



Finance (No. 2) Act 2023

2023 CHAPTER 30

PART 4

DOMESTIC TOP-UP TAX

CHAPTER 1

INTRODUCTION

265 Introduction to domestic top-up tax

- (1) The purpose of [this Part](#) is to make provision for a qualified domestic minimum top-up tax within the meaning of the Pillar Two rules.
- (2) For that purpose, [this Part](#) makes provision for a tax payable in respect of qualifying entities (that will be located in the United Kingdom) whose rate of tax (as determined in accordance with [this Part](#)) is less than 15%.
- (3) The tax is to be known as “domestic top-up tax”.
- (4) [This Part](#) applies (with modifications) many of the provisions of [Part 3](#) (multinational top-up tax) for the purposes of—
 - (a) determining liability to domestic top-up tax, and
 - (b) administering domestic top-up tax.
- (5) Except where the contrary appears, expressions used in [this Part](#) and in [Part 3](#) (multinational top-up tax) have the same meaning in [this Part](#) as they have in [Part 3](#).

266 Qualifying entities

- (1) An entity is qualifying for an accounting period if it is not a DTT excluded entity or an investment entity, it meets condition A for that period and—
 - (a) if it is not a member of a group, it meets condition B for that period, or
 - (b) if it is a member of a group, it meets condition C for that period.

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- (2) Condition A is met by an entity for an accounting period if it is located in the United Kingdom in that period (see [section 239](#) in [Part 3](#)).
- (3) Condition B is met by an entity for an accounting period if the entity has revenue that exceeds the threshold set out in [subsection \(6\)](#) in at least 2 previous accounting periods of the previous 4 accounting periods.
- (4) For the purposes of condition B, the revenue of an entity that is not a member of a group is to be determined by reference to its qualifying financial statements.
- (5) Condition C is met by a member of a group for an accounting period if the members of the group have revenue that exceeds the threshold set out in [subsection \(6\)](#) in at least 2 previous accounting periods of the previous 4 accounting periods.
- (6) The threshold for an accounting period is the amount given by multiplying 750 million euros by the amount given by dividing the number of days in the accounting period by 365.
- (7) For the purposes of condition C, the revenue of the members of a group for a period is to be determined by reference to the consolidated financial statements of the ultimate parent for that period (see [sections 126\(2\)](#) and [249](#) in [Part 3](#)).
- (8) [Sections 130](#) and [131](#) in [Part 3](#) (change in composition of multinational groups) apply for the purpose of Condition C as if—
 - (a) references to “multinational group” were to “group”,
 - (b) in [section 130](#)—
 - (i) in [subsection \(1\)](#), for “condition A in [section 129\(2\)](#)” there were substituted “condition C in [section 266\(5\)](#)”,
 - (ii) in [subsection \(4\)](#), for “[section 129\(4\)](#)” there were substituted “[section 266\(6\)](#)”,
 - (c) in [section 131\(1\)](#)—
 - (i) for “[section 129](#)” there were substituted “[section 266](#)”,
 - (ii) for “[subsection \(2\)](#)” there were substituted “[subsection \(5\)](#)”,
 - (iii) for “condition A” there were substituted “condition C”, and
 - (iv) for “[section 129\(4\)](#)” there were substituted “[section 266\(6\)](#), and
 - (d) in [section 131\(2\)](#), for “condition A in [section 129\(2\)](#)” there were substituted “condition C in [section 266\(5\)](#)”
- (9) References in [this Part](#) to a “group” (other than in the expression “multinational group”) means a consolidated group (see [section 126\(2\)](#) in [Part 3](#)).
- (10) For the purposes of [this Part](#) “qualifying financial statements” in relation to an entity means—
 - (a) financial statements of the entity prepared in accordance with acceptable accounting standards, or
 - (b) where no such accounts were prepared, the statements that would have been prepared (whether or not the entity was required to prepare such statements) in accordance with an authorised accounting standard that is either—
 - (i) an acceptable accounting standard, or
 - (ii) a financial accounting standard whose application is adjusted to prevent material competitive distortions (see [section 249\(4\)](#)).

267 DTT excluded entities

- (1) An entity is a DTT excluded entity if—
 - (a) it falls within [subsection \(3\)](#) of [section 127](#) in [Part 3](#) (excluded entities),
 - (b) it is a member of a multinational group and falls within [subsection \(4\)](#) of that section, or
 - (c) it is a member of a group that is not a multinational group, but would fall within that subsection if that group were a multinational group.
- (2) A DTT excluded entity falling within subsection (1) (as well as not being a qualifying entity) is, for the purposes of the provisions of [this Part](#) other than [section 266](#) and [this section](#), to be treated as not being a member of any group.
- (3) A qualifying transformer vehicle that is not a member of a multinational group is also a DTT excluded entity.
- (4) In this section “qualifying transformer vehicle” means—
 - (a) a qualifying transformer vehicle within the meaning of the Risk Transformation (Tax) Regulations 2017 ([S.I. 2017/1271](#)), or
 - (b) a part of a protected cell company that is a qualifying transformer vehicle within the meaning of those Regulations.

268 Permanent establishments

Section [232\(3\)](#) (permanent establishment treated as distinct from entity it is a permanent establishment of) applies for the purposes of [this Part](#) as it applies for the purposes of [Part 3](#).

CHAPTER 2

CHARGE TO DOMESTIC TOP-UP TAX

269 Chargeable persons

- (1) A person is chargeable to domestic top-up tax for an accounting period if—
 - (a) the person is a qualifying entity for that period and is a body corporate or a partnership that is not a body corporate, or
 - (b) the person is chargeable to tax in respect of an entity—
 - (i) that is a qualifying entity for that period, and
 - (ii) that is not a body corporate or a partnership that is not a body corporate.
- (2) A person is chargeable to tax in respect of an entity if the profits of that entity would, on the relevant assumptions, be the profits of the person for the purposes of income tax or corporation tax.
- (3) The relevant assumptions are that—
 - (a) the entity has profits that are chargeable to income tax or corporation tax, and
 - (b) the person is resident in the United Kingdom for the purposes of that tax.
- (4) Where a partnership that is not a body corporate is chargeable to domestic top-up tax as a result of [subsection \(1\)\(a\)](#)—

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- (a) the person liable to pay the tax is the responsible partners, and
 - (b) the liability of the responsible partners to do so is joint and several.
- (5) The references in [subsection \(4\)](#) to “the responsible partners” are to all the persons who are members of the partnership at any time during the accounting period.
- (6) A partnership is to be regarded for the purposes of [this section](#) as continuing to be the same partnership regardless of a change in membership, provided that a person who was a member before the change remains a member after the change.
- (7) Where more than one person is chargeable to tax in relation to the same qualifying entity as a result of the application of [subsection \(2\)](#), each of those persons is jointly and severally liable to domestic top-up tax.

270 Amount charged

- (1) Where a person is chargeable to domestic top-up tax for an accounting period as a qualifying entity or in respect of a qualifying entity, the amount (if any) the person must pay is determined as follows—
- Step 1*
Determine whether the entity has any top-up amounts or additional top-up amounts for that period and the extent of those amounts.
- Step 2*
Determine the sum of those amounts.
- Step 3*
If the result of Step 3 is not expressed in sterling, convert the result of that Step to sterling.
- (2) Generally, a qualifying entity will have a top-up amount for an accounting period if it has profits for a period and its effective tax rate (or, where it is a member of a group, that of its group) is less than 15%.
- (3) [Chapter 3](#) of [this Part](#) makes provision, principally by applying (with modifications) provisions in [Part 3](#), for determining—
- (a) the effective tax rate of a qualifying entity by reference—
 - (i) in the case of an entity that is a member of a group, to the profits of, and the taxes payable by, members of the group that are located in the United Kingdom, or
 - (ii) in the case of an entity that is not a member of a group, to its profits and to the taxes payable by that entity.
 - (b) those profits,
 - (c) which taxes (referred to as “covered taxes”) are to be considered in the determining effective tax rates,
 - (d) top-up amounts, and
 - (e) additional top-up amounts.

271 Election to make one member of a group liable for amounts charged

- (1) Where multiple members of a group are chargeable to domestic top-up tax in an accounting period, the filing member of the group may elect that only one member of

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the group specified in the election (the “responsible member”) is to be liable to pay domestic top-up tax in that period.

- (2) Where an election under this section is made—
 - (a) no member of the group other than the responsible member is required to pay any amount by way of domestic top-up tax, and
 - (b) the responsible member must pay any amount by way of domestic top-up tax any other member of the group would have been required to pay if the election had not been made.
- (3) Subsection (2) does not apply if the responsible member has not consented to the election.
- (4) Paragraph 2 of [Schedule 15](#) (annual elections) applies to an election under this section, and has effect for that purpose as if references to an information return or overseas return notification were to a self-assessment return or below-threshold notification.

CHAPTER 3

APPLICATION OF MULTINATIONAL TOP-UP TAX PROVISIONS

272 Determining top-up amounts of entity that is a member of a group

- (1) Subject as follows, [Chapters 3 to 6, 8 and 9 of Part 3](#) apply for the purposes (“domestic purposes”) of determining whether a qualifying entity that is a member of a group has top-up amounts or additional top-up amounts, and the extent of those amounts, as they apply for the purpose of determining the same for the purposes of multinational top-up tax.
- (2) Where the group is not a multinational group, that Part has effect for domestic purposes as if any reference to a multinational group were to a group.
- (3) [Part 3](#) has effect for those purposes as if the following provisions (which provide for reductions of top-up amounts where a qualifying domestic top-up tax is payable) were omitted—
 - (a) in [section 194](#), subsections (2) to (7);
 - (b) in [section 203](#), subsections (3) to (7);
 - (c) in [section 206](#), subsections (4) to (8).
- (4) The following provisions of [Part 3](#) are of no practical application for domestic purposes and accordingly that Part has effect for those purposes as if they were omitted—
 - (a) [section 173\(1\)\(b\)](#) and sections [189 to 192](#) (eligible distribution tax systems);
 - (b) [section 225](#) (attribution of top-up amounts of investment entities).
- (5) Where—
 - (a) an election is made under [Part 3](#) in relation to a member of a multinational group (whether or not a qualifying entity) for the purposes of multinational top-up tax, and
 - (b) if the election had effect for domestic purposes, it would affect the calculation of top-up amounts or additional top-up amounts,that election has effect for domestic purposes.

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- (6) For the purposes of subsection (5), a foreign IIR election is to be treated as an election made under [Part 3](#).
- (7) A “foreign IIR election” means an election—
- (a) made in respect of a group in connection with a tax equivalent to multinational top-up tax in another Pillar Two territory;
 - (b) contained in an information return—
 - (i) submitted to a qualifying authority in that territory, and
 - (ii) in relation to which information in the return about the election has been shared with HMRC.
- (8) For domestic purposes—
- (a) [section 134](#) (underlying profits as determined for statements of ultimate parent) has effect as if, after subsection (3), there were inserted—

“(3A) The conditions in subsection (3) are not required to be met if—

 - (a) the alternative accounting standard is UK GAAP,
 - (b) all members of the group are located in the United Kingdom, and
 - (c) the filing member of the group has made an election in a self-assessment return that the underlying profits of all members of the group are to be determined on the basis of UK GAAP.

(3B) Paragraph 1 of [Schedule 15](#) (long term elections) applies to an election under subsection (3A), and has effect for that purpose as if references to an information return or overseas return notification were to a self-assessment return or below-threshold notification.”;
 - (b) [section 176](#) (amounts to be reflected in covered tax balance) has effect as if, for subsection (2)(i) (amounts allocated from another member of the group), there were substituted—

“(i) any amount allocated to the member from another member of the group under [section 178\(1\)](#) (reallocation of tax expense).”;
 - (c) [section 178](#) (reallocation of tax expense) has effect as if—
 - (i) after subsection (1) there were inserted—

“(1A) But qualifying tax expense in respect of tax imposed by a territory other than the United Kingdom is not to be allocated to O as a result of the allocation of profits under [section 167](#) (hybrids).”;
 - (ii) subsection (2) (restriction on allocation of tax expense in respect of mobile income) were omitted;
 - (d) [section 179](#) (controlled foreign companies) has effect as if subsection (2) (restriction on allocation to CFC) were omitted;
 - (e) [section 193](#) (calculation of top-up amounts) has effect as if the total top-up amount referred to in that section included any top-up amounts or additional top-up amounts of investment entities determined under [sections 220 to 224](#).

273 Determining top-up amounts of entity that is not a member of a group

- (1) Chapters 3 to 6, 8 and 9 of Part 3 apply for the purposes (“domestic entity purposes”) of determining whether a qualifying entity that is not a member of a group has top-up amounts or additional top-up amounts, and the extent of those amounts, as they apply for the purpose of determining the same for the purposes of multinational top-up tax.
- (2) Chapter 3 of that Part has effect for domestic entity purposes as if for section 132 there were substituted—

“132 Effective tax rate

The effective tax rate of a qualifying entity that is not a member of a group is determined as follows—

Step 1

Determine, in accordance with Chapter 4 of Part 3, the adjusted profits for that period of that member.

Step 2

If, on determining those adjusted profits, the member has not made a profit, the effective tax rate is to be treated as 15%. Otherwise, proceed to Step 3.

Step 3

Determine the covered tax balance of the member for the period (which may be negative) in accordance with Chapter 5 of Part 3.

Step 4

If that balance is nil the effective tax rate is 0%. Otherwise, proceed to Step 5.

Step 5

Divide the covered tax balance by the adjusted profits.

Step 6

Except where Step 2 or 4 applies, the effective tax rate of the entity is X%, where X (which will be negative if the covered tax balance is negative) is the result of Step 5 multiplied by 100.”

- (3) That Part has effect for domestic entity purposes as if—
 - (a) references to “member of a multinational group” (however framed and including references to multiple members) were to “qualifying entity”;
 - (b) any reference (however framed) to the consolidated financial statements of the ultimate parent were to the qualifying financial statements of the entity;
 - (c) in section 194 (total top-up amount), subsections (2) to (7) were omitted;
 - (d) in section 203 (additional top-up amounts: covered taxes less than expected), subsections (3) to (7) were omitted;
 - (e) in section 206 (additional top-up amounts: recalculations), subsections (4) to (8) were omitted.
- (4) Part 3 has effect for those purposes as if the following provisions (which are only relevant to groups or have no relevance for domestic purposes) were omitted—
 - (a) in section 134 (underlying profits as determined for statements of ultimate parent), subsections (2) to (9);
 - (b) section 135 (permanent establishments);

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- (c) [section 139](#) (consolidation adjustments);
- (d) [section 140](#) (purchase accounting adjustments);
- (e) in [section 141](#) (general exclusion of dividends), subsection (2)(c);
- (f) [section 149](#) (arm's length requirement);
- (g) [section 150](#) (transactions between group members);
- (h) [section 154](#) (exclusion of qualifying intra-group financing arrangement expenses);
- (i) [sections 159 and 160](#) (adjustments applicable to permanent establishments);
- (j) in [section 163](#) (election to spread capital gains), subsection (3);
- (k) [section 164](#) (election to exclude intra-group transactions);
- (l) [section 167](#) (underlying profits of member of group seen as transparent);
- (m) in [section 168](#) (underlying profits of flow-through entities), subsection (8);
- (n) [section 169](#) (non-tax resident entities to be treated as flow-through entities);
- (o) [section 170](#) (adjustments for ultimate parent that is flow-through entity);
- (p) [section 172](#) (ultimate parent subject to deductible dividend regime);
- (q) [section 177](#) (allocation of covered taxes: permanent establishments);
- (r) [section 178](#) (reallocation of tax expense);
- (s) [sections 179 and 180](#) (controlled foreign company tax regimes);
- (t) [section 181](#) (distributions from other group members);
- (u) [section 183](#) (qualifying foreign tax credits);
- (v) [sections 189 to 192](#) (deemed distribution tax election);
- (w) [sections 208 to 212](#) (restructuring of groups);
- (x) [sections 213 to 215](#) (elections in relation to investment entities);
- (y) in [section 216](#) (election where assets and liabilities adjusted to fair value), subsection (6);
- (z) [sections 226 to 229](#) (joint venture groups, minority owned members and multi-parent groups).

274 Application of [section 262](#)

The power in [section 262](#) (power to amend to ensure consistency with Pillar Two) applies in relation to this Part as it applies to [Part 3](#).

275 Application of [Schedule 14](#)

[Schedule 18](#)—

- (a) applies [Schedule 14](#) for the purpose of the administration of domestic top-up tax;
- (b) makes related amendments.

276 Application of transitional provision

The transitional provision in [Schedule 16](#) applies in relation to domestic top-up tax as it applies in relation to multinational top-up tax as if—

- (a) references in that Schedule to a multinational group were to a group;
- (b) where a qualifying entity is a member of a group and all members of the group are located in the United Kingdom, the following provisions of that Schedule (which have no relevance in such a case) were omitted—

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- (i) paragraph 3(2)(b) and (d), and 3(7) and (8) (country-by-country reporting);
 - (ii) the words “that are used for preparation of the group’s country-by-country report” in paragraph 4(2);
 - (iii) paragraph 4(5) (use of statements used for preparation of country-by-country report);
 - (iv) in paragraph 9(2), the words from “ignoring” to the end.
- (c) where a qualifying entity is not a member of a group—
- (i) references in that Schedule to a member of a group (however framed and including references to multiple members) were to a qualifying entity;
 - (ii) references in that Schedule (however framed) to the consolidated financial statements of the ultimate parent were to the qualifying financial statements of the entity;
 - (iii) paragraph 2 were omitted;
 - (iv) the provisions mentioned in paragraph (b)(i) to (iv) were omitted.

277 Index of defined expressions

See the table in Schedule 17 for a list of terms defined for Part 3, but which also contains some terms defined for this Part, and the provisions that define or explain them.

278 Domestic top-up tax to apply from 31 December 2023

This Part has effect in relation to accounting periods commencing on or after 31 December 2023.