Finance (No. 2) Act 2023

2023 CHAPTER 30

PART 3 U.K.

MULTINATIONAL TOP-UP TAX

CHAPTER 5 U.K.

COVERED TAX BALANCE

Dealing with deferred tax assets etc

182 Total deferred tax adjustment amount U.K.

(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

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) U.K.

(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.

(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 [F1in the territory in which the member is located].

(4) Section 182(7) (adjustment where rate of tax exceeds 15%) applies to a qualifying [F2foreign] 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[F3and in section 183A] "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.

Textual Amendments

F1 Words in s. 183(3)(b) substituted (22.2.2024 with effect for accounting periods beginning on or after 31.12.2023 in accordance with Sch. 12 para. 1(2) of the amending Act) by Finance Act 2024 (c. 3), **Sch. 12 para. 20(2)**

F2 Word in s. 183(4) inserted (22.2.2024 with effect for accounting periods beginning on or after 31.12.2023 in accordance with Sch. 12 para. 1(2) of the amending Act) by Finance Act 2024 (c. 3), **Sch. 12 para. 20(3)**

F3 Words in s. 183(5) inserted (22.2.2024 with effect for accounting periods beginning on or after 31.12.2023 in accordance with Sch. 12 para. 1(2) of the amending Act) by Finance Act 2024 (c. 3), **Sch. 12 para. 20(4)**

[F4183A Alternative to section 183 where carry forward of credits not permitted U.K.

(1) A special foreign tax asset of a member of a multinational group is to be used to increase its covered tax balance in accordance with this section.

(2) Subsection (3) applies where—

(a) the territory in which a member of a multinational group is located requires that domestic losses are offset against relevant foreign income before foreign tax credits can be applied against tax on foreign income,

(b) the territory limits the extent to which foreign tax credits can be applied against tax in a taxable period,

(c) the territory allows foreign tax credits to be used to a greater extent where a domestic loss has been used to offset (in whole or in part) relevant foreign income in a prior period, and

(d) the member has used a domestic loss to offset (in whole or in part) relevant foreign income.

(3) Where this subsection applies, the member has a special foreign tax asset arising in the accounting period in which the loss was used.

(4) The amount of that special foreign tax asset is the amount of the domestic loss used to offset relevant foreign income multiplied by the lesser of—

(a) the nominal rate of tax in the member's territory for the taxable period in which it was used, and

(b) 15%.

(5) Where a member of a multinational group has a special foreign tax asset that arose in any previous accounting period, the member is to use that amount to increase its covered tax balance.

(6) The amount of the special foreign tax asset that is to be used in an accounting period is the lesser of—

(a) the amount of the asset, and

(b) so much of the amount of foreign tax credits credited against tax in the taxable period corresponding to that accounting period as is capable of being credited only as a result of the prior use of the domestic loss.

Any remainder continues to be a special foreign tax asset (and is available for use in subsequent account periods where subsection (5) applies).]

Textual Amendments

F4 S. 183A inserted (22.2.2024 with effect for accounting periods beginning on or after 31.12.2023 in accordance with Sch. 12 para. 1(2) of the amending Act) by Finance Act 2024 (c. 3), **Sch. 12 para. 20(5)**

184 Recaptured deferred tax liabilities U.K.

(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).

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

(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 [[F5]or liability]—

(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.

Textual Amendments

F5 Words in s. 185(2)(a) inserted (22.2.2024 with effect for accounting periods beginning on or after 31.12.2023 in accordance with Sch. 12 para. 1(2) of the amending Act) by Finance Act 2024 (c. 3), **Sch. 12 para. 51(1)**

186 Deferred tax assets recorded at less than minimum rate U.K.

(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.

[F6(2) But this section only applies in relation to a deferred tax asset of the member falling within subsection (1) if the filing member accounts for all such assets of the member in accordance with this section in an information return submitted to HMRC or a qualifying authority (see paragraph 10(5) of Schedule 14).]

(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.

F7(8) . . . .

Textual Amendments

F6 S. 186(2) substituted (22.2.2024 with effect for accounting periods beginning on or after 31.12.2023 in accordance with Sch. 12 para. 1(2) of the amending Act) by Finance Act 2024 (c. 3), **Sch. 12 para. 51(2)(a)**

F7 S. 186(8) omitted (22.2.2024 with effect for accounting periods beginning on or after 31.12.2023 in accordance with Sch. 12 para. 1(2) of the amending Act) by virtue of Finance Act 2024 (c. 3), **Sch. 12 para. 51(2)(b)**

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

(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—

(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

[F8(b) the result of Step 2 in section 132(1) multiplied by 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 **[**F9in which the election has effect**]**).

(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.

Textual Amendments

F8 S. 187(6)(b) substituted (22.2.2024 with effect for accounting periods beginning on or after 31.12.2023 in accordance with Sch. 12 para. 1(2) of the amending Act) by Finance Act 2024 (c. 3), **Sch. 12 para. 51(3)(a)**

F9 Words in s. 187(6) substituted (22.2.2024 with effect for accounting periods beginning on or after 31.12.2023 in accordance with Sch. 12 para. 1(2) of the amending Act) by Finance Act 2024 (c. 3), **Sch. 12 para. 51(3)(b)**

188 Further provision about elections under section 187 U.K.

(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).

Changes to legislation:
There are currently no known outstanding effects for the Finance (No. 2) Act 2023, Cross Heading: Dealing with deferred tax assets etc.