Finance (No. 2) Act 2023

2023 CHAPTER 30

PART 3

MULTINATIONAL TOP-UP TAX

CHAPTER 6

CALCULATION OF TOP-UP AMOUNTS

193 Calculation of top-up amounts

Take the following steps to determine if a standard member of a multinational group ("the member in question") has a top-up amount for an accounting period and, if it does, the extent of it—

Step 1

Determine, under section 194, the total top-up amount for the accounting period for the territory the member in question is located in.

Step 2

If the total top-up amount for that territory is nil, the member in question does not have a top-up amount. Otherwise, proceed to Step 3.

Step 3

Determine the adjusted profits of the member in question for the period (in accordance with Chapter 4).

Step 4

If the member has not made a profit for the period (as determined by reference to its adjusted profits), the member in question does not have a top-up amount. Otherwise, proceed to Step 5.

Step 5

If there are no other standard members of the multinational group located in the same territory as the member in question, the member's top-up amount is equal to the total top-up amount for that territory for the period. Otherwise, proceed to Step 6.

Step 6

Determine (in accordance with Chapter 4) the adjusted profits for the period of all of the other standard members of the group that are located in same territory as the member in question.

Step 7

Add together the adjusted profits of all standard members of the group in that territory that have profits (including those of the member in question).

Step 8

Divide the member in question's adjusted profits by the result of Step 7.

Step 9

The member's top-up amount is the result of multiplying the total top-up amount for the territory by the result of Step 8.

194 Total top-up amount for a territory

(1) Take the following steps to determine the total top-up amount for an accounting period for a territory—

Step 1

Subtract the effective tax rate of the standard members of the group in that territory for that period (as determined in accordance with section 132) from 15%.

Step 2

If the result of Step 1 is nil or less, the total top-up amount for that territory is nil. Otherwise, proceed to Step 3.

Step 3

Subtract the sum of the losses of those members of the group that made a loss for the period (as determined by reference to their adjusted profits) from the sum of the profits of those members of the group that made a profit in that period (as determined by reference to their adjusted profits).

Step 4

Subtract the substance based income exclusion for that period for that territory (if any) from the result of Step 3.

Step 5

If the result of Step 4 is nil or less, the total top-up amount for that territory is nil. Otherwise, proceed to Step 6.

Step 6

Multiply the result of Step 1 (which will be a percentage) by the result of Step 4.

(2) But where those members have a QDT credit for that territory for the accounting period, the total top-up amount is to be reduced in accordance with subsections (4) to (7).

(3) For the purposes of this Part, standard members of a multinational group in a territory have a "QDT credit" for a territory for an accounting period if qualifying domestic top-up tax (see section 256) is accrued by one or more of those members in that territory in that period.

(4) Where—

(a) the standard members do not have a collective additional amount under section 206 for the period, and

(b) the result of Step 6 in subsection (1) is equal to or greater than the sum of amounts of qualifying domestic top-up tax accrued by those members in that period,

the total top-up amount is to be reduced by the sum of those amounts.

(5) Where—

(a) the standard members do not have a collective additional amount under section 206 for the period, and

(b) the result of Step 6 in subsection (1) is less than the sum of amounts of qualifying domestic top-up tax accrued by those members in the period,

the total top-up amount is to be reduced to nil.

(6) Where—

(a) the standard members have a collective additional amount under section 206 for the period, and

(b) the sum of the result of Step 6 in subsection (1) and that collective additional amount is less than the sum of amounts of qualifying domestic top-up tax accrued by those members in the period,

the total top-up amount is to be reduced to nil.

(7) Where—

(a) the standard members have a collective additional amount under section 206, and

(b) the sum of the result of Step 6 in subsection (1) and that collective additional amount is equal to or greater than the sum of amounts of qualifying domestic top-up tax accrued by those members in the period,

the total top-up amount is to be reduced by the amount given by multiplying the sum of those amounts of qualifying domestic top-up tax by the amount given by dividing the result of Step 6 in subsection (1) by the sum of the result of that step and that collective additional amount.

195 Substance based income exclusion

(1) The substance based income exclusion for a period for a territory is calculated by taking the following steps—

Step 1

Determine the payroll carve-out amount for that period for each standard member of the group in that territory.

Step 2

Determine the tangible asset carve-out amount for that period for each standard member of the group in that territory.

Step 3

Add together the amounts determined at steps 1 and 2.

(2) But if the filing member for the group elects not to calculate the substance based income exclusion for the period, the exclusion is nil.

(3) Paragraph 2 of Schedule 15 (annual elections) applies to an election under subsection (2).

(4) The payroll carve-out amount for a member is 5% of the eligible payroll costs incurred by the member in the period.

(5) The tangible asset carve-out amount for a member is 5% of the eligible tangible asset amount of the member in the period.

(6) Section 196 sets out how to calculate the eligible payroll costs of a member.

(7) Section 197 sets out how to calculate the eligible tangible asset amount of a member.

(8) Section 198 sets out special rules on calculating the eligible payroll costs and eligible tangible asset amount of a member that is a permanent establishment or a flow-through entity.

196 Eligible payroll costs

(1) The eligible payroll costs of a member for a period are all costs incurred by the member in the period in connection with the employment of an employee of that member, provided that—
- (a) the employee is an individual,
- (b) the costs are payable primarily in respect of work done in the course of the ordinary operating activities of the member or the group,
- (c) those activities are substantially performed in the territory in which the member is located, and
- (d) the costs are not excluded costs.

(2) The costs may include in particular—
- (a) salaries, wages and other expenditures that provide a direct and personal benefit to the employee,
- (b) payroll and other employment taxes payable by the member, and
- (c) social security contributions payable by the member.

(3) "Employee" means—
- (a) a person regarded as an employee under the law of the territory in which the member is located, and
- (b) any other person while they are acting exclusively under the direction or control of the member or the group (including on a part-time basis),

and "employment" is to be construed accordingly.

(4) "Excluded costs" are the following—
- (a) costs taken into account in determining the underlying profits of a permanent establishment of the member;
- (b) costs taken into account in a carrying value used to calculate the eligible tangible asset amount (see section 197);
- (c) costs that are core international shipping costs (see section 157);
- (d) costs that are ancillary international shipping costs (see section 158), subject to subsections (5) and (6).

(5) Where the member has an ancillary international shipping profit cap adjustment of more than nil for the period, only the eligible proportion of costs that are ancillary international shipping costs are excluded costs.

(6) The eligible proportion is the proportion given by dividing—

(a) the member's ancillary international shipping profits for the period, by

(b) the amount given by subtracting the member's ancillary international shipping costs from the member's ancillary international shipping revenue for the period.

197 Eligible tangible asset amount

(1) The eligible tangible asset amount of a member for a period is the average of—

(a) the sum of the carrying values of each eligible tangible asset held by the member, as those values are recorded at the start of the period;

(b) the sum of the carrying values of each eligible tangible asset held by the member, as those values are recorded at the end of the period.

(2) Where a value is not recorded at a time referred to in subsection (1), the value is to be calculated as if it were recorded at that time.

(3) "Recorded" means recorded for the purposes of preparing the consolidated financial statements of the ultimate parent.

(4) For the purposes of this section "carrying value" means the carrying value of the asset including—

(a) accumulated depreciation, amortisation or depletion,

(b) amounts attributable to the capitalisation of eligible payroll costs and costs that would be eligible payroll costs were they not excluded costs under section 196(4), and

(c) amounts attributable to any purchase accounting adjustment relating to the asset,

but not including any positive difference between the value of an asset recorded from time to time and the value of an asset when it was acquired by the member, where that difference is solely attributable to a revaluation.

(5) An asset is an eligible tangible asset if it is—

(a) of a type referred to in subsection (6), and

(b) not an excluded asset.

(6) The types of asset are—

(a) property, plant or equipment located in the same territory as the member;

(b) natural resources located in that territory;

(c) a right to use a tangible asset located in that territory under a lease;

(d) a license or similar right to use a tangible asset located in that territory, provided that—

(i) the right is granted by a government of that territory, and

(ii) it is expected in granting the right that the member will, in using that right, incur significant expenditure in enhancing the value of tangible assets in that territory (whether or not those assets are subject to the right).

(7) An asset is an excluded asset if it is of one of the following types—

(a) property (including land or buildings) that is held for sale, lease or investment (whether such sale, lease or investment is to be carried out in the period or not);

(b) an asset used in the course of core international shipping activity (see section 157);

(c) an asset used in the course of ancillary international shipping activity (see section 158), subject to subsections (8) and (9).

(8) Where the member has an ancillary international shipping profit cap adjustment of more than nil for the period, only the eligible proportion of an asset used in the course of ancillary international shipping activity is to be treated as an excluded asset.

(9) The eligible proportion is the proportion given by dividing—

(a) the member's ancillary international shipping profits for the period, by

(b) the amount given by subtracting the member's ancillary international shipping costs from the member's ancillary international shipping revenue for the period.

198 Eligible payroll costs and eligible tangible asset amount: permanent establishments and flow-through entities

(1) In calculating the eligible payroll costs and eligible tangible asset amount of a permanent establishment, the only amounts to be taken into account are amounts that would be taken into account in determining the adjusted profits of the establishment.

(2) But if, following the application of subsection (1), the value of an eligible tangible asset used in the business of the establishment has not been taken into account in calculating the eligible tangible asset amount of the establishment, the value of that asset is to be taken into account as well.

(3) In calculating the eligible payroll costs and eligible tangible asset amount of a flow-through entity, the only amounts to be taken into account are amounts that would be taken into account in determining the adjusted profits of the entity.

199 Election to treat total top-up amount as nil

(1) The filing member of a multinational group may elect that the total top-up amount for an accounting period ("the current period") for a territory is to be treated as nil.

(2) An election under this section may be made only if—

(a) the average revenue for an accounting period of the standard members of the group in that territory is less than 10 million euros, and

(b) the average of the adjusted profits of those members for an accounting period is less than 1 million euros.

(3) The average revenue for an accounting period of the standard members of a multinational group in a territory is determined by adding together all of the revenue of those members in each qualifying accounting period, and dividing the result by the number of qualifying accounting periods.

(4) The average of the sum of the adjusted profits of the standard members of a multinational group in a territory is determined by taking the following steps—

Step 1

Determine the sum of the adjusted profits of each of those members for each qualifying accounting period.

Step 2

Add together the results of Step 1.

Step 3

Divide the result of Step 2 by the number of qualifying accounting periods.

(5) The current period is a qualifying accounting period.

(6) Each of the previous two accounting periods is a qualifying period unless—

(a) none of the standard members of the group in the territory had revenue in that period, and

(b) none of the standard members of the group in the territory made a loss in that period.

(7) Where a qualifying period is longer or shorter than a year, the adjusted profits and revenue of the members are to be treated for the purposes of this section as the amounts given by multiplying the profits and revenue by the amount given by dividing 365 by the number of days in the period.

(8) An election under this section may not be made in respect of the nominal territory of a stateless member of a multinational group.

(9) Paragraph 2 of Schedule 15 (annual elections) applies to an election under this section.