



Finance (No. 2) Act 2023

2023 CHAPTER 30

PART 4

DOMESTIC TOP-UP TAX

CHAPTER 3

APPLICATION OF MULTINATIONAL TOP-UP TAX PROVISIONS

272 Determining top-up amounts of entity that is a member of a group

- (1) Subject as follows, [Chapters 3 to 6, 8 and 9 of Part 3](#) apply for the purposes (“domestic purposes”) of determining whether a qualifying entity that is a member of a group has top-up amounts or additional top-up amounts, and the extent of those amounts, as they apply for the purpose of determining the same for the purposes of multinational top-up tax.
- (2) Where the group is not a multinational group, that Part has effect for domestic purposes as if any reference to a multinational group were to a group.
- (3) [Part 3](#) has effect for those purposes as if the following provisions (which provide for reductions of top-up amounts where a qualifying domestic top-up tax is payable) were omitted—
 - (a) in [section 194](#), subsections (2) to (7);
 - (b) in [section 203](#), subsections (3) to (7);
 - (c) in [section 206](#), subsections (4) to (8).
- (4) The following provisions of [Part 3](#) are of no practical application for domestic purposes and accordingly that Part has effect for those purposes as if they were omitted—
 - (a) [section 173\(1\)\(b\)](#) and sections [189](#) to [192](#) (eligible distribution tax systems);
 - (b) [section 225](#) (attribution of top-up amounts of investment entities).
- (5) Where—

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- (a) an election is made under [Part 3](#) in relation to a member of a multinational group (whether or not a qualifying entity) for the purposes of multinational top-up tax, and
 - (b) if the election had effect for domestic purposes, it would affect the calculation of top-up amounts or additional top-up amounts,
- that election has effect for domestic purposes.
- (6) For the purposes of subsection (5), a foreign IIR election is to be treated as an election made under [Part 3](#).
- (7) A “foreign IIR election” means an election—
- (a) made in respect of a group in connection with a tax equivalent to multinational top-up tax in another Pillar Two territory;
 - (b) contained in an information return—
 - (i) submitted to a qualifying authority in that territory, and
 - (ii) in relation to which information in the return about the election has been shared with HMRC.
- (8) For domestic purposes—
- (a) [section 134](#) (underlying profits as determined for statements of ultimate parent) has effect as if, after subsection (3), there were inserted—
 - “(3A) The conditions in subsection (3) are not required to be met if—
 - (a) the alternative accounting standard is UK GAAP,
 - (b) all members of the group are located in the United Kingdom, and
 - (c) the filing member of the group has made an election in a self-assessment return that the underlying profits of all members of the group are to be determined on the basis of UK GAAP.
 - (3B) Paragraph 1 of [Schedule 15](#) (long term elections) applies to an election under subsection (3A), and has effect for that purpose as if references to an information return or overseas return notification were to a self-assessment return or below-threshold notification.”;
 - (b) [section 176](#) (amounts to be reflected in covered tax balance) has effect as if, for subsection (2)(i) (amounts allocated from another member of the group), there were substituted—
 - “(i) any amount allocated to the member from another member of the group under [section 178\(1\)](#) (reallocation of tax expense).”;
 - (c) [section 178](#) (reallocation of tax expense) has effect as if—
 - (i) after subsection (1) there were inserted—
 - “(1A) But qualifying tax expense in respect of tax imposed by a territory other than the United Kingdom is not to be allocated to O as a result of the allocation of profits under [section 167](#) (hybrids).”;
 - (ii) subsection (2) (restriction on allocation of tax expense in respect of mobile income) were omitted;
 - (d) [section 179](#) (controlled foreign companies) has effect as if subsection (2) (restriction on allocation to CFC) were omitted;

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- (e) [section 193](#) (calculation of top-up amounts) has effect as if the total top-up amount referred to in that section included any top-up amounts or additional top-up amounts of investment entities determined under [sections 220 to 224](#).

273 Determining top-up amounts of entity that is not a member of a group

- (1) [Chapters 3 to 6, 8 and 9 of Part 3](#) apply for the purposes (“domestic entity purposes”) of determining whether a qualifying entity that is not a member of a group has top-up amounts or additional top-up amounts, and the extent of those amounts, as they apply for the purpose of determining the same for the purposes of multinational top-up tax.
- (2) Chapter 3 of that Part has effect for domestic entity purposes as if for [section 132](#) there were substituted—

“132 Effective tax rate

The effective tax rate of a qualifying entity that is not a member of a group is determined as follows—

Step 1

Determine, in accordance with Chapter 4 of [Part 3](#), the adjusted profits for that period of that member.

Step 2

If, on determining those adjusted profits, the member has not made a profit, the effective tax rate is to be treated as 15%. Otherwise, proceed to Step 3.

Step 3

Determine the covered tax balance of the member for the period (which may be negative) in accordance with Chapter 5 of Part 3.

Step 4

If that balance is nil the effective tax rate is 0%. Otherwise, proceed to Step 5.

Step 5

Divide the covered tax balance by the adjusted profits.

Step 6

Except where Step 2 or 4 applies, the effective tax rate of the entity is X%, where X (which will be negative if the covered tax balance is negative) is the result of Step 5 multiplied by 100.”

- (3) That Part has effect for domestic entity purposes as if—
- (a) references to “member of a multinational group” (however framed and including references to multiple members) were to “qualifying entity”;
 - (b) any reference (however framed) to the consolidated financial statements of the ultimate parent were to the qualifying financial statements of the entity;
 - (c) in [section 194](#) (total top-up amount), subsections (2) to (7) were omitted;
 - (d) in [section 203](#) (additional top-up amounts: covered taxes less than expected), subsections (3) to (7) were omitted;
 - (e) in [section 206](#) (additional top-up amounts: recalculations), subsections (4) to (8) were omitted.

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- (4) **Part 3** has effect for those purposes as if the following provisions (which are only relevant to groups or have no relevance for domestic purposes) were omitted—
- (a) in [section 134](#) (underlying profits as determined for statements of ultimate parent), subsections (2) to (9);
 - (b) [section 135](#) (permanent establishments);
 - (c) [section 139](#) (consolidation adjustments);
 - (d) [section 140](#) (purchase accounting adjustments);
 - (e) in [section 141](#) (general exclusion of dividends), subsection (2)(c);
 - (f) [section 149](#) (arm’s length requirement);
 - (g) [section 150](#) (transactions between group members);
 - (h) [section 154](#) (exclusion of qualifying intra-group financing arrangement expenses);
 - (i) sections 159 and 160 (adjustments applicable to permanent establishments);
 - (j) in [section 163](#) (election to spread capital gains), subsection (3);
 - (k) [section 164](#) (election to exclude intra-group transactions);
 - (l) [section 167](#) (underlying profits of member of group seen as transparent);
 - (m) in [section 168](#) (underlying profits of flow-through entities), subsection (8);
 - (n) [section 169](#) (non-tax resident entities to be treated as flow-through entities);
 - (o) [section 170](#) (adjustments for ultimate parent that is flow-through entity);
 - (p) [section 172](#) (ultimate parent subject to deductible dividend regime);
 - (q) [section 177](#) (allocation of covered taxes: permanent establishments);
 - (r) [section 178](#) (reallocation of tax expense);
 - (s) [sections 179 and 180](#) (controlled foreign company tax regimes);
 - (t) [section 181](#) (distributions from other group members);
 - (u) [section 183](#) (qualifying foreign tax credits);
 - (v) sections 189 to 192 (deemed distribution tax election);
 - (w) sections 208 to 212 (restructuring of groups);
 - (x) sections 213 to 215 (elections in relation to investment entities);
 - (y) in [section 216](#) (election where assets and liabilities adjusted to fair value), subsection (6);
 - (z) sections 226 to 229 (joint venture groups, minority owned members and multi-parent groups).

274 Application of [section 262](#)

The power in [section 262](#) (power to amend to ensure consistency with Pillar Two) applies in relation to this Part as it applies to [Part 3](#).

275 Application of [Schedule 14](#)

[Schedule 18](#)—

- (a) applies [Schedule 14](#) for the purpose of the administration of domestic top-up tax;
- (b) makes related amendments.

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276 Application of transitional provision

The transitional provision in [Schedule 16](#) applies in relation to domestic top-up tax as it applies in relation to multinational top-up tax as if—

- (a) references in that Schedule to a multinational group were to a group;
- (b) where a qualifying entity is a member of a group and all members of the group are located in the United Kingdom, the following provisions of that Schedule (which have no relevance in such a case) were omitted—
 - (i) paragraph [3\(2\)\(b\)](#) and [\(d\)](#), and [3\(7\)](#) and [\(8\)](#) (country-by-country reporting);
 - (ii) the words “that are used for preparation of the group’s country-by-country report” in paragraph [4\(2\)](#);
 - (iii) paragraph [4\(5\)](#) (use of statements used for preparation of country-by-country report);
 - (iv) in [paragraph 9\(2\)](#), the words from “ignoring” to the end.
- (c) where a qualifying entity is not a member of a group—
 - (i) references in that Schedule to a member of a group (however framed and including references to multiple members) were to a qualifying entity;
 - (ii) references in that Schedule (however framed) to the consolidated financial statements of the ultimate parent were to the qualifying financial statements of the entity;
 - (iii) [paragraph 2](#) were omitted;
 - (iv) the provisions mentioned in [paragraph \(b\)\(i\)](#) to [\(iv\)](#) were omitted.

277 Index of defined expressions

See the table in [Schedule 17](#) for a list of terms defined for Part 3, but which also contains some terms defined for this Part, and the provisions that define or explain them.

278 Domestic top-up tax to apply from 31 December 2023

This Part has effect in relation to accounting periods commencing on or after 31 December 2023.

Changes to legislation:

There are currently no known outstanding effects for the Finance (No. 2) Act 2023, Chapter 3.