



# Finance (No. 2) Act 2023

## 2023 CHAPTER 30

### PART 3

#### MULTINATIONAL TOP-UP TAX

### CHAPTER 8

#### FURTHER ADJUSTMENTS

#### *Restructuring of groups*

#### **208 Member joining or leaving multinational group**

- (1) **Subsection (2)** applies to an entity where, in an accounting period (“the transfer period”) of a multinational group, the entity—
  - (a) becomes a member of that multinational group (including, where it was previously a member of a different group, as a result of it becoming the ultimate parent of a new group), or
  - (b) ceases to be a member of that multinational group.
- (2) The entity is to be treated as a member of that group for the whole of the transfer period (whether or not that results in it being treated as a member of two or more groups) if any portion of its assets, liabilities, income, expenses or cash flows are included on a line-by-line basis in the consolidated financial statements of the ultimate parent for that period.
- (3) But in applying **this Part** in relation to the entity as a member of the multinational group it has become or ceased to be a member of, only its profits, covered taxes and (where applicable) eligible payroll costs that are taken into account in the consolidated financial statements of the ultimate parent are to be taken account of.
- (4) Any purchase accounting consolidation adjustments arising from the transfer of the ownership interests resulting in an entity becoming a member of a multinational group

---

*Status: This is the original version (as it was originally enacted).*

---

are to be ignored in determining the adjusted profits and covered tax balance of that entity as a member of that group in the transfer period and in subsequent accounting periods.

- (5) When (where applicable) determining the eligible tangible asset amount of an entity that becomes a member of a multinational group as a member of that group in the transfer period, adjust that amount by multiplying it by the amount given by dividing the number of days in the post-transfer period by the number of days in the transfer period.
- (6) For the purposes of [subsection \(5\)](#) the “post-transfer period” means the period beginning with the day on which the member became or (as the case may be) ceased to be a member of a multinational group and ending with the last day of the transfer period.
- (7) When (where applicable) determining the eligible tangible asset amount of an entity that ceased to be a member of a multinational group as a member of that group in the transfer period, adjust that amount by multiplying it by the amount given by dividing the number of days in the pre-transfer period by the number of days in the transfer period.
- (8) For the purposes of [subsection \(7\)](#) the “pre-transfer period” means the period beginning with the commencement of the transfer period and ending with the day before the day on which the ownership interests were transferred.
- (9) [Subsections \(10\) and \(11\)](#) apply where an entity that becomes a member of a multinational group (“group A”) as a result of a transfer of direct or indirect ownership interests in it was a member of another multinational group immediately before the transfer (“group B”).
- (10) The amount of deferred tax assets and tax liabilities (which for these purposes does not include a special loss deferred tax asset) of the entity that existed immediately before the transfer to be taken into account in relation to that entity as a member of group A is the amount that would have been taken into account had group A had a controlling interest in the entity at the time the assets and liabilities arose.
- (11) Where a deferred tax liability of the entity was included in the total deferred tax adjustment amount for that member in group B—
  - (a) that deferred tax liability is to be deemed to have reversed without the need to reflect the reversal in any calculation made for the purposes of [this Part](#) in relation to group B, and
  - (b) the deferred tax liability is to be treated as arising in the transfer period for the purpose of determining the total deferred tax adjustment amount for the member in group A,
  - (c) any resulting reduction in the covered tax balance of the entity as a member of group A (see [sections 182 and 184](#)) is only to have effect in the accounting period in which the deferred tax liability is recaptured.

## **209 When transfer of controlling interest treated as acquisition of assets and liabilities**

- (1) [This section](#) applies to the acquisition or disposal of a controlling interest in a member of a multinational group where—

---

*Status: This is the original version (as it was originally enacted).*

---

- (a) the acquisition or disposal of that controlling interest is treated in the same, or a similar manner, as a transfer of assets and liabilities of the member (rather than ownership interests in it) by—
    - (i) in the case of the acquisition or disposal of a controlling interest in an entity which is tax transparent under the law of the territory in which it was created, the territory in which the assets are located, or
    - (ii) in any other case, the territory in which the member is located, and
  - (b) that territory imposes a covered tax on the seller based on the difference between the tax basis and either the consideration paid in exchange for the controlling interest or the fair value of the assets and liabilities.
- (2) Where [this section](#) applies to an acquisition or disposal of a controlling interest in a member of a multinational group, that acquisition or disposal is to be treated as an acquisition or disposal of the assets and liabilities of the member (and accordingly, [section 208](#) will not apply in relation to that transfer).
- (3) Any covered tax arising in relation to the disposal of a controlling interest in a member of a multinational group described in subsection (1)(b) is to be included in the covered tax balance of that member.

## **210 Transfer of assets or liabilities from a member of a multinational group**

- (1) Where a member of a multinational group transfers assets or liabilities to another entity in the course of a qualifying reorganisation (see [section 212](#)), any gain or loss on the transfer is to be excluded from the adjusted profits of the member, except to the extent it is a non-qualifying gain or loss.
- (2) In [this section](#), and in [sections 211](#) and [212](#), “non-qualifying gain or loss” means a gain or loss of the transferee on the transfer of assets or liabilities, and is the lesser of—
- (a) the amount of that gain or loss that is subject to tax in the territory the transferee is located in, and
  - (b) the amount of that gain or loss reflected in the underlying profits accounts of the transferee.

## **211 Transfer of assets or liabilities to a member of a multinational group**

- (1) Where there has been a transfer of assets or liabilities to a member of a multinational group—
- (a) if the transfer forms part of a qualifying reorganisation (see [section 212](#)), the value of the assets or liabilities is, for the purpose of determining the adjusted profits of the member, the carrying value of the assets or liabilities in the hands of the transferor immediately before the transfer, or
  - (b) otherwise, the value of the assets or liabilities, for that purpose, is the carrying value of the assets or liabilities immediately after the transfer as determined under the accounting standard used in determining the underlying profits of the member for the purposes of [this Part](#) and subject to the adjustments to those profits made in accordance with [Chapter 4](#).
- (2) But [subsection \(3\)](#) applies where—
- (a) [subsection \(1\)\(b\)](#) applies to the transfer,
  - (b) the transfer is from another member of the group, and

---

*Status: This is the original version (as it was originally enacted).*

---

- (c) neither a gain nor a loss is recorded in the underlying profits accounts of the transferor in respect of that transfer.
- (3) Where [this subsection](#) applies the adjusted profits of both the transferor and the transferee are to be adjusted to secure that the transfer is reflected on an arm's length basis (see [section 149\(7\)](#)).
- (4) Where a member of a multinational group transfers assets or liabilities to another entity in the course of a qualifying reorganisation, and recognises a non-qualifying gain or loss as a result of that transfer—
  - (a) that gain or loss, to the extent it is non-qualifying, is to be included in the adjusted profits of the member, and
  - (b) where the other entity is a member of a multinational group, the value of the assets or liabilities is, for the purposes of determining the adjusted profits of that member, to be adjusted to exclude the non-qualifying gain or loss in a manner consistent with the tax treatment of the assets or liabilities.

## 212 Meaning of “qualifying reorganisation”

- (1) For the purposes of [sections 210](#) and [211](#), a transfer of assets or liabilities is made in the course of a qualifying reorganisation if the transfer takes place as a result of a merger, de-merger, liquidation or a change in form of an entity, or a similar event, and conditions A, B and C are met.
- (2) Condition A is that—
  - (a) any consideration for the transfer is, or the transfer involves, wholly or mostly equity interests issued by the transferee, or by a person connected with the transferee,
  - (b) in the case of a liquidation, any consideration for the transfer is, or the transfer involves, wholly or mostly, the cancellation of equity interests in the entity subject to the liquidation, or
  - (c) the reorganisation does not result in a change in the ownership of an entity.
- (3) Condition B is that any gain or loss of the transferor that arises from the transfer is not, in whole or in part, subject to tax.
- (4) Condition C is that, under the law of the territory the transferee is located in, the value of the assets or liabilities for the purpose of determining the transferee's taxable income is the tax basis value of the assets or liabilities in the hands of the transferor, adjusted for any non-qualifying gain or loss.
- (5) Sections 719 to 724A of CTA 2010 (change in company ownership) have effect for the purposes of determining whether there has been a change in ownership of an entity as if—
  - (a) references in those sections to “company” were to “entity”;
  - (b) references in those sections to ordinary share capital or shares (however expressed), in relation to a company, were to ownership interests in an entity;
  - (c) in section 721—
    - (i) in subsection (1), “for the purposes of Chapters 2 to 5A” were omitted,
    - (ii) in subsection (3), for the words from “major change” to the end there were substituted “a change in the ownership of the company”,
    - (iii) in subsection (4), the words from “for” to “5A” were omitted,

---

*Status: This is the original version (as it was originally enacted).*

---

- (iv) in that subsection, paragraph (a) were omitted, and
- (v) in that paragraph (a) of that subsection, for “share capital” there were substituted “ownership interests”;
- (d) section 722, and references to it in those sections, were omitted;
- (e) in section 724—
  - (i) in subsection (2) for “conditions A, B and C are met” there were substituted “the parent entity has at least 75% of the ownership interests in the subsidiary entity”, and
  - (ii) subsections (3) to (6) were omitted;
- (f) in section 724A—
  - (i) in subsection (1), in the words before paragraph (a), “for the purposes of Chapters 2 to 6” were omitted, and
  - (ii) in that subsection, paragraphs (b) and (c) were omitted, and
  - (iii) subsection (8) were omitted.