



# Finance (No. 2) Act 2023

## 2023 CHAPTER 30

### PART 3

#### MULTINATIONAL TOP-UP TAX

#### CHAPTER 10

#### DEFINITIONS ETC

#### *Miscellaneous*

#### **252 Application to sovereign wealth funds**

- (1) A sovereign wealth fund that would, ignoring this subsection, be the ultimate parent of a multinational group is not to be regarded as the ultimate parent of that group and is to be ignored for the purposes of [this Part](#).
- (2) Accordingly, an entity (“A”) in which such a sovereign wealth fund has a controlling interest as a result of direct ownership interests is to be regarded as the ultimate parent of a consolidated group consisting of—
  - (a) itself, and
  - (b) the entities that A has a controlling interest in.
- (3) For the purposes of [this section](#) “sovereign wealth fund” means an entity which is a government entity for the purposes of [this Part](#) as a result of meeting the condition in [section 234\(1\)\(b\)\(ii\)](#).

#### **253 Disqualified and qualified refundable imputation taxes**

- (1) An amount of tax payable by a member of a multinational group is “disqualified refundable imputation tax” if—
  - (a) it is—

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- (i) in respect of a dividend made by the member and is refundable to the beneficial owner of the dividend,
  - (ii) creditable by the beneficial owner of such a dividend against a tax liability other than a tax liability in respect of that dividend, or
  - (iii) refundable to an entity upon the distribution of a dividend, and
  - (b) it is not qualified refundable imputation tax.
- (2) An amount of tax payable by a member of a multinational group is “qualified refundable imputation tax” to the extent—
- (a) it is refundable or creditable to the beneficial owner of a dividend distributed by—
    - (i) the member, or
    - (ii) where the member is a permanent establishment, the main entity, and
  - (b) the refund is payable, or the credit is provided—
    - (i) under a foreign tax credit regime by a territory other than the territory that imposed the tax on the member,
    - (ii) to a beneficial owner of the dividend subject to tax in the territory imposing the tax payable by the member, provided the nominal rate of that tax that is at least 15%,
    - (iii) to a beneficial owner of the dividend who is an individual who is tax resident in that territory and who is subject to tax on the dividends as ordinary income,
    - (iv) to a governmental entity or an international organisation,
    - (v) to a resident non-profit organisation, a resident pension fund or a resident investment entity that is not a member of a multinational group, or
    - (vi) to a resident life insurance company to the extent the dividends are received in connection with a pension fund business and subject to tax in a similar manner as a dividend received by a pension fund.
- (3) For the purposes of [sub-paragraphs \(v\) and \(vi\)](#) of [subsection \(2\)\(b\)](#), an entity is a resident entity if it is resident in the territory that imposed the tax, and for those purposes—
- (a) a non-profit organisation or pension fund is resident in a territory if it is created and managed in that territory;
  - (b) an investment entity is resident in a territory if it is created and regulated in that territory;
  - (c) a life insurance company is resident in a territory if it is located there (see [section 239](#)).

## 254 Use of currency

Where it is necessary, for the purposes of this Part, to convert an amount expressed in one currency to another, the average exchange rate for the accounting period to which the amount relates is to be used.

## 255 Pillar Two rules

- (1) In this Part references to the “Pillar Two rules” are to the Pillar Two model rules as interpreted in accordance with, and supplemented by—

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- (a) the Pillar Two commentary, and
  - (b) any further commentaries or guidance published from time to time by the OECD that are relevant to the implementation of the Pillar Two model rules.
- (2) In [subsection \(1\)](#)—
- “Pillar Two model rules” means the model rules published by the Organisation for Economic Co-operation and Development as “Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS”;
- “Pillar Two commentary” means the following—
- (a) the commentary on the Pillar Two model rules published by the Organisation for Economic Co-operation and Development as “Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two)”, and
  - (b) the examples illustrating the application of the Pillar Two model rules published by the Organisation for Economic Co-operation and Development as “Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two) Examples”.
- (3) Pillar Two rules apply to a multinational group, or a member of a multinational group, in an accounting period if—
- (a) the group is a qualifying multinational group, or
  - (b) the group would be a qualifying multinational group but is not only as a result of Condition B in [section 129\(3\)](#) (requirement that at least one member located in the United Kingdom).

## 256 Qualifying domestic top-up tax

- (1) For the purposes of [this Part](#) a tax is a “qualifying domestic top-up tax” if it is—
  - (a) domestic top-up tax (see [Part 4](#)), or
  - (b) specified in a regulations made by the Treasury.
- (2) A tax may only be specified in regulations if the Treasury consider that it is equivalent in substance to domestic top-up tax (see [Part 4](#)).
- (3) A tax may be considered equivalent to domestic top-up tax despite being not being calculated in accordance with the financial accounting standard used in the consolidated financial statements of the ultimate parent if calculated in accordance with an authorised accounting standard that is either—
  - (a) an acceptable accounting standard, or
  - (b) another financial accounting standard that is adjusted to prevent material competitive distortions.
- (4) Regulations under this section may provide that the specification of a tax is to have effect from a time before the regulations are made (but may not provide that the specification of a tax previously specified ceases to have effect before the regulations are made).

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## 257 Qualifying undertaxed profits tax

- (1) For the purposes of [this Part](#) a tax is a “qualifying undertaxed profits tax” if it is specified in regulations made by the Treasury.
- (2) A tax may only be specified in regulations if the Treasury consider that the tax is an appropriate means of implementing the UTPR (within the meaning of the Pillar Two rules).
- (3) Regulations under this section may provide that the specification of a tax is to have effect from a time before the regulations are made (but may not provide that the specification of a tax previously specified ceases to have effect before the regulations are made).

## 258 Meaning of “connected”

For the purposes of this Part, a person or entity is “connected” with an entity if they are “closely related” within the meaning of Article 5(8) of the OECD tax model.

## 259 Other definitions

- (1) In [this Part](#)—

“company” means a body corporate;

“for accounting purposes” means for the purposes of accounts drawn up in accordance with acceptable accounting standards;

“held for sale” has the meaning given by international accounting standards;

“HMRC” means His Majesty’s Revenue and Customs;

“international financial reporting standards” or “international accounting standards” means those standards as issued or adopted, from time to time, by the International Accounting Standards Board;

“OECD tax model” means the Model Tax Convention on Income and on Capital published (from time to time) by the Organisation for Economic Co-operation and Development;

“overseas REIT equivalent” means an entity resident in a territory outside the United Kingdom that is the equivalent of a UK REIT;

“tax treaty” means an agreement for the avoidance of double taxation with respect to taxes on income and on capital;

“UK REIT” means—

- (a) a company UK REIT within the meaning of Part 12 of CTA 2010 (see section 524 of that Act), or
- (b) a company that is a member of a group UK REIT within the meaning of that Part (see sections 523 and 606 of that Act);

an “uncertain tax position”, in relation to an amount of covered taxes, exists where the amount as reflected in the underlying profits accounts is different to how it is, or will be, reflected in a tax return because of uncertainty over whether the tax authority in question will accept the basis on which it is reflected in that return.

- (2) For the purposes of this Part, an individual is “tax resident” in a territory if—
  - (a) in the case of the United Kingdom, the individual is resident for income tax purposes, and

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- (b) in any other territory, the individual is resident for the purposes of a tax on income imposed under the law of that territory.
- (3) Where a term in this Part has a meaning for accounting purposes, unless the context otherwise requires, it has that meaning in this Part.
- (4) Examples of such terms include—
  - carrying value;
  - current tax;
  - deferred tax;
  - deferred tax expense;
  - deferred tax asset;
  - deferred tax liability;
  - fair value;
  - impairment;
  - tax expense.

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