations, 2026. Citation.

2. In these Regulations, unless the context otherwise requires— Interpretation.

“acceptable financial accounting standard” means International Financial Reporting Standards and the generally accepted accounting principles of Australia, Brazil, Canada, Member States of the European Union, Member States of the European Economic Area, Hong Kong (China), Japan, Mexico, New Zealand, the People’s Republic of China, the Republic of India, the Republic of Korea, Russia, Singapore, Switzerland, the United Kingdom, and the United States of America;

“consolidated financial statement” means—

- (a) a financial statement prepared by an entity in accordance with an acceptable financial accounting standard, in which the assets, liabilities, income, expenses and cash flows of that entity and other entities in which it has a controlling interest are presented as those of a single economic unit;
- (b) where an entity is within the meaning of “group”, the consolidated financial statement of the entity that is prepared in accordance with an acceptable financial accounting standard;
- (c) where the ultimate parent entity has financial statements described in paragraphs (a) or (b) that are not prepared in accordance with an acceptable financial accounting standard, the consolidated financial statements are the statements that have been adjusted to prevent any material competitive distortion; or
- (d) where the ultimate parent entity does not prepare financial statements described in paragraphs (a), (b) or (c), the consolidated financial statements of the ultimate parent entity are the statements prepared in accordance with an authorised financial accounting standard, being acceptable financial accounting standard or another financial accounting standard that is adjusted to prevent any material competitive distortion;

“controlling interest” means the ownership interest in an entity where the interest holder—

- (a) is required to consolidate the assets, liabilities, income, expenses and cash flows of the entity on a line-by-line basis in accordance with a recognised financial accounting standard in Kenya; or
- (b) would have been required to consolidate the assets, liabilities, income, expenses and cash flows of the entity on a line-by-line basis if the interest holder had prepared consolidated financial statements including a main entity deemed to have the controlling interest of its permanent establishment:

Provided that a public entity to which paragraph (b)(ii) of the definition of “public entity” applies will not be considered to own a controlling interest in any entity in which it has an ownership interest;

“eligible employee” means an employee, including a part-time employee, of a covered person and independent contractors participating in the ordinary operating activities of the covered person under the direction of the covered person;

“employee costs” means employee compensation expenditures (including salaries, wages, and other expenditures that provide a direct and separate personal benefit to the employee including health insurance, pension contributions and stock-based compensation), the employer's contributions under the National Social Security Fund Act, Social Health Insurance Act, Affordable Housing Act, Public Service Superannuation Scheme Act, an occupational retirement benefits scheme registered under the Retirement Benefits Act;

Cap. 258.
No. 16 of 2023.
Cap. 117A.
Cap. 189A.

“excluded dividends” means dividends or other distributions received or accrued in respect of an ownership interest except for a short-term portfolio shareholding;

“excluded equity gain or loss” means the gain, profit or loss included in the financial accounting net income or loss of a covered person arising from—

- (a) gains and losses from changes in fair value of an ownership interest, except for a portfolio shareholding;
- (b) profit or loss in respect of an ownership interest included under the equity method of accounting; and
- (c) gains and losses from disposition of an ownership interest, except for a disposition of a portfolio shareholding;

“flow-through entity” means an entity to the extent it is fiscally transparent with respect to the entity’s income, expenditure, profit or loss in the jurisdiction where it was created unless it is resident person and subject to a covered tax on its income or profit in another jurisdiction and a flow-through entity shall be deemed to be—

- (a) a tax transparent entity if the domestic tax law of the owners also treats the entity as fiscally transparent and requires the owner to recognise the income, expenditure, profit or loss of the flow-through entity as if it was income earned or expenditure borne by the owners; or

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- (b) a “reverse hybrid entity” if the domestic tax law of the owners is not treating it as fiscally transparent and therefore, it does not recognise the income, expenditure, profit or loss when earned or incurred by the entity, but until the entity distributes profits or make an equivalent payment to its owners;

“GloBE Model Rules” means the model rules published by the Inclusive Framework on Base Erosion and Profit Shifting as “Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS and any Commentary, Agreed Administrative Guidance or Safe Harbours pursuant to those model rules;

“group” means—

- (a) two or more entities that are related through ownership or control where the assets, liabilities, income, expenses and cash flows of the entities are included in the consolidated financial statements of the ultimate parent entity, or are excluded from the consolidated financial statements of the ultimate parent entity on the grounds of size, materiality, or that they are held for sale; or
- (b) an entity that is located in one jurisdiction and has one or more permanent establishments located in two or more other jurisdictions but not where the entity is not an entity of another group;

“included revaluation method gain or loss” means the net gain or loss, increased or decreased by any associated covered taxes, for the year of income in respect of all property, plant and equipment that arises under an accounting method or practice that—

- (a) periodically adjusts the carrying value of such property to its fair value;
- (b) records the changes in value in other comprehensive income; and
- (c) does not subsequently report the gains or losses recorded in other comprehensive income through profit and loss;

“insurance investment entity” means an entity that would meet the definition of an investment fund or a real estate investment vehicle except that it is established in relation to liabilities under an insurance or annuity contract and is wholly owned by an entity that is regulated in Kenya as an insurance company;

“intergovernmental or supranational organisation” means an intergovernmental or supranational organisation including a wholly owned agency or organ of the intergovernmental or supranational organisation that meets all of the following criteria—

- (a) it is comprised primarily of governments;
- (b) it has in effect a headquarters or substantially similar agreement that entitles the organisation, its offices or establishments to privileges and immunities; and

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

“investment fund” means an insurance investment entity, or an entity that meets all of the following criteria—

- (a) it is designed to pool assets which may be financial and non-financial from a number of investors (some of which are not connected);
- (b) it invests in accordance with a defined investment policy;
- (c) it allows investors to reduce transaction, research, and analytical costs, or to spread risk collectively;
- (d) it is primarily designed to generate investment income or gains, or protection against a particular or general event or outcome;
- (e) investors have a right to return from the assets of the fund or income earned on those assets, based on the contributions made by those investors;
- (f) the entity or its management is regulated where it is established or managed; and
- (g) it is managed by investment fund management professionals on behalf of the investors;

“main entity”, in relation to a permanent establishment, means an entity that includes the financial accounting net income or loss of the entity’s permanent establishment in its financial statements;

“member” means—

- (a) any entity that is included in a multinational group; and
- (b) any permanent establishment of a main entity that is within the meaning of paragraph (a):

Provided that a permanent establishment that is a member under paragraph (b) shall be treated as separate from the main entity and any other permanent establishment of the main entity;

“multinational group” means a group that includes at least one entity or permanent establishment that is not located in the jurisdiction of the ultimate parent entity;

“net taxes expense” means the net amount of—

- (a) any covered taxes accrued as an expense and any current and deferred covered taxes included in the income tax expense, including covered taxes on income that is excluded from the income or loss computation in regulation 4;
- (b) any deferred tax asset attributable to a loss for the year of income;
- (c) any qualified domestic minimum top-up tax accrued as an expense;

- (d) any taxes arising pursuant to a qualified income inclusion rule or qualified under tax profit rule accrued as an expense;

“other comprehensive income” means items of income and expense that are not recognised in profit or loss as required or permitted by the authorised financial accounting standard used in the consolidated financial statements;

“ownership interest” means any equity interest that carries rights to the profits, capital or reserves of an entity, including the profits, capital or reserves of a main entity’s permanent establishment;

“pension fund” means—

- (a) an entity that is established, operated and regulated exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals; or
- (b) a pension services entity;

“pension services entity” means an entity that is established and operated exclusively or almost exclusively—

- (a) to invest funds for the benefit of the entity referred to in paragraph (a) of the definition of “pension fund”; or
- (b) to carry out activities that are ancillary to the regulated activities carried out by the entity referred to in paragraph (a) of the definition of “pension fund”;

Provided that where there is more than one entity that falls within the meaning of the entity referred to in paragraph (a) of the definition of “pension fund”, the entities are members of the same group;

“portfolio shareholding” means ownership interests in an entity that are held by the multinational group and that carry rights to less than ten per cent of the profits, capital, reserves, or voting rights of that entity at the date of the distribution or disposition;

“prior period errors and changes in accounting principles” means all changes in the opening equity at the beginning of the year of income of a covered person attributable to—

- (a) a correction of an error in the determination of financial accounting net income in a previous year of income that affected the income or expenses includible in the computation of income or loss for such year of income, except to the extent such error correction resulted in a material decrease in a liability for covered taxes; or
- (b) a change in accounting principle or policy that affects income or expenses includible in the computation of income or loss;

“real estate investment vehicle” means an entity which achieves a single level of taxation either in its hands or the hands of its interest holders with at most one year of deferral:

Provided that the entity holds predominantly immovable property and is itself widely held;

“short-term portfolio shareholding” means a portfolio shareholding that is economically held by the covered person that receives or accrues the dividends or other distributions for less than one year at the date of the distribution;

“substitute loss carry-forward deferred tax asset” means a deferred tax assets attributable to a carry-forward loss that arises when—

- (a) it is a requirement that foreign source income offset domestic source losses before foreign tax credits may be applied against tax imposed on foreign source income;
- (b) the covered person has a domestic tax loss that is fully or partially offset by foreign source income; and
- (c) the foreign tax credits can be used to offset a tax liability in a subsequent year in relation to income that is included in the computation of the covered person’s net income or loss;

“tangible assets” means—

- (a) property, plant, and equipment located in Kenya;
- (b) natural resources located in Kenya;
- (c) a licence or similar arrangement from the Government for the use of immovable property or exploitation of natural resources that entails significant investment in tangible assets;

“tested year of income” means any year of income that occurred on or after the 1st January, 2025, and the subsequent years of income a covered person determines if the covered person is subject to section 12G of the Act and these Regulations;

“ultimate parent entity” means

- (a) an entity that—
 - (i) owns directly or indirectly a controlling interest in any other entity; and
 - (ii) is not owned, with a controlling interest, directly or indirectly by another entity; or
- (b) is the main entity of a group; and

3. The objective of these Regulations is to provide a guideline for implementation of the minimum top up tax in Kenya.

Objective of the Regulations

PART II--COMPUTATION

4. (1) For the purposes of section 12G(5) of the Act, the consolidated annual turnover means the turnover of the multinational group’s consolidated financial statements for the year of income.

Annual threshold of a covered person

(2) Where one or more of the years of income of the multinational group is of a period that is longer or shorter than twelve months, the consolidated annual turnover threshold shall be calculated as follows—

€750,000,000 x A/365

where A is the number of days in the year of income concerned.

5. (1) The net income or loss of a covered person in a year of income shall be the sum of the net income or loss for that year of income, after deducting the sum of the losses of that covered person, as determined under a recognised accounting standard in Kenya.

Computation of a covered person's net income or loss.

(2) For the purposes of subregulation (1)—

- (a) the net income or loss shall be the financial accounting net income or loss of a covered person used in preparing the consolidated financial statements of the ultimate parent entity determined—
 - (i) before consolidating adjustments eliminating intra-group transactions; and
 - (ii) without adjustments to income or expenses attributable to purchase accounting for an acquired business;
- (b) where it is not reasonably practicable to determine the financial accounting net income or loss of a covered person based on the recognised accounting standards used in preparation of the consolidated financial statement as provided under paragraph (a), the financial accounting net income or loss of the covered person for the year of income may be determined using another acceptable financial accounting standard or an authorised financial accounting standard:

Provided that—

- (i) the financial accounts of the covered person are maintained on the basis of that other accounting standard;
 - (ii) the information contained in the financial accounts is reliable; and
 - (iii) permanent differences in excess of one million euros that arise from the application of a particular principle or standard to items of income or expenses or transactions, where that principle or standard differs from the other financial standard used in the preparation of the consolidated financial statements of the ultimate parent entity, are adjusted to conform to the treatment required for that item under the accounting standard used in the preparation of the consolidated financial statements; and
- (c) the net income or loss of a covered person shall be determined by adjusting the financial accounting net income or loss of that covered person in the following manner—
- (i) by adding net taxes expense;
 - (ii) by excluding any amount of excluded dividends received or accrued by that covered person;

- (iii) by excluding the amount of the gain and adding back the amount of the loss for any excluded equity gain or loss;
- (iv) by adding any amount of gain, and subtracting any amount of loss, for any included revaluation method gain or loss;
- (v) by including gains or losses from the disposal of assets and liabilities under regulation 15;
- (vi) by adjusting a gain or loss from asymmetric foreign currency gains or losses;
- (vii) by adding policy disallowed expenses;
- (viii) by including accrued pension expense;
- (ix) by including prior period errors and changes in accounting principles; and
- (x) by adding the movement in the insurance reserves, where a movement in an insurance company's reserves is attributable to a security held on behalf of a policyholder and that either economically matches an excluded dividend (net of the investment management fee) or is an item related to excluded equity gain or loss.

(3) Each transaction between a covered person and a related person shall be consistent with the arm's length principle and if the amount is not recorded in the same amount in the financial accounts of both persons, it shall be adjusted so as to be in the same amount.

(4) Any expense relating to an intra-group financing arrangement shall be excluded when computing the net income or loss of a covered person if the following conditions are met—

- (a) it can reasonably be anticipated that the intra-group financing arrangement will, over its expected duration, increase the amount of expenses taken into account in the computation of the income or loss of the covered person;
- (b) it can reasonably be anticipated that the intra-group financing arrangement would not result in a commensurate increase in the taxable income of the high-tax counterparty;
- (c) the counterparty is located in a jurisdiction that is not a low-tax jurisdiction or in a jurisdiction that would not have been low-taxed if the income related to the expense had not been accrued by the counterparty; and
- (d) the covered person's combined effective tax rate is less than fifteen per cent or the combined effective tax rate would have been less than fifteen per cent if the expense had not been accrued by the covered entity.

(5) In this regulation—

“accrued pension expense” means the difference between the amount of pension liability expense of pension plans that are provided through a pension fund included in the financial accounting net income or loss and the amount contributed to a pension fund for the year of income;

“high tax counterparty” means a covered person that is located in a jurisdiction that is not a low-tax jurisdiction or that is located in a jurisdiction that would not be a low-tax jurisdiction if the covered person’s effective tax rate was determined without regard to any income or expense accrued by that entity in respect of an intragroup financing arrangement;

“intragroup financing arrangement” means an arrangement between two or more members of a multinational group whereby a high-tax counterparty directly or indirectly provides credit or otherwise makes an investment in a low-tax entity;

“low-tax entity” means a member located in a low-tax jurisdiction or a jurisdiction that would be a low-tax jurisdiction if the effective tax rate for the jurisdiction was determined without regard to any income or expense accrued by the entity in respect of an intragroup financing arrangement; and

“low-tax jurisdiction”, in relation to a multinational group in any year of income, means a jurisdiction where the multinational group has net income and is subject to an effective tax rate in that year of income that is lower than fifteen per cent; and

“policy disallowed expenses” means—

- (a) expenses accrued by a covered person for illegal payments, including bribes and kickbacks; or
- (b) expenses accrued by the covered person for fines and penalties;

6. An insurance company shall—

- (a) exclude from the computation of its net income or loss any amount charged to policyholders for taxes paid by the insurance company in respect of returns to the policyholders; and
- (b) include in the computation of its income or loss any returns to policyholders that are not recorded in its financial accounting net income or loss to the extent that the corresponding increase or decrease in liability to the policyholders is recorded in its financial accounting net income or loss.

7. Where a covered person is a person with a permanent establishment in Kenya, the net income or loss of the permanent establishment shall be the net income or loss recorded in the separate financial accounts of the permanent establishment,

Computation of net income or loss of an insurance company

Net income or loss of a person with a permanent establishment in Kenya

Provided that—

- (a) where the permanent establishment does not have separate financial accounts, its net income or loss shall be the amount that would have been recorded in its separate financial accounts if pre-accounts had been prepared on a standalone basis in accordance with the accounting standard used in the preparation of the consolidated financial statements of the ultimate parent entity;
- (b) the permanent establishment's net income or loss shall be adjusted to reflect only the amounts and items of income and expense that are attributable to it in accordance with the applicable tax treaty or of the Act, regardless of the amount of income subject to tax and the amount of deductible expenses;
- (c) the net income or loss of the permanent establishment shall not be taken into account when determining the income or loss of the covered person except as provided under these Regulations;
- (d) any loss of the permanent establishment shall be treated as an expense of the covered person (and not of the permanent establishment) for the purpose of computing the permanent establishment's qualifying income or loss to the extent that the loss of the permanent establishment is treated as an expense in the computation of the taxable income of the covered person and is not set off against an item of income that is subject to tax under the laws of both the jurisdiction of the covered person and the jurisdiction of the permanent establishment; and
- (e) where paragraph (d) applies, any income subsequently arising in the permanent establishment shall be treated as income of the covered person (and not the permanent establishment) up to the amount of the loss that previously was treated as an expense for purposes of computing the income or loss of the covered person under this regulation.

8. (1) The allocation of net income or loss from a flow-through entity shall be determined as provided under regulation 5.

Allocation of net income or loss from a flow-through entity
Decrease or increase in equity of covered persons.

9. (1) Where—

- (a) an amount is recognised as a decrease to the equity of a covered person attributable to distributions paid or payable in respect of additional tier one capital or restricted tier one capital issued by the covered person, the amount shall be treated as an expense in the computation of the covered person's net income or loss; and
- (b) an amount is recognised as an increase to the equity of a covered person attributable to distributions received or

receivable in respect of additional tier one capital or restricted tier one capital held by the covered person, the amount shall be included in the computation of the covered person's net income or loss.

(2) In this regulation—

“additional tier one capital” means an instrument—

- (a) issued by a covered person pursuant to prudential regulatory requirements applicable to the banking sector that is convertible to equity or may be written down if a pre-specified trigger event occurs; and
- (b) that has other features which are designed to aid loss absorbency in the event of a financial crisis;

“restricted tier one capital” means an instrument—

- (a) issued by a covered person pursuant to prudential regulatory requirements applicable to the insurance sector that is convertible to equity or may be written down if a pre-specified trigger event occurs; and
- (b) that has other features which are designed to aid loss absorbency in the event of a financial crisis.

10. (1) Where the net income or loss of a covered person for a year of income includes any international shipping income or qualified ancillary international shipping income, its financial accounting net income or loss for that year of income shall be adjusted as follows—

International
shipping income
or qualified
ancillary
international
shipping income

- (a) where the computation of the covered person's international shipping income and qualified ancillary international shipping income results in a loss, the loss shall be excluded from the computation of the covered person's income or loss;
- (b) the aggregated qualified ancillary international shipping income of all the covered persons that are members of the same multinational group shall not exceed fifty per cent of those covered persons' international shipping income;
- (c) the costs incurred by the covered person that are directly attributable to its international shipping income and qualified ancillary international shipping income shall be allocated to such activities for the purpose of computing the net international shipping income and net qualified ancillary international shipping income of the covered person;
- (d) the costs incurred by the covered person that indirectly result from its international shipping activities and qualified ancillary international shipping activities shall be deducted from the covered person's revenues from such activities to compute the international shipping income and qualified ancillary international shipping income of the covered person on the basis of the covered person's revenues from such activities in proportion to its total revenues; and

- (e) all direct and indirect costs attributed to the covered person's international shipping income and qualified ancillary international shipping income in accordance with this subregulation shall be excluded from the computation of the covered person's income or loss.

(2) The international shipping income and qualified ancillary international shipping income of the covered person shall be excluded from the computation of the covered person's qualifying income or loss:

Provided that the covered person demonstrates that the strategic or commercial management of all ships concerned is effectively carried on from or within Kenya.

- (3) In this regulation—

“international shipping income” means the net income of a covered person earned from —

- (a) the transportation of passengers or cargo by ships that the covered person operates in international traffic, whether the ship is owned, leased or otherwise at the disposal of the covered person;
- (b) the transportation of passengers or cargo by ships operated in international traffic under slot-chartering arrangements;
- (c) the leasing of ships for the transportation of passengers or cargo in international traffic on charter, and the ships are fully equipped, crewed and supplied;
- (d) the leasing of a ship on a bare-boat charter basis, for the transportation of passengers or cargo in international traffic, to another member;
- (e) the participation in a pool, a joint business or an international operating agency for the transportation of passengers or cargo by ships in international traffic; and
- (f) the sale of a ship used for the transportation of passengers or cargo in international traffic provided that the ship has been held for use by the covered person for a minimum of one year:

Provided that international shipping income shall not include net income obtained from the transportation of passengers or cargo by ships in inland waterways within the same jurisdiction;

“qualified ancillary international shipping income” means net income obtained by a covered person from the following activities that are performed primarily in connection with the transportation of passengers or cargo by ships in international traffic—

- (a) leasing a ship on a bare boat charter basis to another shipping enterprise that is not a member:

Provided that the charter does not exceed three years;

- (b) sale of tickets issued by another shipping enterprise for the domestic leg of an international voyage;
- (c) leasing and short-term storage of containers or detention charges for the late return of containers;
- (d) provision of services to another shipping enterprise by engineers, maintenance staff, cargo handlers, catering staff and customer services personnel of the covered person; and
- (e) investment income where the investment that generates the income is an integral part of the business of operating the ships in international traffic by the covered person.

11. (1) Where a covered person is a flow-through entity, the financial accounting net income or loss of the covered person shall be reduced by the amount allocable to the flow-through entity's owners that are not covered persons and that hold their ownership interest in the flow-through entity directly or through one or more of the tax transparent entities, unless—

Allocation of net income or loss from a flow-through entity.

- (a) the flow-through entity is an ultimate parent entity; or
- (b) the flow-through entity is held, directly or through a tax transparent structure, by an ultimate parent entity.

(2) The financial accounting net income or loss of a covered person that is a flow-through entity shall be reduced by the financial accounting net income or loss that is allocated to another covered person.

(3) Where a flow-through entity wholly or partially carries on business through a permanent establishment, the entity's financial accounting net income or loss which remains after applying the formulae specified in subregulation (1) shall be allocated to the permanent establishment.

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

(5) Where a flow-through entity is a tax transparent entity that is the ultimate parent entity, any financial accounting net income or loss of the flow-through entity which remains after applying the allocation to any permanent establishment shall be allocated to the ultimate parent entity.

(6) Where a flow-through entity is a reverse hybrid entity, any financial accounting net income or loss of the flow-through entity which remains after applying the formulae set out in subparagraphs (1) and (3) shall be allocated to the reverse hybrid entity.

(7) Subparagraphs (3), (4) and (5) shall be applied separately with respect to each ownership interest in the flow-through entity.

12. (1) This regulation shall apply to a covered person for a year of income where—

Election for company in distress.

- (a) the covered person is released from an obligation to pay a debt;
- (b) an amount of income is recorded in the financial net income or loss of the covered person for that year of income in respect of the debt release;
- (c) the debt release—
 - (i) is made pursuant to insolvency, bankruptcy or similar proceedings in Kenya;
 - (ii) is made pursuant to an arrangement with a creditor who is not connected with the covered person, and the covered person has obtained an independent expert opinion that the covered person will not be able to meet payments due within the next twelve months to persons who are not connected with the covered person; or
 - (iii) is made in a case where subparagraphs (i) and (ii) do not apply and by a creditor who is not connected with the covered person, and, at the time of the release, the liabilities of the covered person exceed the fair market value of the assets of the covered person; and
- (d) the covered person makes an election in a GloBE information return in that year of income.

(2) Where this regulation applies to a covered person, and paragraph (1)(c)(i) or (ii) applies, its financial net income or loss shall be adjusted to exclude any income recognised in respect of the release.

(3) Where this regulation applies to a covered person, and subregulation (1)(c)(iii) applies, the covered person's financial net income or loss shall be adjusted by deducting the lowest of—

- (a) the amount of income recognised in respect of the debt release;
- (b) the amount by which the covered person's liabilities exceed the fair market value of its assets before the debt release; and
- (c) the amount of any tax attributes of the covered person reduced as a result of the debt release.

(4) In subregulation (3)(c), "tax attributes" means any loss, deduction, allowance, credit or similar attribute for the reduction of tax recognised in Kenya.

13. (1) Any taxes recorded in the financial accounts of a covered person shall take into account—

Adjusted covered taxes.

- (a) the current tax expense accrued in financial accounting net income or loss with respect to covered taxes for the year of income;

- (b) the deferred tax expense as determined under these Regulations, where a person has not made the net loss election under regulation 16; and
 - (c) any increase or decrease in covered taxes recorded in equity or other comprehensive income relating to amounts included in the computation of financial income or loss which is subject to tax in Kenya.
- (2) In determining the adjusted covered taxes of a covered person, the current tax expense recorded in the financial accounts shall be adjusted as follows—
- (a) additions to covered taxes for the year of income shall be the sum of—
 - (i) any amount of covered taxes accrued as an expense in the profit before taxation in the financial accounts;
 - (ii) any amount of net loss deferred tax assets recognised under these Regulations; and
 - (iii) any amount of covered taxes that is paid in the year of income and relates to uncertain tax position where the amount was excluded for a previous year of income;
 - (b) reductions to covered taxes for the year of income shall be the sum of—
 - (i) any amount of current tax expense that relates to income or gains that are excluded from the computation of the net income or loss of the covered person for the year of income;
 - (ii) any amount of current tax expense that relates to an uncertain tax position for the covered person for the year of income;
 - (iii) any amount of current tax expense that is not expected to be paid by the covered person within three years of the last day of the year of income; and
 - (iv) any current tax expense relating to a previous year of income; and
 - (c) covered taxes shall not include any amount of—
 - (i) top up tax accrued by a covered person under a qualified domestic minimum top up tax;
 - (ii) taxes paid by an insurance company in respect of returns to policy holders;
 - (iii) a tax expense included in the financial accounts of a direct or indirect owner of the covered person under a controlled foreign company tax regime on their share of income;
 - (iv) a tax expense included in the financial accounts of the main entity of the covered person that is with respect to the income or loss of the covered person's permanent establishment;

- (v) a tax expense included in the financial accounts of an owner of a tax transparent entity or reverse hybrid entity that is with respect to the income of the tax transparent entity or reverse hybrid entity; or
- (vi) a tax expense included in the financial accounts of an owner of a covered person that is related to distributions from the covered person, other than a withholding tax.

(3) In determining the adjusted covered taxes of a covered person, the deferred tax expense recorded in the covered person's financial accounts shall be adjusted as follows—

- (a) any amount of the expense in respect of an item excluded from the computation of the net income or loss for that year of income shall be excluded;
- (b) any amount of the expense that reflects a disallowed accrual or unclaimed accrual for the year of income shall be excluded:

Provided that the amount of any such accrual paid during the year of income shall be added;

- (c) the impact in the year of income of a valuation adjustment or accounting recognition adjustment with respect to a deferred tax asset shall be excluded;
- (d) any amount of the expense in the year of income arising from a re-measurement of the deferred tax with respect to a change in the rate of tax shall be excluded;
- (e) any amount of the expense in the year of income that reflects the generation or use of tax credits shall be excluded other than a substitute loss carry-forward deferred tax asset;
- (f) any recaptured deferred tax liability under regulation 14 that is paid in the year of income shall be added; and
- (g) where a loss deferred tax asset has not been recognised because the recognition criteria are not met, a reduction for the amount of the recognition of a loss deferred tax asset for a current year tax loss.

(4) Where the deferred tax expense of a covered person for a year of income relates to covered taxes imposed at a rate greater than fifteen per cent, the expense shall be adjusted to the amount that would have been incurred if the rate of tax had been fifteen per cent.

(5) Where a deferred tax asset has been recorded at a rate lower than fifteen per cent—

- (a) the asset may be adjusted to fifteen per cent in the year of income where the covered person demonstrates that the deferred tax asset is attributable to a net loss; and
- (b) the total amount of the deferred tax adjustment is reduced by the amount of the increase in the deferred tax asset resulting from the adjustment under this subregulation.

(6) Covered taxes shall be allocated from one covered person to another covered person as follows—

- (a) the amount of any covered taxes included in the financial accounts of a tax transparent entity with respect to income or loss allocated to the owner pursuant to regulation 5 is allocated to that owner; and
- (b) the amount of any covered taxes accrued in the financial accounts of a covered person's direct owners that are withholding taxes on distributions from the covered person during the year of income shall be allocated to the distributing covered person.

(7) The amount of any covered taxes included in the financial accounts of a covered person relating to net income or loss of a permanent establishment shall be allocated to the permanent establishment, but shall not be allocated where the income of a permanent establishment is treated as income of the main entity pursuant to regulation 4(6):

Provided that any covered taxes arising in the location of the permanent establishment and associated with the income shall be treated as covered taxes of the main entity up to an amount not exceeding the income multiplied by the highest rate of corporate tax applicable to ordinary income in the jurisdiction where the main entity is located.

(8) No amount of covered taxes may be taken into account more than once.

(9) In this regulation—

“disallowed accrual” means—

- (a) any movement in deferred tax expense accrued in the financial accounts of a covered person which relates to an uncertain tax position; and
- (b) any movement in deferred tax expense accrued in the financial accounts of a covered person which relates to distributions from that person; and

“unclaimed accrual” means any increase in a deferred tax liability recorded in the financial accounts of a covered person for a year of income that is not expected to be paid within the five subsequent years of income and for which the covered person makes an annual election not to include in total deferred tax adjustment amount for such year of income.

14. (1) A covered person shall be deemed to have recaptured a deferred tax liability if the person has a deferred tax liability, other than an excluded liability, that is taken into account in the covered person's deferred tax expense for a year of income and that is not reversed within the five years of income immediately following the year of income in which the tax liability first arose.

Recaptured
deferred tax
liabilities.

(2) The amount of the recaptured deferred tax liability determined for the current year of income shall be treated as the reduction of covered taxes in the fifth preceding year of income and the effective tax rate and top-up tax for that year of income shall be recalculated in accordance with these Regulations.

(3) In this regulation, “excluded liability” means a tax expense attributable to changes in deferred tax liabilities in respect of—

- (a) cost recovery allowances on tangible assets;
- (b) the cost of a license or similar arrangement from the Government for the use of immovable property or exploitation of natural resources that entails significant investment in tangible assets;
- (c) research and development expenses;
- (d) de-commissioning and remediation expenses;
- (e) fair value accounting on unrealised net gains;
- (f) foreign currency exchange net gains;
- (g) insurance reserves and insurance policy deferred acquisition costs;
- (h) gains from the sale of tangible assets located in Kenya that are reinvested in tangible assets located in Kenya; or
- (i) any additional amounts accrued as a result of changes to accounting principles relating to anything falling within paragraphs (a), (b), (c), (d), (e), (f), (g) or (h).

15. (1) Subject to subregulation (2), an adjustment to a covered person’s liability for covered taxes for a previous year of income recorded in the financial accounts shall be treated as an adjustment to covered taxes in the year of income in which the adjustment is made.

Other adjustments
to covered taxes.

(2) Where a decrease in covered taxes was included in the covered person’s adjusted covered taxes for a previous year of income, the combined effective tax rate and top-up tax for that year of income shall be recalculated and the adjusted covered taxes determined for the previous year of income shall be reduced by the amount of the decrease in covered taxes and income determined for the year of income and any intervening year of income shall be adjusted as necessary and appropriate.

(3) Subregulation (2) shall also apply where the tax rate in Kenya is reduced below fifteen per cent in respect of any deferred tax expense that was claimed as a covered tax in a previous year of income and that has not been reversed.

(4) The amount of deferred tax expense, when paid, that has resulted from an increase to the tax rate in Kenya shall be treated as an adjustment under this regulation to a person’s liability for covered taxes claimed under regulation 7 for a previous year of income when such amount was originally recorded at a rate of less than fifteen per cent

and the adjustment shall be limited to an amount that is equal to an increase of deferred tax expense up to such deferred tax expense recast at fifteen per cent.

(5) Where an amount accrued by a covered person as current tax expense and included in adjusted covered taxes for a year of income is not paid within three years of the last day of such year, the combined effective tax rate and top-up tax for the year of income in which the unpaid amount was claimed as a covered tax shall be recalculated by excluding such unpaid amount from adjusted covered taxes.

(6) A deferred tax expense attributable to a substitute loss carry-forward deferred tax asset shall be included in the covered person's total deferred tax adjustment amount in the year of income that it arises and in the year of income (or years) it reverses, but only to the extent the foreign tax credit that gave rise to the substitute loss carry-forward deferred tax asset is used to offset tax liability on income included in the covered person's income or loss.

(7) The amount of a substitute loss carry-forward deferred tax asset shall be the lesser of—

- (a) the amount of the foreign tax credit in respect of the foreign source income inclusion that the tax regime allows to be carried forward from the year in which the covered person had a tax loss (before taking into account any foreign source income) to a subsequent year; or
- (b) the amount of the covered person's tax loss for the tax year (before taking into account any foreign source income) multiplied by the applicable tax rate.

(8) The substitute loss carry-forward deferred tax asset shall be recast at the rate of fifteen per cent.

(9) Where—

- (a) the difference between the applicable rate of minimum top up tax and the combined effective tax rate for the year of income exceeds fifteen per cent due to adjusted covered taxes being below zero (negative adjusted covered taxes), the covered person shall exclude the negative adjusted covered taxes from the computation of the combined effective tax rate under regulation 12; and
- (b) the negative adjusted covered taxes shall be carried forward in each subsequent year of income in which the covered person has a positive income and adjusted covered taxes, the person shall decrease (but not to below zero) the aggregate adjusted covered taxes by the remaining balance of the negative adjusted covered taxes carried-forward.

16. (1) A covered person that has a net loss in a year of income may elect to create a deferred tax asset as set out in this regulation. Net loss election.

(2) Where the covered person makes an election under subregulation (1)—

- (a) the deferred tax asset for that year of income shall be deemed to be equal to the net loss for that year multiplied by fifteen per cent; and
- (b) the deferred tax asset shall be used in any subsequent years of income where the net income is equal to the lower of—
 - (i) the net income multiplied by the minimum top up tax rate; and
 - (ii) the amount of available deferred tax asset under this regulation.
- (3) An election under subregulation (1) shall cease to apply if—
 - (a) the covered person revokes the election in writing; or
 - (b) the Commissioner rejects the election by the covered person.
- (4) Where an election ceases to apply pursuant to subregulation (3), any remaining net loss deferred tax asset shall be reduced to zero with effect from the first day of the first year of income in which the election ceases to apply.
- (5) The election shall be lodged together with the first GloBE information return of the covered person and a net loss election shall apply to each covered person that belongs to the same multinational group.

17. The combined effective tax rate of a covered person for a year of income shall be calculated by dividing the sum of all the adjusted covered taxes of the covered person for the year of income by the sum of all net income or loss of the covered person for the same year of income and multiplying by one hundred, in accordance with the following formula—

$$\begin{array}{lcl} \text{Combined} & & \text{Sum of all adjusted covered taxes} \\ \text{effective tax} & = & \frac{\quad}{\quad} \quad \times 100 \\ \text{rate} & & \text{Sum of all net income or loss} \end{array}$$

Combined
effective tax rate.

18. (1) The minimum top-up tax payable by a covered person for a year of income shall be calculated as the difference between fifteen per cent and the combined effective tax rate for that year of income, multiplied by the excess profit of the covered person, in accordance with the following formula—

$$\text{Minimum top up tax} = (15\% - \text{combined effective tax rate}) \times \text{excess profit} + \text{any additional top-up tax calculated under regulations 14, 15 and 20,}$$

Computation of
minimum top-up
tax.

Where “excess profit” means the net income or loss of the covered person for the year of income, reduced by the substance-based income exclusion.

(2) Where two or more covered persons are members of the same multinational group in Kenya, the minimum top-up tax payable under subregulation (1) shall be determined on a group basis and allocated among the covered persons in proportion to the net income attributable

to each covered person after taking into account the substance-based income exclusion.

(3) Despite subregulation (2), a covered person who elects any other manner in which the minimum top-up tax liability is allocated amongst the covered persons for the year of income, the covered person shall make the election in writing to the Commissioner and the election shall be effective upon approval by the Commissioner in writing.

(4) The substance-based income exclusion shall be calculated as the sum of—

- (a) ten per cent of the employee costs; and
- (b) eight per cent of the net book value of tangible assets.

(5) The applicable rate for employee cost and the net book value of tangible asset under paragraph (4) shall be adjusted for each year of income in accordance with the Schedule.

19. (1) In determining the substance-based income exclusion of a covered person, the computation of the net book value of tangible assets for each covered person shall not include the net book value of property (including land or buildings) that is held for sale, lease or investment.

Substance-based
income exclusion.

(2) Despite subregulation (1), in the case of an operating lease, the lessor shall be allowed to take into account a portion of the net book value of an asset that is under an operating lease in determining its tangible asset:

Provided that the asset is located in Kenya, subject to the following conditions—

- (a) the amount allowed shall be equal to the excess, if any, of the lessor's average net book value of the asset determined at the beginning and end of the year of income divided by the average amount of the lessee's right of use of the asset determined at the beginning and end of the year of income; and
- (b) if the lessor leases a part of a tangible asset, the net book value of the asset attributable to the residual part of the asset shall be allocated on a reasonable basis.

(3) Where an employee of a covered person that is a multinational enterprise group performs more than fifty per cent of the employee's activities for the group within Kenya during the relevant period in respect of the covered person, covered person shall be entitled to the full employee costs in respect of the employee.

(4) Where a covered person's tangible asset is located in Kenya for more than fifty per cent of the relevant period in respect of the covered person, the covered person or, where applicable, the lessee, shall be entitled to the full net book value of the tangible asset in respect of the tangible asset.

(5) Where an employee of a covered person that is a multinational enterprise group performs fifty per cent or less of the

employee's activities for the group within Kenya during the relevant period in respect of the covered person, the covered person shall be entitled only to a proportionate employee cost corresponding to the proportion of time that the employee performed the employee's activities within Kenya.

(6) Where a covered person's tangible asset is located in Kenya for fifty per cent or less of the relevant period in respect of the covered person, the covered person or, where applicable, the lessee, shall be entitled only to the proportionate net book value of the tangible asset corresponding to the proportion of time that the tangible asset was located within Kenya.

(7) For purposes of substance-based income exclusion for a permanent establishment under this regulation—

- (a) the eligible employee costs and eligible netbook value of tangible assets attributable to a permanent establishment shall not be included in the computation of the eligible employee costs and eligible netbook value of tangible assets of the main entity; and
- (b) where the income of a permanent establishment is wholly or partially excluded from globe income or adjusted covered taxes under these regulations, the corresponding eligible employee costs and eligible netbook value of tangible assets shall be excluded from the substance-based income exclusion computation in the same proportion as the excluded income.

(8) Eligible employee costs of eligible employees paid by, and eligible net book value of tangible assets owned by, a flow-through entity that are not allocated under subregulation (7) shall be allocated to—

- (a) the owners of the flow-through entity in proportion to the amount allocated to the owners pursuant to regulation 5; and
- (b) the flow-through entity if it is the ultimate parent entity, reduced in proportion to the income excluded from the computation of the qualifying income of the flow-through entity;

Provided that—

- (i) the eligible employees and eligible tangible assets are located in Kenya; and
- (ii) all other eligible employee costs and eligible netbook value of tangible assets of the flow-through entity are excluded from the substance-based income exclusion computations of the multinational group.

(9) The computation of net book value of tangible assets for purposes of regulation 18 shall be based on the average of the net book value at the beginning and end of the year of income as recorded in the covered person's financial accounts and the computation shall exclude—

- (a) any increase in the carrying value of an asset arising from revaluations or fair value adjustment; and
- (b) any incremental depreciation or amortisation attributable to such revaluation fair value adjustment .

(10) In this regulation—

- (a) the employee costs and net book value of tangible assets of a covered person that is a permanent establishment shall be those included in covered person's separate financial accounts as determined under regulation 18:

Provided that the employees and tangible assets are located in Kenya;

- (b) employee costs and net book value of tangible assets shall exclude any employee costs and net book value of tangible assets attributable to a covered person's international shipping income and qualified ancillary international shipping income; and
- (c) "operating lease" means a lease of a property that does not transfer substantially the obsolescence, risks or rewards incidental to ownership of the property to the lessee;

20. (1) An additional minimum top-up tax shall arise in a year of income if—

Additional top up tax.

- (a) the sum of the net income of the covered persons for that year of income is nil or results in a net loss; and
- (b) the sum of the adjusted covered taxes of the covered persons for that year of income is less than zero; and
- (c) the sum of the adjusted covered taxes of the covered persons for that year of income are less than the amount obtained by multiplying the loss referred to in paragraph (a) by fifteen per cent (in this paragraph referred to as the "expected adjusted covered taxes amount").

(2) The amount of the additional minimum top-up tax referred to in subregulation (1) shall be equal to the difference between—

- (a) the sum of the adjusted covered taxes of the covered persons; and
- (b) the expected adjusted covered taxes amount determined under paragraph (1)(c).

21. (1) In the determination of the consolidated annual turnover for multinational group mergers and demergers, the following shall apply—

Special rules for corporate restructuring.

- (a) where two or more groups merge to form a single multinational group, in any of the four years of income prior to the tested year of income, the consolidated annual turnover of the multinational group for any year of income before the merger shall be deemed to have been met if the

sum of the annual turnover included in each of the groups' consolidated financial statements for that year of income is equal to or greater than seven hundred and fifty million euros;

- (b) where an entity that is not a member of any group merges with an entity or group in the tested year of income and the target or acquirer does not have consolidated financial statements in any of the four years of income before the tested year of income where it was not a member of any multinational group in that year, the consolidated annual turnover of the multinational group shall be deemed to have been met if the sum of the annual turnover included in each of entity's or multinational group's financial statements or consolidated financial statements for that year of income is equal to or greater than seven hundred and fifty million euros; and
- (c) where a single multinational group within the scope of these Regulations demerges into two or more groups, the consolidated annual turnover shall be deemed to have been met by a demerged group if—
 - (i) in the first tested year of income ending after the demerger, the demerged group has an annual turnover of seven hundred and fifty million euros or more in that year of income; or
 - (ii) with respect to the second to fourth tested year of income ending after the demerger, the demerged group has annual revenues of seven hundred and fifty million euros or more in at least two of the years of income following the year of the demerger.

(2) The following shall apply where an entity becomes or ceases to be a member of a multinational group as a result of the transfer of direct or indirect ownership interests in the entity during the year of income—

- (a) where the target joins or leaves a group or the target becomes the ultimate parent entity of a new group, the target shall be treated as a member of the group for the purposes of these Regulations if any portion of its assets, liabilities, income, expenses or cash flows is included on a line-by-line basis in the consolidated financial statements of the ultimate parent entity in the acquisition year;
- (b) in the year in which the target was acquired, a group shall take into account only the financial accounting net income or loss and adjusted covered taxes of the target that are recorded in the consolidated financial statements of the ultimate parent entity for purposes of these Regulations;
- (c) in the acquisition year and each succeeding year, the target shall determine its net income or loss and adjusted covered taxes using its historical net book value of assets and liabilities;

- (d) the computation of the target's employee costs under regulation 18(4) shall take into account only those costs recorded in the consolidated financial statements of the ultimate parent entity;
- (e) the computation of the net book value of the target's tangible assets for purposes of regulation 18(4) shall be adjusted proportionally to correspond with the length of the relevant year of income that the target was a member of the multinational group;
- (f) the deferred tax assets and deferred tax liabilities of a member that are transferred between multinational groups shall be taken into account by the acquiring multinational group in the same manner and extent as if the acquiring multinational group controlled the member when the assets and liabilities arose; and
- (g) the deferred tax liabilities of a target that have previously been included in the target's total deferred tax adjustment amount shall—
 - (i) be treated as reversed for purposes of applying regulation 14 by the disposing multinational group; and
 - (ii) be treated as arising in the acquisition year for purposes of applying regulation 14 by the acquiring multinational group.

Provided that in any case under subparagraph (i) or (ii), any subsequent reduction to covered taxes under regulation 14 shall have effect in the year in which the amount is recaptured.

(3) Where the transfer of assets and liabilities is part of a GloBE reorganisation—

- (a) the transferor shall exclude any gain or loss on the transfer from the computation of its net income or loss; and
- (b) the transferee shall determine its net income or loss after the transfer using the transferor's carrying values of the acquired assets and liabilities upon transfer.

(4) Where a transfer of assets and liabilities is part of a GloBE reorganisation in which the transferor recognises a non-qualifying gain or loss—

- (a) the transferor shall include the gain or loss in the computation of its net income or loss to the extent of the non-qualifying gain or loss; and
- (b) the transferee shall determine its net income or loss after the transfer using the transferor's carrying value of the acquired assets and liabilities upon transfer, adjusted in accordance with the Act and these Regulations to account for the non-qualifying gain or loss.

(5) In the case of a transfer of assets and liabilities other than in a GloBE reorganisation—

- (a) the transferor shall include the gain or loss on the transfer in the computation of its net income or loss; and
- (b) the transferee shall determine its net income or loss using the net book value of the acquired assets and liabilities as determined under the accounting standard used in the preparation of consolidated financial statements of the ultimate parent entity.

(6) In this regulation—

“demerger” means an arrangement where the constituent entities of a single multinational group are separated into two or more multinational groups that are no longer consolidated by the same ultimate parent entity;

“GloBE reorganisation” means a transformation or transfer of assets and liabilities including a merger, demerger, liquidation, or similar transaction where—

- (a) the consideration for the transfer is, in whole or in part, equity interests issued by the transferee or a person connected with the transferee, or, in the case of a liquidation, equity interests of the target including issuance of an equity interest with no economic significance which does not give rise to a consideration;
- (b) the transferor’s gain or loss on the transferred assets is not subject to tax, in whole or in part; and
- (c) the tax laws of the jurisdiction in which the transferee is located require the transferor to compute taxable income after the transfer using the transferee tax basis in the assets, adjusted for any non-qualifying gain or loss on the transfer;

“merger” means an arrangement where—

- (a) all or substantially all of the group entities of two or more separate groups are brought under common control such that they constitute group entities of a combined group; or
- (b) an entity that is not a member of any group is brought under common control with another entity or group such that they constitute group entities of a combined group; and

“non-qualifying gain or loss” means the lesser of—

- (a) the gain or loss of the transferor arising in connection with a covered reorganisation that is subject to tax in the transferor’s jurisdiction; and
- (b) the financial accounting gain or loss arising in connection with the covered reorganisation.

22. (1) The net income of a flow-through entity that is an ultimate parent entity shall be reduced, for the year of income, by the amount of net income that is attributable to the ownership holder:

Ultimate parent entity that is a flow-through entity.

Provided that—

- (a) the ownership holder is subject to tax on such income for a taxable period that ends within twelve months after the end of that year of income at a nominal rate that equals or exceeds fifteen per cent; or
- (b) it can be reasonably expected that the aggregated amount of adjusted covered taxes of the ultimate parent entity and taxes of the holder of the ownership interest on such income for a taxable period that ends within twelve months after the end of the year of income equals or exceeds an amount equal to that income multiplied by fifteen per cent.

(2) The net income of a flow-through entity that is an ultimate parent entity shall be reduced, for the year of income, by the amount of income that is allocated to the ownership holder in the flow-through entity:

Provided that the ownership holder is—

- (a) a natural person who is resident in the jurisdiction where the ultimate parent entity is located and holds ownership interests representing a right to five per cent or less of the profits and assets of the ultimate parent entity; or
- (b) a governmental entity, an international organisation, a non-profit organisation or a pension fund that is ~~tax~~ resident in the jurisdiction where the ultimate parent entity is located and holds ownership interests representing a right to five per cent or less of the profits and assets of the ultimate parent entity.

(3) The net loss of a flow-through entity that is an ultimate parent entity shall be reduced, for the year of income, by the amount of loss that is attributable to the ownership holder.

(4) Subregulation (3) shall not apply to the extent the ownership holder is not allowed to use the loss attributable to the ultimate ownership holder for the computation of its taxable income.

(5) Subregulations (1), (2), (3) and (4) shall apply to a permanent establishment—

- (a) through which a flow-through entity that is an ultimate parent entity wholly or partly carries on business; or
- (b) through which a tax transparent entity wholly or partly carries on business:

Provided that the ultimate parent entity's ownership interest in the tax transparent entity is held directly or through one or more tax transparent entities.

(6) A flow-through entity that reduces its income pursuant to this regulation shall reduce its covered taxes proportionally.

(7) For the purposes of this section, "ownership holder" means the holder of an ownership interest in the flow-through entity.

23. (1) The computation of the effective tax rate and top-up tax applicable to members of a minority-owned subgroup shall apply as if each minority-owned subgroup was a separate multinational group.

Minority-owned covered persons.

(2) The effective tax rate and minimum top-up tax of a minority-owned covered person that is not a member of a minority-owned subgroup shall be computed on an entity basis.

(5) For the purposes of this regulation—

“minority-owned covered person” means a covered person in which the ultimate parent entity has a direct or indirect ownership interest of thirty per cent or less;

“minority-owned parent entity” means a minority-owned covered person that holds, directly or indirectly, the controlling interests in another minority-owned covered person, but not where the controlling interest in the former entity is held, directly or indirectly, by another minority-owned covered person;

“minority-owned subgroup” means a minority-owned parent entity and its minority-owned subsidiaries; and

“minority-owned subsidiary” means a minority-owned covered person in which the controlling interest is held, directly or indirectly, by a minority-owned parent entity.

24. (1) The minimum top-up tax in respect of a joint venture and its joint venture subsidiaries shall be determined and computed under these Regulations as if they were covered persons of a separate multinational group and as if the joint venture was the ultimate parent entity of that group.

Joint ventures.

(2) In this regulation—

“joint venture” means an entity whose financial results are recorded under the equity method in the consolidated financial statements an ultimate parent entity that is a covered person:

Provided that the ultimate parent entity holds directly or indirectly at least fifty per cent of its ownership interests and does not include—

- (a) an ultimate parent entity of a multinational group that is subject to these Regulation; or
- (b) an entity whose ownership interest is held by the multinational group directly through an entity excluded under section 12G of the Act and the entity—
 - (i) operates exclusively or almost exclusively for the purposes of holding assets or investing funds for the benefit of its investors;
 - (ii) carries out activities that are ancillary to those carried out by the entity excluded under section 12G(4) of the Act;
 - (iii) its income is substantially excluded from the computation of net income or loss in accordance with regulation 4; or

(iv) is held by a multinational group composed exclusively of entities excluded under section 12G(4) of the Act; or

(c) a joint venture subsidiary; and

“joint venture subsidiary” means an entity whose assets, liabilities, income, expenses and cash flows are consolidated by the joint venture under a recognised accounting standard in Kenya and a permanent establishment whose main entity is the joint venture or a joint venture subsidiary shall be treated as a separate joint venture subsidiary.

25. (1) Where a covered person is a member of a multi-parented multinational group—

Multi-Parented Groups.

- (a) the covered person shall be treated as a member of a single multinational group if it is consolidated on a line-by-line basis by the multi-parented multinational group or if its controlling interests are held by entities in the multi-parented multinational group;
- (b) the consolidated financial statements of the multi-parented multinational group shall be the consolidated financial statements prepared under a recognised accounting standard of the ultimate parent entity;
- (c) the ultimate parent entities of each separate group that comprises the multi-parented multinational group shall be regarded as the ultimate parent entities of that group;
- (d) each covered person shall submit a return in accordance with regulation 28, unless a single designated filing entity is appointed, and the return shall include the information concerning each of the groups that comprise the multi-parented multinational group.

(2) In this regulation—

“dual-listed arrangement” means an arrangement entered into by two or more ultimate parent entities of separate groups, under which—

- (a) the ultimate parent entities agree to combine their business by contract alone;
- (b) the ultimate parent entities, pursuant to contractual arrangements, make distributions with respect to dividends and in liquidation to their shareholders based on a fixed ratio;
- (c) the activities of the ultimate parent entities are managed as a single economic entity under contractual arrangements while retaining their separate legal identities;
- (d) the ownership interests in the ultimate parent entities comprising the arrangement are quoted, traded or transferred independently in different capital markets; and
- (e) the ultimate parent entities prepare consolidated financial statements in which the assets, liabilities, income, expenses and cash flows of all the entities of the groups are presented together as those of a single economic unit;

“multi-parented multinational group” means two or more groups where—

- (a) the ultimate parent entities of those groups enter into an arrangement that is a stapled structure or a dual-listed arrangement; and
- (b) at least one entity or permanent establishment of the combined group is located in a different jurisdiction from that of the other entities of the combined group.

“stapled structure” means an arrangement entered into by two or more ultimate parent entities of separate groups, under which—

- (a) fifty per cent or more of the ownership interests in the ultimate parent entities of the separate groups are in the form of ownership, restrictions on transfer, or other terms or conditions combined with each other, and the ownership interests cannot be transferred or traded independently, and where the combined ownership interests are listed, they are quoted at a single price; and
- (b) one of the ultimate parent entities prepares consolidated financial statements in which the assets, liabilities, income, expenses and cash flows of all the other ultimate parent entities of the separate groups are presented together as those of a single economic unit.

26. (1) The amounts that are relevant to the computation of the net income or loss of a covered person for a year of income shall be consistent with the reporting currency under these Regulations.

Currency
conversion.

(2) Where an amount that is relevant to the computation of the net income or loss of a covered person for a year of income is denominated in a currency other than the reporting currency of the consolidated financial statements of the ultimate parent entity of the covered person and is not converted to the reporting currency during the preparation of the consolidated financial statements, the amount shall be converted to the relevant reporting currency using the foreign currency translation principles of the financial accounting standard that would have been used to convert the amount to the reporting currency if that conversion was undertaken during the preparation of the consolidated financial statements.

(3) Despite the generality of subregulation (1), in the determination of any materiality or other threshold in these Regulations that is denominated in the currency of the European Monetary Union of the European Union is satisfied or exceeded by an amount in respect of a multinational group, entity or jurisdiction for a year of income, the amount shall be converted from that currency to the currency of the European Monetary Union using the average of the daily rates of exchange, in respect of the two currencies for the month of December included in the year of income, one year immediately preceding that year of income, as determined by the Central Bank of Kenya.

(4) In this regulation, “reporting currency” means the relevant reporting currency utilised during the preparation of a consolidated financial statement.

27. (1) Upon the commencement of these Regulations, where a person becomes a covered person for the purposes of these Regulations, that person shall notify the Commissioner in writing within sixty days from date of publication of these Regulations.

Notification to the Commissioner.

(2) Where a person becomes a covered person at any time after the period contemplated in subregulation (1), that person shall notify the Commissioner in writing at any time before the end of that person's year of income.

(3) A person who ceases to be a covered person for the purposes of these Regulations, shall notify the Commissioner within six months from the first day of the year of income.

(4) Where two or more covered persons are members of the same multinational group in Kenya, a single designated entity may be appointed to notify the period specified in subregulation (1).

(5) Where there is any change to the information provided under this regulation, the person shall notify the Commissioner in accordance with section 9 of the Tax Procedures Act.

Cap. 469B.

28. (1) Each covered person shall submit a minimum top-up tax return in accordance with section 52B of the Act.

Returns.

(2) The minimum top-up tax return shall be submitted to the Commissioner not later than the last day of the sixth month following the end of the year of income.

(3) Each covered person shall file a GloBE information return for the year of income in the prescribed form and with such content and in the manner specified by the Commissioner taking into account the GloBE Model Rules on filing obligation, on or before the specified return date.

(4) A covered person shall not be required to file a GloBE information return where a GloBE Information Return has been filed by either —

- (a) the ultimate parent entity of the covered person is located in a jurisdiction that has entered into an agreement with Kenya; or
- (b) the covered person's designated filing entity is located in a jurisdiction that has entered into an agreement with Kenya;

(5) A GloBE information return shall be filed—

- (a) not later than eighteen months after the end of the first year of income in which the covered person becomes subject to section 12G of the Act; and
- (b) not later than fifteen months after the end of each subsequent year of income.

(6) A GloBE information return shall include the following information—

- (a) common information about the members of the multinational group including tax identification number and the jurisdiction in which the group is located;
- (b) the organizational structure of the covered person including the controlling interests in the covered person's entities held by another covered person;
- (c) calculation of effective tax rate and top-up tax payable by the covered person; and
- (d) any other information that the Commissioner may require by notice in writing.

(7) A return required to be submitted under this regulation may be amended in accordance with Section 31 of the Tax Procedures Act.

29. (1) Notwithstanding any other provision of these Regulations, until a year of income that commences on or after the 1st July 2029, each covered person may elect to adopt the Transitional CbCR Safe Harbour as set out in the GloBE Model Rules and any other extension or similar safe harbour thereto.

Safe harbours.

(2) Notwithstanding any other provision of these Regulations, a covered person may elect the Non-material Constituent Entity simplified calculations as set out in the GloBE Model Rules.

PART III—MISCELLANEOUS PROVISIONS

30. (1) The payment of the minimum top-up tax shall be in shillings, converted from the presentation currency of the Consolidated Financial Statements based on the average foreign exchange rate for year of income.

Payment of minimum top-up tax.

(2) Where the amount of top-up tax paid exceeds the actual tax payable under the Act, the provisions of section 47 of the Tax Procedures Act relating to overpaid tax shall apply.

31. Each covered person shall maintain records necessary for determining and ascertaining the minimum top-up tax in accordance with section 23 of the Tax Procedures Act.

Record keeping.

32. A person who fails to comply with any provision of these Regulations commits an offence and shall be liable to the applicable sanctions under the Tax Procedures Act.

Cap. 469B.

Offences and penalties.

33. (1) In this regulation, the transition year for a covered person shall be the first year of income in which the person becomes subject to the Act.

Cap. 469B.

Transition.

(2) A person who was a covered person on the 27th December, 2024, and the person's year of income commenced on the 1st January, 2025, shall be required to pay the minimum top-up tax that was due on or before the 30th April, 2026.

(3) Each other eligible person, after the commencement of these Regulations, shall be required to pay the minimum up to up tax for each subsequent year of income in accordance with these Regulations.

(4) When determining the effective tax rate in a transition year, and for each subsequent year, the covered person shall take into account all of the deferred tax assets and deferred tax liabilities recorded in the financial accounts of the covered person for the transition year.

(5) The following shall apply for the purposes of subregulation (4)—

- (a) if the applicable corporate tax rate at which the deferred tax asset is recorded in the financial accounts is less than fifteen per cent and subregulation (6) does not apply, the deferred tax asset shall be taken into account at the corporate tax rate;
- (b) if the applicable corporate tax rate at which the deferred tax liability is recorded in the financial accounts is less than the fifteen per cent, the deferred tax liability shall be taken into account at the corporate tax rate;
- (c) if the applicable corporate tax rate at which the deferred tax asset or deferred tax liability is recorded in the financial accounts is equal to or greater than the fifteen per cent, the deferred tax asset or deferred tax liability shall be taken into account at the rate of fifteen per cent; and
- (d) when taking into account the deferred tax asset, the impact of any valuation adjustment or accounting recognition adjustment with respect to the deferred tax asset shall be excluded.

(6) For purposes of subregulation (5)(a), a deferred tax asset that has been recorded at a rate lower than the fifteen per cent may be taken into account at the rate of fifteen per cent if the covered person can demonstrate that the deferred tax asset is attributable to a net loss.

(7) Any deferred tax asset arising from an item that was excluded from the computation of net income or loss under regulation 4 shall be excluded from subregulation (4) when the deferred tax asset was generated in a transaction that takes place after the 30th November, 2021.

(8) In the case of a transfer of assets between covered persons or other related parties after 30th November, 2021, and before the commencement of a transition year, the basis in the acquired assets other than inventory shall be based upon the disposing entity's carrying value of the transferred assets upon disposition with the deferred tax assets and liabilities brought into net income or loss determined on that basis.

34. (1) Subject to sections 2 and 12G of the Act and regulation 2, the GloBE Model Rules and Agreed Administrative Guidance may be applied for the purposes of the interpretation of these Regulations.

Interpretation and election.

(2) The covered persons may apply any relevant election permitted in the GloBE Model Rules not otherwise provided in section 12G of the Act or these Regulations and such elections shall be

exercised in accordance with the conditions set out in the GloBE Model Rules, including making any required consequential adjustments.

(3) Notwithstanding subregulation (2), elections made pursuant to subregulation (2) shall not be inconsistent with any elections made for the purpose of a Qualified Income Inclusion Rule or Qualified Undertaxed Profits Rule, where applicable.

(4) Notwithstanding subregulations (2) and (3), the covered persons shall not make the De Minimis Exclusion election under Article 5.5 of the GloBE Model Rules.

SCHEDULE

[r. 18(5)]

EMPLOYEE COSTS AND NET BOOK VALUE OF TANGIBLE ASSETS IN EACH YEAR OF THE TRANSITIONAL PERIOD

For the purposes of applying Regulation 12(4), the applicable rate shall be replaced with the rate set out in the table below for each year of income beginning in each of the following calendar years—

<i>Year Beginning</i>	<i>Employee costs (%)</i>	<i>Net book value of tangible assets (%)</i>
2025	9.6%	7.6%
2026	9.4%	7.4%
2027	9.2%	7.2%
2028	9.0%	7.0%
2029	8.2%	6.6%
2030	7.4%	6.2%
2031	6.6%	5.8%
2032	5.8%	5.4%
2033 and subsequent years	5.0%	5.0%

Made on the 12th August, 2026.

JOHN MBADI NG'ONGO,
Cabinet Secretary for the National Treasury.