



Finance (No. 2) Act 2023

2023 CHAPTER 30

PART 3

MULTINATIONAL TOP-UP TAX

CHAPTER 5

COVERED TAX BALANCE

Dealing with deferred tax assets etc

182 Total deferred tax adjustment amount

- (1) The total deferred tax adjustment amount for a member of a multinational group for an accounting period is the deferred tax expense relating to covered taxes reflected in the member's underlying profits, adjusted as follows.
- (2) The deferred tax expense is to be adjusted to exclude the following—
 - (a) any amount of that expense that reflects items not reflected in the member's adjusted profits;
 - (b) any amount of that expense that reflects disallowed accruals or unclaimed accruals;
 - (c) the impact of a valuation adjustment or accounting recognition adjustment with respect to a deferred tax asset;
 - (d) any amount of that expense arising from a re-measurement with respect to a change in the rate of tax;
 - (e) any amount of that expense that reflects the generation or use of tax credits (but see [section 183](#) which permits the inclusion of qualifying foreign tax credits).
- (3) Where a deferred tax liability is reversed in an accounting period, and that deferred tax liability was treated as an unclaimed accrual in a previous accounting period, the

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deferred tax expense is to be increased by the amount of the deferred tax liability that has reversed.

- (4) Where a deferred tax asset is not reflected in the deferred tax expense only as a result of the recognition criteria not being met, that deferred tax asset is to be reflected in the total deferred tax adjustment amount.
- (5) Where the amount of a deferred tax asset is adjusted as a result of [section 186](#), an amount equal to that adjustment is to be reflected in the total deferred tax adjustment amount.
- (6) Where an amount of recaptured deferred tax liability (see [section 184](#)) that was determined for a previous accounting period is reversed during the accounting period, that amount is to be reflected in the total deferred tax adjustment amount.
- (7) Where the deferred tax expense relates to covered taxes where the rate is greater than 15%, the amount of that expense (after adjustment under [subsections \(2\) to \(6\)](#)) is to be adjusted so that it reflects the amount it would have been had the rate been 15%.
- (8) For the purposes of [this section](#)—
 - “disallowed accrual” means—
 - (a) any movement in deferred tax expense reflected in the member’s underlying profits which relates to an uncertain tax position, or
 - (b) any movement in deferred tax expense reflected in those profits which relates to distributions from another member of that group;
 - “unclaimed accrual” means an increase in a deferred tax liability reflected in the member’s underlying profits for an accounting period—
 - (a) that is not expected to be reversed before the end of the fifth accounting period after that period, and
 - (b) in respect of which the filing member has elected not to include in the total deferred tax adjustment amount for that period.

[Paragraph 2 of Schedule 15](#) (annual elections) applies to an election not to include an unclaimed accrual in the total deferred tax adjustment amount.

183 Qualifying foreign tax credits (substitute loss carry forward assets)

- (1) A qualifying foreign tax credit of a member of a multinational group is to be included in the member’s total deferred tax adjustment amount.
- (2) A foreign tax credit is qualifying if—
 - (a) the territory in which the member is located—
 - (i) requires that domestic losses are offset against relevant foreign income before foreign tax credits can be applied against tax on foreign income, and
 - (ii) permits foreign tax credits to be used to offset tax on domestic profits to the extent to which domestic losses have been offset against relevant foreign income in a previous taxable period,
 - (b) the member has used a domestic loss to offset (in whole or in part) relevant foreign income, and
 - (c) the foreign tax credit is in respect of tax imposed by another territory on that foreign income.

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- (3) The amount that may be included in the total deferred tax adjustment amount of the member is the lesser of—
 - (a) the foreign tax paid, and
 - (b) the amount of domestic loss used to offset the relevant foreign income, multiplied by the tax rate in respect of which the foreign tax was calculated.
- (4) [Section 182\(7\)](#) (adjustment where rate of tax exceeds 15%) applies to a qualifying tax credit included in the member’s total deferred tax adjustment amount as it applies to the member’s deferred tax expense.
- (5) In [this section](#) “relevant foreign income”, in relation to a member of a multinational group, means income of a controlled foreign company of the member on which the member is taxed as a result of a controlled foreign company tax regime.

184 Recaptured deferred tax liabilities

- (1) A member of a multinational group has a recaptured deferred tax liability if it has a deferred tax liability, other than an excluded liability, taken into account in its total deferred tax adjustment amount for an accounting period (“the initial period”) that is not reversed before the end of the fifth accounting period after the initial period.
- (2) Where a member of a multinational group has a recaptured deferred tax liability—
 - (a) the amount included in the total deferred tax adjustment amount for the initial period in relation to that recaptured deferred tax liability is to be excluded from its covered tax balance for that period, and
 - (b) the following are to be accordingly recalculated for the initial period—
 - (i) the effective tax rate for the member and the other members of that group located in the same territory, and
 - (ii) the top-up amounts that those members would have.
- (3) [Section 206](#) applies to recalculations under [subsection \(2\)](#).
- (4) For the purposes of [subsection \(1\)](#) “excluded liability” means a tax expense attributable to changes in associated deferred tax liabilities in respect of—
 - (a) cost recovery allowances on tangible assets,
 - (b) the cost of 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,
 - (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 property located in the same territory as the member that are reinvested in tangible property in the same territory, or
 - (i) additional amounts accrued as a result of accounting principle changes with respect to things falling within any of [paragraphs \(a\) to \(h\)](#).

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185 Inclusion of existing deferred tax assets and liabilities on entry into regime

- (1) [This section](#) applies to deferred tax assets and deferred tax liabilities of a member of a multinational group as at the beginning of the first accounting period for which Pillar Two rules apply to it that is reflected in its underlying profits accounts (and the adjustments set out in [this section](#) apply instead of those set out in [section 182\(2\)](#) to (7)).
- (2) Each such asset and liability is to be taken into account in determining the member's deferred tax expense—
 - (a) if the nominal tax rate in relation to the asset—
 - (i) is less than 15% and [subsection \(3\)](#) does not apply, at its nominal tax rate,
 - (ii) is 15% or more, as if the rate of tax to which the asset or liability related was 15%,
 - (b) in the case of a deferred tax asset, excluding the impact of a valuation adjustment or accounting recognition adjustment with respect to it.
- (3) But where—
 - (a) the nominal tax rate in relation to the asset is less than 15%, and
 - (b) the member can demonstrate that a deferred tax asset is attributable to the fact of the member having a loss which would have been taken account of in determining adjusted profits had those profits been determined under [this Part](#), that asset is to be taken into account in determining the member's deferred tax expense as if the rate of tax to which the asset related was 15%.
- (4) Where a deferred tax asset relates to a tax credit neither [subsection \(2\)\(a\)](#) nor (3) applies.
- (5) If the nominal tax rate that applies on the reversal of such a tax asset exceeds 15%, the amount of the reversal is to be treated as if it were the amount given by multiplying—
 - (a) the amount given by dividing—
 - (i) the amount of the deferred tax expense in the underlying profits accounts in respect of that deferred tax asset, by
 - (ii) the nominal tax rate that applied on the reversal, by
 - (b) 15%.
- (6) [Subsection \(7\)](#) applies to a deferred tax asset of a member of a qualifying multinational group that arises—
 - (a) as a result of a transaction made after 30 November 2021 and before the commencement of the first accounting period for which Pillar Two rules apply to it, and
 - (b) in relation to an item that either—
 - (i) is included in the member's taxable income but which would not be included in the member's adjusted profits (had those profits been determined under [this Part](#)), or
 - (ii) is not included in the member's taxable income but which would be included in the member's adjusted profits (had those profits been determined under [this Part](#)).
- (7) A deferred tax asset to which [this subsection](#) applies is to be ignored in determining the member's deferred tax expense.

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186 Deferred tax assets recorded at less than minimum rate

- (1) [This section](#) applies where the value of a deferred tax asset of a member of a multinational group—
 - (a) is calculated on the basis of a tax rate of less than 15%, and
 - (b) is attributable to an accounting period in which the member’s adjusted profits were a loss.
- (2) But [this section](#) only applies in relation to a deferred tax asset if the filing member has made an election for it to apply to the member.
- (3) [Subsection \(4\)](#) applies where the loss for the accounting period upon which the value of that asset was calculated does not exceed the loss established on determining the member’s adjusted profits for that period.
- (4) Where [this subsection](#) applies, the asset is to be treated as having the value it would have if the tax rate upon which it was calculated were 15%.
- (5) [Subsection \(6\)](#) applies where the loss for the accounting period upon which the value of that asset was calculated exceeds the loss established on determining the member’s adjusted profits for that period.
- (6) The relevant part of the asset is to be treated as having the value of a deferred tax asset generated on the loss established on determining the member’s adjusted profits on the basis of a tax rate of 15%.
- (7) The “relevant part” of the asset means so much of the asset derived from an amount of loss that does not exceed the loss established on determining the member’s adjusted profits.
- (8) [Paragraph 2 of Schedule 15](#) (annual elections) applies to an election under [this section](#).

187 Election for losses to be treated as special loss deferred tax assets

- (1) The filing member of a multinational group may elect that [this section](#) applies to all of the standard members of the group in a particular territory (“the relevant territory”).
- (2) An election under [subsection \(1\)](#)—
 - (a) must be made having effect for the first accounting period in which the Pillar Two rules apply to any standard member in the relevant territory,
 - (b) may not otherwise be made (and accordingly if the election is revoked it cannot be made again), and
 - (c) may not be made for a territory that has an eligible distribution tax system.
- (3) Where [this section](#) applies to the standard members of a multinational group for an accounting period—
 - (a) none of those members has a total deferred tax adjustment amount for that period, and
 - (b) if the result of Step 2 in [section 132\(1\)](#) in relation to those members is nil or less (those members between them have made a loss), the amount of that result (expressed as a positive number) multiplied by 15% is a special loss deferred tax asset of those members.
- (4) [Subsection \(5\)](#) applies where—

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- (a) [this section](#) applies in relation to the standard members of a multinational group in a territory for an accounting period,
 - (b) the result of Step 2 in [section 132\(1\)](#) in relation to those members is greater than nil, and
 - (c) those members have one or more special loss deferred tax assets.
- (5) Where [this subsection](#) applies, the standard members of the group that have made a profit in that accounting period are to use those assets in that period to increase their covered tax balances in accordance with [subsections \(6\)](#) and [\(7\)](#).
- (6) The amount of the special loss deferred tax assets that is to be used is the lesser of—
- (a) the amount of the assets, and
 - (b) the amount which would cause the effective tax result of the standard members of the group in that territory to be 15%.

Any remainder continues to be a special loss deferred tax asset of the relevant members of the group (and is available for use in subsequent accounting periods where [subsection \(5\)](#) applies).

- (7) Each of the standard members that made a profit in that period is to use the proportion of the amount to be used in accordance with [subsection \(6\)](#) that is equal to the proportion the adjusted profits of the member bears to the total adjusted profits of all of the standard members that made a profit.

188 Further provision about elections under [section 187](#)

- (1) [Paragraph 1](#) of [Schedule 15](#) (long term elections) applies to an election under [section 187](#).
- (2) But that paragraph has effect for the purposes of such an election as if—
- (a) sub-paragraph (4) were omitted (so that there is no restriction on revoking the election), and
 - (b) sub-paragraph (5) were omitted (as an election under [this section](#) cannot be made again once revoked).

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 131(2)(3) substituted for s. 131(2) by 2024 c. 3 Sch. 12 para. 5(3)
- s. 147A inserted by 2024 c. 3 Sch. 12 para. 8(1)
- s. 148A-148C inserted by 2024 c. 3 Sch. 12 para. 8(3)
- s. 150(6A) inserted by 2024 c. 3 Sch. 12 para. 50(5)(b)
- s. 151(1)(c) and word inserted by 2024 c. 3 Sch. 12 para. 9(2)(d)
- s. 151(1)(aa) inserted by 2024 c. 3 Sch. 12 para. 9(2)(c)
- s. 151(6A) inserted by 2024 c. 3 Sch. 12 para. 9(4)
- s. 151(8) inserted by 2024 c. 3 Sch. 12 para. 9(6)
- s. 159(1)(a)(b) substituted for words by 2024 c. 3 Sch. 12 para. 12(2)
- s. 159(2)(a)(b) substituted for words by 2024 c. 3 Sch. 12 para. 12(3)
- s. 159(3)(a)(b) substituted for words by 2024 c. 3 Sch. 12 para. 12(4)
- s. 159(4) inserted by 2024 c. 3 Sch. 12 para. 12(5)
- s. 165(2)(a)(i)(ii) s. 165(2)(a)(b) become s. 165(2)(a)(i)(ii) by 2024 c. 3 Sch. 12 para. 50(6)(b)
- s. 168(12) inserted by 2024 c. 3 Sch. 12 para. 14(8)
- s. 170(2A) inserted by 2024 c. 3 Sch. 12 para. 14(9)(b)
- s. 176A-176C and cross-heading inserted by 2024 c. 3 Sch. 12 para. 8(6)
- s. 176D-176F and cross-heading inserted by 2024 c. 3 Sch. 12 para. 16(1)
- s. 178(1A)(1B) inserted by 2024 c. 3 Sch. 12 para. 17(4)
- s. 178(5)(6) inserted by 2024 c. 3 Sch. 12 para. 17(6)
- s. 179(1A) inserted by 2024 c. 3 Sch. 12 para. 17(7)(a)
- s. 179(3A)(3B) inserted by 2024 c. 3 Sch. 12 para. 17(7)(b)
- s. 180(8)(b)(ii)(iia) substituted for s. 180(8)(b)(ii) by 2024 c. 3 Sch. 12 para. 19(4)
- s. 183A inserted by 2024 c. 3 Sch. 12 para. 20(5)
- s. 195(7A) inserted by 2024 c. 3 Sch. 12 para. 25(1)
- s. 196(1)(e) and words inserted by 2024 c. 3 Sch. 12 para. 22(1)(b)
- s. 196(1A) inserted by 2024 c. 3 Sch. 12 para. 21(1)(b)
- s. 197(4)(d)(e) inserted by 2024 c. 3 Sch. 12 para. 23(b)
- s. 197(5)(c) and word inserted by 2024 c. 3 Sch. 12 para. 22(2)(e)
- s. 197(6A) inserted by 2024 c. 3 Sch. 12 para. 21(2)
- s. 197(7A) inserted by 2024 c. 3 Sch. 12 para. 24
- s. 197A inserted by 2024 c. 3 Sch. 12 para. 25(2)
- s. 198A inserted by 2024 c. 3 Sch. 12 para. 26
- s. 211(1)-(1C) substituted for s. 211(1) by 2024 c. 3 Sch. 12 para. 27(a)
- s. 213(6A) inserted by 2024 c. 3 Sch. 12 para. 28
- s. 232(3A) inserted by 2024 c. 3 Sch. 12 para. 4(6)
- s. 232A inserted by 2024 c. 3 Sch. 12 para. 2(2)
- s. 236(2A) inserted by 2024 c. 3 Sch. 12 para. 31(3)
- s. 251A inserted by 2024 c. 3 Sch. 12 para. 29(1)
- s. 253(2)(b)(va) inserted by 2024 c. 3 Sch. 12 para. 56(10)(c)(iii)
- s. 255(2A) inserted by 2024 c. 3 Sch. 12 para. 34(1)(a)
- s. 255(4)-(6) inserted by 2024 c. 3 Sch. 12 para. 34(1)(c)
- s. 256A inserted by 2024 c. 3 Sch. 12 para. 35(1)
- s. 262(1A)-(1D) inserted by 2024 c. 3 Sch. 12 para. 36
- s. 267(3A) inserted by 2024 c. 3 Sch. 12 para. 42(1)(a)
- s. 267(3B)-(3D) inserted by 2024 c. 3 Sch. 12 para. 43(1)(b)
- s. 267A inserted by 2024 c. 3 Sch. 12 para. 42(2)
- s. 268A inserted by 2024 c. 3 Sch. 12 para. 2(4)

- s. 272(8)(da) inserted by 2024 c. 3 Sch. 12 para. 44(1)
- s. 272(9)-(11) inserted by 2024 c. 3 Sch. 12 para. 43(3)(b)
- s. 272A inserted by 2024 c. 3 Sch. 12 para. 42(3)
- s. 273(3)(ba) inserted by 2024 c. 3 Sch. 12 para. 44(2)
- s. 273(4)(pa) inserted by 2024 c. 3 Sch. 12 para. 57(3)(c)
- s. 273A273B inserted by 2024 c. 3 Sch. 12 para. 45(1)
- s. 273C inserted by 2024 c. 3 Sch. 12 para. 46
- s. 276(c)(iiia) inserted by 2024 c. 3 Sch. 12 para. 45(2)(b)
- s. 276(aa) inserted by 2024 c. 3 Sch. 12 para. 45(2)(a)
- s. 311A inserted by 2024 c. 3 s. 21(3)
- Sch. 14 para. 37A37B and cross-heading inserted by 2024 c. 3 Sch. 12 para. 2(6)(b)
- Sch. 14 para. 39(1)(aa) inserted by 2024 c. 3 Sch. 12 para. 2(6)(c)(ii)
- Sch. 14 para. 39(2)(aa) inserted by 2024 c. 3 Sch. 12 para. 2(6)(c)(iii)
- Sch. 14 para. 33A inserted by 2024 c. 3 Sch. 12 para. 37(3)
- Sch. 14 para. 6(1A) inserted by 2024 c. 3 Sch. 12 para. 58(1)(a)
- Sch. 14 para. 34(2A) inserted by 2024 c. 3 Sch. 12 para. 58(1)(b)(ii)
- Sch. 14 para. 3(3)-(5) substituted for Sch. 14 para. 3(3) by 2024 c. 3 Sch. 12 para. 2(6)(a)(iii)
- Sch. 15 para. 2(1)(za) inserted by 2024 c. 3 Sch. 12 para. 16(2)
- Sch. 15 para. 2(1)(k) inserted by 2024 c. 3 Sch. 12 para. 40(2)
- Sch. 15 para. 2(1)(l) inserted by 2024 c. 3 Sch. 12 para. 41(4)
- Sch. 15 para. 1(1)(aa) inserted by 2024 c. 3 Sch. 12 para. 58(2)(a)
- Sch. 15 para. 2(1)(ea) inserted by 2024 c. 3 Sch. 12 para. 58(2)(b)(i)
- Sch. 15 para. 2(1)(fa) inserted by 2024 c. 3 Sch. 12 para. 58(2)(b)(ii)
- Sch. 16 para. 10(1) Sch. 16 para. 10 renumbered as Sch. 16 para. 10(1) by 2024 c. 3 Sch. 12 para. 58(3)(a)
- Sch. 16 para. 2(11)(b) inserted by 2024 c. 3 Sch. 12 para. 34(2)(d)(ii)
- Sch. 16 para. 2(3A) inserted by 2024 c. 3 Sch. 12 para. 38(3)
- Sch. 16 para. 2(12)(13) inserted by 2024 c. 3 Sch. 12 para. 38(8)
- Sch. 16 para. 4(3)(d) and word inserted by 2024 c. 3 Sch. 12 para. 39(3)(a)(ii)
- Sch. 16 Pt. 3 inserted by 2024 c. 3 Sch. 12 para. 40(1)
- Sch. 16 para. 10(2)(3) inserted by 2024 c. 3 Sch. 12 para. 58(3)(d)
- Sch. 16 para. 2(1)(b)(ba) substituted for Sch. 16 para. 2(1)(b) by 2024 c. 3 Sch. 12 para. 34(2)(a)
- Sch. 16 para. 3(1)(1A) substituted for Sch. 16 para. 3(1) by 2024 c. 3 Sch. 12 para. 39(2)
- Sch. 16 para. 3(7)-(9) substituted for Sch. 16 para. 3(7)(8) by 2024 c. 3 Sch. 12 para. 29(2)
- Sch. 16 para. 10(1)(a) word substituted by 2024 c. 3 Sch. 12 para. 58(3)(c)
- Sch. 16 para. 10(1) words inserted by 2024 c. 3 Sch. 12 para. 58(3)(b)(ii)
- Sch. 16 para. 10(1) words substituted by 2024 c. 3 Sch. 12 para. 58(3)(b)(i)
- Sch. 16A inserted by 2024 c. 3 Sch. 12 para. 41(1)