



Finance (No. 2) Act 2023

2023 CHAPTER 30

PART 3

MULTINATIONAL TOP-UP TAX

CHAPTER 4

CALCULATION OF ADJUSTED PROFITS OF MEMBERS OF A MULTINATIONAL GROUP

Adjusted profits of a member of a multinational group

133 Adjusted profits of a member of a multinational group

- (1) For the purposes of [this Part](#), references to the adjusted profits of a member of a multinational group are to the underlying profits of that member adjusted in accordance with this Chapter and (to the extent applicable) [Chapter 8](#).
- (2) [Sections 134 to 137](#) set out how to determine the underlying profits.
- (3) [Sections 138 to 158](#) set out various adjustments that may need to be made to those profits.
- (4) [Sections 159 and 160](#) set out adjustments to be made in relation to members that are permanent establishments.
- (5) [Sections 161 to 164](#) make provision for elections for certain matters to be calculated in an alternative manner.
- (6) [Sections 167 to 171](#) set out adjustments in relation to transparent and hybrid entities and entities subject to a “qualifying dividend regime”.
- (7) Other provisions of [this Part](#) may require further adjustments of underlying profits, including provision in—
 - (a) [Chapter 9](#) (investment entities), and

Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2023, Cross Heading: Adjusted profits of a member of a multinational group. (See end of Document for details)

- (b) [Schedule 16](#) (transitional provision).

134 Underlying profits as determined for statements of ultimate parent

- (1) The normal rule is that the underlying profits of a member of a multinational group, other than a member that is a permanent establishment, are the member's profits as they would be determined for that member in preparing consolidated financial statements for the ultimate parent.
- (2) But those profits may instead be determined on the basis of an alternative accounting standard, and information in the separate financial accounts of the member, if all of the conditions in [subsection \(3\)](#) are met.
- (3) Those conditions are that—
 - (a) it is not reasonably practicable to determine those profits on the basis of the accounting standard used in the preparation of the consolidated financial statements of the ultimate parent,
 - (b) the alternative accounting standard is an acceptable accounting standard or an authorised accounting standard,
 - (c) the alternative accounting standard is that used for the financial accounts of the member, and
 - (d) the information in those accounts is reliable.
- (4) Where an alternative accounting standard is used and an amount relevant to the underlying profits of a member of a multinational group is recorded in a currency other than the currency used for the consolidated financial statements of the ultimate parent, that amount is to be converted to that currency for the purposes of [this Part](#).
- (5) [Subsection \(6\)](#) applies where the application of a particular policy of the alternative accounting standard in the determination of the profits of the member results in a significant accounting standard difference that would not arise if the accounting standard of the ultimate parent had been applied.
- (6) The underlying profits are to be adjusted to eliminate that difference (as if the accounting standard of the ultimate parent had been applied).
- (7) Information in the financial accounts of the member is “reliable” if an auditor applying the generally accepted auditing standards of a relevant territory would reasonably conclude the member has in place such processes relating to their preparation as are likely to make the information in the financial accounts a fair and accurate description of the income, expenses, assets and liabilities of that member.
- (8) For the purposes of [subsection \(7\)](#), the following are relevant territories—
 - (a) the territory in which the member is located;
 - (b) the territory in which the ultimate parent is located;
 - (c) if the member is a flow-through entity (see [section 168\(2\)](#)) that is a stateless entity, the territory in which it was created.
- (9) For the purposes of this section, reference to a “significant accounting standard difference” is to a difference of more than 1 million euros between the treatment of an amount in the financial accounts of a member of a multinational group and the consolidated financial statements of the ultimate parent that is not eliminated over time.

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135 Underlying profits of permanent establishments

- (1) The underlying profits of a member of a multinational group that is a permanent establishment are the member's profits—
 - (a) if the member has separate financial accounts, as reflected in those accounts, and
 - (b) if not, as reflected in the underlying profits accounts of the main entity, attributed between the permanent establishment and the main entity in accordance with [section 159](#).
- (2) If the member is a permanent establishment falling within [paragraph \(d\)](#) of [section 232\(2\)](#) (income of permanent establishment exempt from tax in territory of main entity) the member's underlying profits are determined only by reference to its relevant income and relevant expenses.
- (3) For the purposes of [subsection \(2\)](#)—
 - (a) the relevant income of the member is the income of the member that is exempted from tax in the territory where the main entity is located that is attributable to operations carried out outside the territory the main entity is located in, and
 - (b) the relevant expenses of the member are such of its expenses as are attributable to those operations and are not deducted for tax purposes in the territory of the main entity.
- (4) Profits (as determined in accordance with this Part) of a permanent establishment are not to be taken into account in determining the adjusted profits of the main entity, and vice versa.
- (5) But [subsection \(4\)](#)—
 - (a) does not apply to profits of a permanent establishment that are excluded from its profits as a result of an adjustment under [section 159](#), and
 - (b) is subject to [section 160](#) (attribution of losses between permanent establishment and main entity).

136 Underlying profits accounts

In this Part, reference to the “underlying profits accounts” of a member of a multinational group is to the statements or accounts (which may in some circumstances be hypothetical) that are the basis of the determination of the member's underlying profits for the purposes of this Part.

137 No amounts outside of profit and loss account to be included

Except as required by any other provision of this Part, amounts that are recognised outside the profit and loss account in the underlying profits accounts of a member of a multinational group are not to be reflected in the underlying profits of that member.

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