



Finance (No. 2) Act 2023

2023 CHAPTER 30

PART 3

MULTINATIONAL TOP-UP TAX

CHAPTER 4

CALCULATION OF ADJUSTED PROFITS OF MEMBERS OF A MULTINATIONAL GROUP

Adjusted profits of a member of a multinational group

133 Adjusted profits of a member of a multinational group

- (1) For the purposes of [this Part](#), references to the adjusted profits of a member of a multinational group are to the underlying profits of that member adjusted in accordance with this Chapter and (to the extent applicable) [Chapter 8](#).
- (2) [Sections 134](#) to [137](#) set out how to determine the underlying profits.
- (3) [Sections 138](#) to [158](#) set out various adjustments that may need to be made to those profits.
- (4) [Sections 159](#) and [160](#) set out adjustments to be made in relation to members that are permanent establishments.
- (5) [Sections 161](#) to [164](#) make provision for elections for certain matters to be calculated in an alternative manner.
- (6) [Sections 167](#) to [171](#) set out adjustments in relation to transparent and hybrid entities and entities subject to a “qualifying dividend regime”.
- (7) Other provisions of [this Part](#) may require further adjustments of underlying profits, including provision in—
 - (a) [Chapter 9](#) (investment entities), and

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- (b) [Schedule 16](#) (transitional provision).

134 Underlying profits as determined for statements of ultimate parent

- (1) The normal rule is that the underlying profits of a member of a multinational group, other than a member that is a permanent establishment, are the member's profits as they would be determined for that member in preparing consolidated financial statements for the ultimate parent.
- (2) But those profits may instead be determined on the basis of an alternative accounting standard, and information in the separate financial accounts of the member, if all of the conditions in [subsection \(3\)](#) are met.
- (3) Those conditions are that—
 - (a) it is not reasonably practicable to determine those profits on the basis of the accounting standard used in the preparation of the consolidated financial statements of the ultimate parent,
 - (b) the alternative accounting standard is an acceptable accounting standard or an authorised accounting standard,
 - (c) the alternative accounting standard is that used for the financial accounts of the member, and
 - (d) the information in those accounts is reliable.
- (4) Where an alternative accounting standard is used and an amount relevant to the underlying profits of a member of a multinational group is recorded in a currency other than the currency used for the consolidated financial statements of the ultimate parent, that amount is to be converted to that currency for the purposes of [this Part](#).
- (5) [Subsection \(6\)](#) applies where the application of a particular policy of the alternative accounting standard in the determination of the profits of the member results in a significant accounting standard difference that would not arise if the accounting standard of the ultimate parent had been applied.
- (6) The underlying profits are to be adjusted to eliminate that difference (as if the accounting standard of the ultimate parent had been applied).
- (7) Information in the financial accounts of the member is “reliable” if an auditor applying the generally accepted auditing standards of a relevant territory would reasonably conclude the member has in place such processes relating to their preparation as are likely to make the information in the financial accounts a fair and accurate description of the income, expenses, assets and liabilities of that member.
- (8) For the purposes of [subsection \(7\)](#), the following are relevant territories—
 - (a) the territory in which the member is located;
 - (b) the territory in which the ultimate parent is located;
 - (c) if the member is a flow-through entity (see [section 168\(2\)](#)) that is a stateless entity, the territory in which it was created.
- (9) For the purposes of this section, reference to a “significant accounting standard difference” is to a difference of more than 1 million euros between the treatment of an amount in the financial accounts of a member of a multinational group and the consolidated financial statements of the ultimate parent that is not eliminated over time.

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135 Underlying profits of permanent establishments

- (1) The underlying profits of a member of a multinational group that is a permanent establishment are the member's profits—
 - (a) if the member has separate financial accounts, as reflected in those accounts, and
 - (b) if not, as reflected in the underlying profits accounts of the main entity, attributed between the permanent establishment and the main entity in accordance with [section 159](#).
- (2) If the member is a permanent establishment falling within [paragraph \(d\)](#) of [section 232\(2\)](#) (income of permanent establishment exempt from tax in territory of main entity) the member's underlying profits are determined only by reference to its relevant income and relevant expenses.
- (3) For the purposes of [subsection \(2\)](#)—
 - (a) the relevant income of the member is the income of the member that is exempted from tax in the territory where the main entity is located that is attributable to operations carried out outside the territory the main entity is located in, and
 - (b) the relevant expenses of the member are such of its expenses as are attributable to those operations and are not deducted for tax purposes in the territory of the main entity.
- (4) Profits (as determined in accordance with this Part) of a permanent establishment are not to be taken into account in determining the adjusted profits of the main entity, and vice versa.
- (5) But [subsection \(4\)](#)—
 - (a) does not apply to profits of a permanent establishment that are excluded from its profits as a result of an adjustment under [section 159](#), and
 - (b) is subject to [section 160](#) (attribution of losses between permanent establishment and main entity).

136 Underlying profits accounts

In this Part, reference to the “underlying profits accounts” of a member of a multinational group is to the statements or accounts (which may in some circumstances be hypothetical) that are the basis of the determination of the member's underlying profits for the purposes of this Part.

137 No amounts outside of profit and loss account to be included

Except as required by any other provision of this Part, amounts that are recognised outside the profit and loss account in the underlying profits accounts of a member of a multinational group are not to be reflected in the underlying profits of that member.

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Adjustments of underlying profits

138 Profits adjusted to be before tax

- (1) The underlying profits of a member of a multinational group for an accounting period are to be adjusted by adding back any debit, and excluding any credit, for tax expense amounts reflected in its those profits.
- (2) In [this Part](#) “tax expense amount” means an amount of tax expense (including a deferred tax expense) in respect of—
 - (a) a covered tax (whether or not the income to which the tax relates are excluded from adjusted profits for the purposes of [this Part](#));
 - (b) multinational top-up tax, or any tax equivalent to multinational top-up tax;
 - (c) a qualifying domestic top-up tax (see [section 256](#));
 - (d) a qualifying undertaxed profits tax (see [section 257](#));
 - (e) taxes accrued by an insurance company in respect of returns to policyholders to the extent that [section 152\(2\)](#) applies in relation to those taxes;
 - (f) a disqualified refundable imputation tax (see [section 253](#)).

139 Profits adjusted to be profits before consolidation adjustments to eliminate intragroup transactions

- (1) The underlying profits of a member of a multinational group are to be adjusted so that they include income, expenses, gains and losses arising from transactions between that member and other members of that group.
- (2) [Subsection \(1\)](#) is subject to—
 - (a) [section 137](#) (amounts outside profit and loss excluded), and
 - (b) [section 164](#) (where an election is made under that section to exclude profits from intra-group transactions).

140 Profits adjusted to be profits before certain purchase accounting adjustments

- (1) The underlying profits of a member of a multinational group for an accounting period are to be adjusted so that they do not reflect relevant share acquisition adjustments.
- (2) “Relevant share acquisition adjustment” means a purchase accounting adjustment to the consolidated financial statements of an ultimate parent of a multinational group arising as a result of an entity becoming a member of the group as a result of the acquisition of shares in the entity by an existing member of the group.
- (3) This section does not apply to a relevant share acquisition adjustment resulting from an acquisition of shares before 1 December 2021 if it is not reasonably practicable to identify the adjustment made.

141 General exclusion of dividends

- (1) The underlying profits of a member of a multinational group are to be adjusted so as to exclude any excluded dividends received or accrued by that member.
- (2) “Excluded dividends” means—

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- (a) a dividend or other distribution arising as a result of a qualifying interest in a flow-through entity (see [section 168](#)), or
 - (b) any other dividend or other distribution arising as a result of a qualifying interest in an entity, other than a dividend or other distribution falling within [subsection \(3\)](#).
- (3) The following fall within [this subsection](#)—
- (a) a dividend or other distribution arising as a result of a qualifying interest that is a short-term portfolio holding;
 - (b) a dividend or other distribution arising as a result of a qualifying interest in an investment entity that is subject to an election under [section 214](#) (taxable distribution method election);
 - (c) a dividend or other distribution made by a member of a multinational group if—
 - (i) its recipient is a member of the same group, and
 - (ii) payments in respect of the distribution (whether or not the distribution was accounted for as a distribution at the time of payment) are treated as an expense of the member that made it for the purposes of determining the member’s underlying profits, or
 - (d) any other dividend or other distribution to the extent it reflects debt rather than a qualifying interest.
- (4) For the purposes of [subsection \(2\)](#) a qualifying interest in an entity held by a member of a multinational group is a portfolio holding if, on the vesting date of the distribution, the members of that group do not, between them, have qualifying interests that entitle them to 10% or more of the entity’s—
- (a) profits,
 - (b) capital,
 - (c) reserves, and
 - (d) voting rights.
- (5) A portfolio holding held by a member of a multinational group is a short-term portfolio holding if it was held for less than 1 year before the vesting date of the distribution.
- (6) The vesting date of a distribution is the earlier of—
- (a) the day on which it is made, and
 - (b) the day on which the person to whom it arises is entitled to have it made.
- (7) The filing member of a multinational group may elect that all portfolio holdings held by a member of the group specified in the election are to be treated for the purposes of [this section](#) as short-term portfolio holdings.
- (8) [Paragraph 1](#) of [Schedule 15](#) (long term elections) applies to an election under [subsection \(7\)](#).
- (9) In [this section](#), and in [section 142](#), “qualifying interest” in an entity means—
- (a) a direct ownership interest in it, or
 - (b) an entitlement to exercise voting rights in relation to it.

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142 Excluded equity gain or loss

- (1) The underlying profits of a member of a multinational group are to be adjusted so as to exclude any excluded equity gain or loss.
- (2) “Excluded equity gain or loss” means any gain, profit or loss arising from—
 - (a) gains and losses from changes in fair value of a qualifying interest or the impairment of such an interest, other than an interest to which [subsection \(3\)](#) applies,
 - (b) profit or loss in respect of a qualifying interest included in underlying profits under the equity method of accounting, other than an interest to which [subsection \(3\)](#) applies, or
 - (c) gains and losses from a disposition of a qualifying interest, other than an interest to which [subsection \(3\)](#) applies.
- (3) [This subsection](#) applies to a qualifying interest in an entity if the members of the multinational group do not, at the relevant time, have qualifying interests between them that entitle them to 10% or more of that entity’s—
 - (a) profits,
 - (b) capital,
 - (c) reserves, and
 - (d) voting rights.
- (4) The “relevant time” means—
 - (a) for the purposes of testing whether [subsection \(3\)](#) applies to an interest for the purposes of [subsection \(2\)\(a\)](#) or [\(b\)](#), the end of the accounting period in which the gain, profit or loss arose, and
 - (b) for the purposes of testing whether [subsection \(3\)](#) applies to an interest for the purpose of [subsection \(2\)\(c\)](#), immediately before the disposition.
- (5) See also [section 165](#) which provides for an election to treat certain gains or losses as not being excluded equity gains or losses.

143 Included revaluation method gain or loss

- (1) The underlying profits of a member of a multinational group are to be adjusted so as to include any relevant revaluation method gain or loss.
- (2) “Relevant revaluation method gain or loss” means a gain or loss, before making any adjustment to reflect tax expense amounts, arising as a result of the use of an accounting method or practice that—
 - (a) periodically adjusts the carrying value of the member’s property, plant and equipment to its fair value,
 - (b) records the changes in value in other comprehensive income, and
 - (c) does not subsequently report the gains or losses through the profit and loss account.
- (3) In [this Part](#)—

“other comprehensive income”, in relation to a member of a multinational group, means items of income and expense that are recognised, in the underlying profits accounts, outside the profit and loss account;

“property, plant and equipment” has the meaning given, for the time being, by International Accounting Standard 16.

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144 Adjustments for asymmetric foreign currency income and losses

(1) This section only applies in relation to a member of a multinational group where its accounting currency and its tax currency are different.

(2) Where—

- (a) the member has a gain or a loss as a result of fluctuations in the exchange rate between its accounting currency and its tax currency, and
- (b) the gain or loss is reflected differently in its taxable income and in the determination of its underlying profits (including where it is not reflected at all in one of those),

the member's underlying profits are to be adjusted so that the gain or loss is reflected in those profits on the same basis it is reflected in its taxable income.

(3) Where—

- (a) the member has a gain or a loss as a result of fluctuations in the exchange rate between its accounting currency and a third currency,
- (b) the gain or loss is reflected in its underlying profits, and
- (c) the gain or loss is not reflected, or is reflected to a different extent, in its taxable income,

the member's underlying profits are to be adjusted to exclude that gain or loss.

(4) Where—

- (a) the member has a gain or a loss as a result of fluctuations in the exchange rate between its tax currency and a third currency, and
- (b) the income or loss is not reflected, or is reflected to a different extent, in its underlying profits,

the member's underlying profits are to be adjusted so that the gain or loss is fully reflected in those profits (whether or not it is reflected in its taxable income).

(5) In this Part—

“accounting currency” means the currency of the main economic environment in which a member of a multinational group operates;

“tax currency” means the currency in which the profits of that member are determined for the purposes of determining its liability to covered taxes in the territory in which it is located;

“third currency” means any currency which is neither the accounting currency nor the tax currency of the member;

“taxable income” means income subject to, and determined for the purposes of, covered taxes.

145 Exclusion of expenses for illegal payments, fines and penalties

(1) Where the underlying profits of a member of a multinational group reflects—

- (a) expenses accrued for illegal payments (for example, bribes or kickbacks), or
- (b) expenses accrued for fines or penalties of 50,000 euros or more,

those profits are to be adjusted to exclude those expenses.

(2) For the purposes of [subsection \(1\)\(a\)](#), a payment is illegal if the making of that payment is, or forms part of conduct which is, an offence under the law of—

- (a) the United Kingdom,

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- (b) the territory of the member, or
 - (c) the territory of the ultimate parent.
- (3) For the purposes of [subsection \(1\)\(b\)](#), where more than one fine or penalty is accrued in respect of the same conduct, or for continuing conduct, those fines or penalties are to be aggregated.

146 Adjustment for changes in accounting policies and prior period errors

Where there has been a change to the net assets and liabilities of a member of a multinational group at the start of an accounting period, the underlying profits of that member for that period are to be adjusted to include the amount of that change if the change is attributable to—

- (a) a change in accounting policy that affects income or expenses included in determining the member’s adjusted profits, or
- (b) a correction of an error reflected in the determination, for the purposes of this Part, of the adjusted profits of the member for a previous accounting period, except to the extent the correction of the error results in a material decrease to the member’s liability to covered taxes such that [section 217](#) (post-filing adjustments of covered taxes) applies.

147 Accrued pension expense

Where the underlying profits of a member of a multinational group for an accounting period reflect pension expense, the underlying profits are to be adjusted in accordance with the following steps—

Step 1

Determine whether income (expressed as a positive number) or expense (expressed as a negative number) has accrued to the member in respect of the pension fund in the period.

Step 2

Add the sum of contributions made to the pension fund by the member in the period to the result of Step 1.

Step 3

If the result of Step 2 is more than nil, reduce the underlying profits by that amount.
 If the result of Step 2 is less than nil, increase the underlying profits by that amount (as expressed as a positive number).

148 Treatment of qualifying refundable tax credits

- (1) The underlying profits of a member of a multinational group are to be adjusted (if necessary) to secure that—
- (a) qualifying refundable tax credits are treated as income, and
 - (b) other tax credits (refundable or otherwise) are not treated as income.
- (2) A refundable tax credit is “qualifying” to the extent that, under the law of the territory in which it is given, it entitles a person to receive (by way of payment or discharge of liability) the amount of the refundable tax credit within 4 years of meeting the conditions for receiving it.

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- (3) But a refundable tax credit is never qualifying if it is creditable or refundable pursuant to a qualified refundable imputation tax or a disqualified refundable imputation tax (see [section 253](#)).
- (4) In this Part “refundable tax credit” means a tax credit which—
- (a) after any liability to covered taxes has been reduced or discharged by it, or
 - (b) in the absence of any tax liability to covered taxes,
- is payable in cash or cash equivalents (which for these purposes includes by way of discharge against a liability to a tax which is not a covered tax).

149 Arm’s length requirement for certain transactions

- (1) [Subsection \(6\)](#) applies to a member of a multinational group if any of Conditions A to D are met.
- (2) Condition A is that—
- (a) a debit is recorded in the underlying profits accounts of the member that arises from a transaction (“the relevant transaction”) comprising a transfer of an asset between the member and another member of that group,
 - (b) both members are located in the same territory, and
 - (c) the relevant transaction is not recorded on an arm’s length basis.
- (3) Condition B is that—
- (a) the member is party to a transaction (“the relevant transaction”) with another member of that group,
 - (b) both members are located in the same territory,
 - (c) one of the members is a minority owned member and the other is not, and
 - (d) the relevant transaction is not recorded in the member’s underlying profits accounts on an arm’s length basis.
- (4) Condition C is that—
- (a) the member is party to a transaction (“the relevant transaction”) with another member of that group,
 - (b) both members are located in the same territory,
 - (c) one of the members is an investment entity and the other is not, and
 - (d) the relevant transaction is not recorded in the member’s underlying profits accounts on an arm’s length basis.
- (5) Condition D is that—
- (a) the member is party to a transaction (“the relevant transaction”) with another member of that group,
 - (b) both members are located in the same territory, and
 - (c) the recorded value of the relevant transaction is not the same in each member’s underlying profits accounts.
- (6) Where [this subsection](#) applies to a member of a multinational group, the underlying profits of the member are to be adjusted to secure that the relevant transaction is reflected on an arm’s length basis.
- (7) In [this Part](#) “arm’s length basis”, in relation to a transaction between members of the same multinational group, means reflecting the conditions of the transaction as

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would have been obtained had the transaction been conducted between independent enterprises in a comparable transaction under comparable circumstances.

150 Transactions between members of a multinational group: differences with accounting for tax

- (1) **This section** applies if—
 - (a) a transaction between two members of a multinational group located in different territories is not recorded in the same amount, or is not recorded on an arm’s length basis (or is not recorded at all), in the underlying profits accounts of both of those members, and
 - (b) there is a permanent difference in respect of the transaction in relation to one or both of those members as a result of adjustments to the taxable income of the member made in connection with transfer pricing.
- (2) **Subsection (3)** applies if—
 - (a) for each member there is a permanent difference in respect of the transaction which arises as a result of adjustments made in connection with transfer pricing, and
 - (b) the permanent difference for each member corresponds to the permanent difference for the other.
- (3) Where **this subsection** applies, the underlying profits of each of the members are to be adjusted so that the amount of the transaction reflects the amount reflected in the member’s taxable income.
- (4) **Subsection (5)** applies if—
 - (a) one of the members (“A”) is a high tax member,
 - (b) there is a permanent difference for A in respect of the transaction which arises as a result of adjustments made in connection with transfer pricing, and
 - (c) there is no permanent difference for the other member (“B”) in respect of the transaction arising as a result of adjustments made in connection with transfer pricing.
- (5) Where **this subsection** applies—
 - (a) the underlying profits of A are to be adjusted so that the amount of the transaction reflects the amount reflected in the member’s taxable income, and
 - (b) an adjustment is to be made to the underlying profits of B which corresponds with the amount of the adjustment made to the profits of A.
- (6) For the purposes of **this section**, a member of a multinational group is a high tax member for an accounting period (“the relevant period”) if—
 - (a) the nominal tax rate in the territory in which the member is located is, or exceeds, 15% in the relevant period, and
 - (b) the effective tax rate of the standard members of that group in that territory is, or exceeds, 15% in either, or both, of the accounting period that immediately preceded the relevant period and the accounting period immediately before that one.
- (7) In this section reference to a “permanent difference” is to a difference between the treatment of an amount for the purposes of covered taxes and for accounting purposes that is not eliminated over time (and accordingly does not give rise to deferred tax).

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151 Adjustments for companies in distress

- (1) This section applies to a member of a multinational group where—
 - (a) it is released from an obligation to pay a debt (however that obligation arises), and
 - (b) at the time of that release, one or more of the circumstances mentioned in paragraphs (a) to (c) of subsection (2) applied to it.
- (2) Those circumstances are—
 - (a) that the member meets an insolvency condition mentioned in paragraphs (a) to (e) of section 322(6) of CTA 2009 (release of debts);
 - (b) that—
 - (i) it is reasonable to suppose that within 12 months, ignoring any debts owed to persons and entities that are connected to the member, the member will be unable to meet its debts to persons and entities it is not connected to as they fall due, and
 - (ii) the member has obtained an independent expert opinion confirming that is the case;
 - (c) that the member's liabilities exceed its assets.
- (3) Where the circumstance in subsection (2)(a) applies to the member, its underlying profits are to be adjusted to exclude any profits arising as a result of the release of the debt obligation.
- (4) Where—
 - (a) the circumstance in subsection (2)(b) applies to the member,
 - (b) the circumstance in (2)(a) does not, and
 - (c) the debt—
 - (i) is not a debt owed to a person or entity that is connected to the member, or
 - (ii) the debt is owed to a person or entity that is connected to the member, but the release of the debt obligation can reasonably be regarded as part of arrangements to secure the solvency of the member that involve the release of debt owed to a person that is not connected to the member,

the member's underlying profits are to be adjusted to exclude any profits arising as a result of the release of the debt obligation.
- (5) Subsection (6) applies where—
 - (a) the circumstance in subsection (2)(c) applies to the member,
 - (b) neither the circumstance in subsection (2)(a) nor (2)(b) applies to the member, and
 - (c) the debt is not a debt owed to a person or entity that is connected to the member.
- (6) Where this subsection applies, the underlying profits of the member are to be adjusted to exclude the lesser of—
 - (a) the amount of any profits arising as a result of the release of the debt obligation,
 - (b) if, as a result of the release of the debt obligation, the member's assets exceed its liabilities, the amount by which its liabilities exceeded its assets immediately before the release, and

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- (c) if, in determining the member's liability to tax, some or all of the profits arising as a result of the release of the debt obligation are offset by deferred tax assets, the amount of those profits that are offset.
- (7) Where the member is released from more than one obligation to pay a debt at the same time, the release of those obligations is to be treated, for the purposes of applying the conditions in [this section](#), as if they represented the release of a single obligation to pay a debt.

152 Adjustments where life assurance business carried on

- (1) This section applies to a member of a multinational group that carries on a life assurance business.
- (2) Where amounts charged to the member's policyholders for taxes payable by the member are reflected in its underlying profits, those profits are to be adjusted to exclude such of those amounts as would (had they not been charged to the policyholders) have formed part of the member's tax expense amount.
- (3) Where returns to the member's policyholders are not reflected in the member's underlying profits but corresponding increases or decreases in the liability of the member to the policyholders are so reflected, those profits are to be adjusted so as to reflect those returns to the extent they correspond with those increases or decreases in liability.
- (4) In this section "life assurance business" has the meaning it has in section 56 of FA 2012.

153 Exclusion of certain insurance reserve movement expense

- (1) The underlying profits of a member of a multinational group that is an insurance company are to be adjusted so as to exclude any expense resulting from the movement of its insurance reserves where the movement is economically matched by excluded dividends (ignoring the extent to which those dividends also reflect any investment management fees).
- (2) The underlying profits of a member of a multinational group that is an insurance company are to be adjusted so as to exclude any expense resulting from the movement of its insurance reserves where the movement is economically matched by an excluded equity gain or loss.

154 Exclusion of qualifying intra-group financing arrangement expenses

- (1) Where—
 - (a) the underlying profits of the member of a multinational group for an accounting period reflect expenses attributable to a qualifying intra-group financing arrangement that could be reasonably expected, over the expected duration of the arrangement, to—
 - (i) increase the amount of expenses taken into account in calculating the member's underlying profits, and
 - (ii) not result in a corresponding increase in the taxable income of a member of the group that is a high tax member for that period,
 - (b) the member is a low tax member for that period, and

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(c) the expenses are not required to be included as a result of [section 155](#), the member's underlying profits for that period are to be adjusted to exclude those expenses.

(2) In [this section](#)—

“intra-group financing arrangement” means an arrangement between two or more members of a multinational group under which a member (member A) directly or indirectly provides credit or otherwise makes an investment in another member (member B);

an intra-group financing arrangement is “qualifying” if member A is a high tax member and member B is a low tax member;

a member of a multinational group is a “low tax member” in an accounting period if the effective tax rate for the standard members of the group located in the member's territory for that period would, ignoring intra-group financing arrangements, be less than 15%;

a member of a multinational group is a “high tax member” in an accounting period if the effective tax rate for the standard members of the group located in the member's territory would, ignoring intra-group financing arrangements, be 15% or more.

155 Qualifying tier one capital

- (1) Where amounts recognised by a member of a multinational group as a decrease to its equity in an accounting period that is attributable to distributions paid or payable in respect of qualifying tier one capital issued by the member are not reflected in its underlying profits for that period as expenses, those profits are to be adjusted to reflect those amounts as expenses.
- (2) Where amounts recognised by a member of a multinational group as an increase to its equity in an accounting period that is attributable to distributions received or receivable in respect of qualifying tier one capital held by the member are not reflected in its underlying profits for that period as income, those profits are to be adjusted to reflect those amounts as income.
- (3) In this section “qualifying tier one capital” means an instrument issued by an entity pursuant to regulatory requirements applicable to the banking or insurance sector that is convertible to equity or written down if a pre-specified trigger event occurs and that has other features which are designed to aid loss absorbency in the event of a financial crisis.

156 Exclusion of international shipping profits

- (1) Where the underlying profits of a member of a multinational group for an accounting period reflect the inclusion of international shipping profits, the member's underlying profits for that period are to be adjusted to exclude those profits.
- (2) The member's international shipping profits for the period are the sum of the member's—
 - (a) core international shipping profits (see [section 157](#)), and
 - (b) ancillary international shipping profits (see [section 158](#)).

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- (3) Subsection (1) does not apply if, in the period, the strategic and commercial management of any ship used in international shipping giving rise to those profits is not effectively carried on within the territory in which the member is located.
- (4) In this section, and in sections 157 and 158—
 “international shipping” means the transportation of passengers or cargo by ship between different territories;
 “transportation” does not include towing or dredging.

157 Core international shipping profits

- (1) A member’s core international shipping profits for a period are the member’s core international shipping revenue for the period less the member’s core international shipping costs for the period.
- (2) A member’s core international shipping revenue is all revenue earned by the member in consideration for the member’s performance of core international shipping activities.
- (3) A member’s core international shipping costs are the sum of—
 (a) all costs incurred by the member that are directly attributable to the member’s performance of core international shipping activities, and
 (b) all costs incurred by the member that are indirectly attributable to the member’s performance of core international shipping activities multiplied by the core international shipping factor.
- (4) The core international shipping factor is the member’s core international shipping revenue divided by all revenue earned by the member from any source.
- (5) An activity is a core international shipping activity if it is of a type referred to in subsection (6).
- (6) The types of activity are—
 (a) carrying out international shipping, whether alone or in conjunction with another person;
 (b) leasing as lessor a ship to be used for international shipping, where—
 (i) the ship is leased fully equipped, crewed and supplied, or
 (ii) the lessee is a member of the same multinational group and the purpose of the lease is to allow that member to carry out a core international shipping activity;
 (c) arranging for another person to carry out international shipping under slot-chartering arrangements;
 (d) the sale of a ship used in international shipping, where the ship has been held for use by the member for at least one year.

158 Ancillary international shipping profits

- (1) A member’s ancillary international shipping profits for a period are the member’s ancillary international shipping revenue for the period, less—
 (a) the member’s ancillary international shipping costs for the period, and
 (b) the member’s ancillary international shipping profit cap adjustment for the period.

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- (2) A member's ancillary international shipping revenue is all revenue earned by the member in consideration for the member's performance of ancillary international shipping activities.
- (3) A member's ancillary international shipping costs are the sum of—
 - (a) all costs incurred by the member that are directly attributable to the member's performance of ancillary international shipping activities, and
 - (b) all costs incurred by the member that are indirectly attributable to the member's performance of ancillary international shipping activities multiplied by the ancillary international shipping factor.
- (4) The ancillary international shipping factor is the ancillary international shipping revenue divided by all revenue earned by the member from any source.
- (5) An activity is an ancillary international shipping activity if—
 - (a) it is of a type referred to in subsection (6), and
 - (b) it is performed primarily in connection with international shipping.
- (6) The types of activity are—
 - (a) leasing as lessor a ship to be used for international shipping, where—
 - (i) the ship is not leased fully equipped, crewed and supplied,
 - (ii) the lessee is a third party, and
 - (iii) the lease has not been in effect for a period exceeding three years, or entered into on terms that would result in the lease being in effect for such a period;
 - (b) selling tickets for a domestic leg of an international voyage carried out by a third party;
 - (c) leasing as lessor a container of a kind used for international shipping;
 - (d) storing such a container for a short period, including by leasing as lessor space for the storage of such a container by another person;
 - (e) providing support services (see subsection (7)(e)) to persons engaged in international shipping;
 - (f) holding assets necessary for the member to carry out a core international shipping activity;
 - (g) the disposal of emissions allowances it is necessary for the member to hold in order to carry out international shipping.
- (7) For the purposes of subsection (6)—
 - (a) “third party”, in relation to a member of a multinational group, means a person that is not—
 - (i) the member, or
 - (ii) a member of the same multinational group;
 - (b) “domestic leg of an international voyage” means the transportation of passengers or cargo by ship between two locations in a single territory in circumstances where the ship's overall voyage has proceeded from or will continue to a different territory;
 - (c) a lease of a ship is in effect for the period in which the practical effect of that lease and any associated arrangements (including any other lease) is that a person is in the position of a lessee of the ship, whether or not the lease or any other document expressly provides that the person is a lessee of the ship for the whole of that period;

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- (d) “lessee”, in relation to a ship, means the person referred to in paragraph (c);
 - (e) “support services” means engineering, maintenance, cargo handling, catering and customer relations services.
- (8) The member’s ancillary international shipping profit cap adjustment is to be calculated by taking the following steps—
- Step 1*
Determine the “cap threshold” in accordance with Steps 2 to 5.
 - Step 2*
Calculate the core international shipping profits for each member of the group in the territory.
 - Step 3*
Add together the amounts calculated at Step 2.
 - Step 4*
If the result of Step 3 is nil or less, the cap threshold is nil. Otherwise, proceed to Step 5.
 - Step 5*
Divide the result of Step 3 by two. This is the cap threshold.
 - Step 6*
Calculate the ancillary international shipping profits for each member of the group in the territory (ignoring the requirement to subtract the ancillary international shipping profit cap adjustment).
 - Step 7*
Add together the amounts calculated at Step 6.
 - Step 8*
Subtract the cap threshold from the result of Step 7. If the result is nil or less, the member’s ancillary international shipping profit cap adjustment is nil. Otherwise, proceed to Step 9.
 - Step 9*
If the ancillary international shipping profits for the member calculated at Step 6 are nil or less, the member’s ancillary international shipping profit cap adjustment is nil. Otherwise, proceed to Step 10.
 - Step 10*
Add together any positive ancillary international shipping profits calculated at Step 6.
 - Step 11*
Divide the ancillary international shipping profits for the member calculated at Step 6 by the result of Step 10.
 - Step 12*
Multiply the result of Step 8 by the result of Step 11. This is the member’s ancillary international shipping profit cap adjustment.

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Adjustments only applicable to permanent establishments

159 Permanent establishment income and expense attribution

- (1) Where a member of a multinational group is a permanent establishment falling within [paragraph \(a\)](#) of [section 232\(2\)](#) (entity treated as permanent establishment in accordance with tax treaty), its underlying profits are to be adjusted so that they only reflect amounts of income and expenses that are attributable to it in accordance with the tax treaty in accordance with which it is treated as a permanent establishment (regardless of whether an amount of income is subject to tax or not, or an amount of expenses are deductible or not).
- (2) Where a member of a multinational group is a permanent establishment falling within [paragraph \(b\)](#) of [section 232\(2\)](#) (permanent establishment taxed on similar basis to residents in absence of tax treaty), its underlying profits are to be adjusted so that they only reflect amounts of income and expenses that are attributable to it in accordance with the law of the territory in which the member is located (regardless of whether an amount of income is subject to tax or not, or an amount of expenses are deductible or not).
- (3) Where a member of a multinational group is a permanent establishment falling within [paragraph \(c\)](#) of [section 232\(2\)](#) (permanent establishment located in territory without corporate income tax), its underlying profits are to be adjusted so that they only reflect amounts of income and expenses that would have been attributed to it in accordance with Article 7 of the OECD tax model.

160 Attribution of losses between permanent establishment and main entity

- (1) [Subsection \(2\)](#) applies where, on determining (ignoring this section) the adjusted profits of a member of a multinational group that is a permanent establishment for an accounting period (“the relevant period”), that member has a loss.
- (2) So much of that loss as—
 - (a) is treated as an allowable expense of the main entity for the purposes of the computation of tax in the territory in which the main entity is located, and
 - (b) is not set off against an item of income that is subject to tax under the laws of both the territory of the permanent establishment and the territory of the main entity,is to be treated as an expense of the main entity for the purposes of determining the adjusted profits of the main entity for the relevant period.
- (3) [Subsections \(4\)](#) and [\(5\)](#) apply where an amount (“the relevant amount”) is treated as an expense of the main entity for the purposes of determining its adjusted profits for the relevant period as a result of [subsection \(2\)](#).
- (4) The relevant amount is to be excluded from the adjusted profits of the permanent establishment for the relevant period.
- (5) Where, on determining (ignoring this section) the adjusted profits of the permanent establishment for an accounting period after the relevant period, the permanent establishment has made a profit for that period, those profits are to be treated as income of the main entity for the purpose of determining that entity’s adjusted profits for that period.

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- (6) But [subsection \(5\)](#) only applies until the total amount treated as income of the main entity as a result of that subsection is equal to the relevant amount.
- (7) Where profits of the permanent establishment for an accounting period are treated as income of the main entity as a result of [subsection \(5\)](#), those profits are to be excluded from the adjusted profits of the permanent establishment for that period.

Elections to treat certain amounts differently

161 Election to use realisation principle

- (1) The filing member of a multinational group may elect that all of the group’s members in a territory, or all of the group’s members in that territory that are investment entities, are to use the realisation principle in determining gains and losses in relation to—
 - (a) all assets and liabilities that are subject to fair value or impairment accounting, or
 - (b) tangible assets that are subject to fair value accounting or impairment accounting.
- (2) Where such an election is in force in relation to members of multinational group in a territory—
 - (a) the underlying profits of each of the group’s members for each of the accounting periods in respect of which the election is in force are to be adjusted so as to exclude gains and losses in respect of assets or liabilities to which the election applies that are attributable to fair value or impairment accounting;
 - (b) the carrying value of an asset or liability to which the election applies to be used for the purposes of determining gains or losses in respect of that asset or liability, is to be its carrying value at the later of—
 - (i) the commencement of the first accounting period of the multinational group to which the election applied, or
 - (ii) the time the asset was acquired or the liability was incurred.
- (3) [Paragraph 1 of Schedule 15](#) (long term elections) applies to an election under this section.
- (4) Where an election under this section has been revoked, the underlying profits of each member of a multinational group in respect of which the election was in force are to be adjusted in the first accounting period in respect of which the election no longer applies (“the revocation period”) by adjusting for the change in treatment of the assets and liabilities that were subject to the election and that remain held by the member at the commencement of the revocation period.
- (5) To adjust the underlying profits of a member of a multinational group for the change in treatment of an asset or liability subject to an election under this section, subtract the carrying value of that asset or liability as determined in accordance with [subsection \(2\)\(b\)](#) from the fair value of the asset or liability at the commencement of the revocation period and—
 - (a) if the amount given is positive, add it to those profits, or
 - (b) if the amount is negative, subtract it from those profits.

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162 Election to reflect deductions for stock-based compensation

- (1) The filing member of a multinational group may make an election under [this section](#) for the members of the group located in a territory to adjust their underlying profits in accordance with [subsection \(2\)](#).
- (2) Where such an election has effect—
 - (a) the underlying profits of each such member is adjusted by substituting, for the amount of any expense for stock-based compensation, the amount that was allowed as a deduction for the same expense when calculating the member’s taxable income, and
 - (b) where such a member has an expense for stock-based compensation that arises in connection with an option that expires without exercise, the underlying profits of that member for the accounting period in which the option expires are to be increased by such amount of that expense as was an expense in determining the member’s adjusted profits for a previous accounting period.
- (3) Where—
 - (a) the underlying profits of a member of a multinational group are adjusted in accordance with [subsection \(2\)](#) in respect of an amount of stock-based compensation,
 - (b) some expenses in respect of that compensation were recorded in the underlying profits of the member in one or more accounting periods before the election had effect, and
 - (c) the sum of the expenses recorded in those periods exceeds the sum of what those expenses would have been had the election been in effect for those periods,the member’s adjusted profits are to be adjusted to include the amount of that excess as if it were income.
- (4) [Paragraph 1 of Schedule 15](#) (long term elections) applies to an election under [this section](#).
- (5) Where—
 - (a) the underlying profits of a member of a multinational group are adjusted in accordance with [subsection \(2\)](#),
 - (b) the election is revoked before all of the stock-based compensation has been paid, and
 - (c) the sum of amounts deducted in accordance with [subsection \(2\)](#) exceeds the sum of the financial account expense accrued that has been paid,the member’s adjusted profits are to be adjusted to include the amount of that excess as if it were income.

163 Election to spread certain capital gains over five years

- (1) The filing member of a multinational group may elect that the net gain in respect of the disposal of local tangible assets by standard members of the group in a territory in an accounting period (“the election period”) is to be spread across that period and the preceding 4 accounting periods (collectively “the look-back period”) in accordance with [subsection \(2\)](#).
- (2) To spread the net gain across those periods take the following steps—
 - Step 1*

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For each standard member of the group in the territory, determine whether it has net losses in the first accounting period of the look-back period (“the carry-back period”) in respect of the disposal of local tangible assets (ignoring any losses in relation to which these steps have previously been carried out).

Step 2

Allocate the proportion of the net gain in the election period to each standard member with such losses in the carry-back period that is equal to the proportion those losses represent of the total losses in respect of the disposal of local tangible assets of all such members of the group in the carry-back period.

Step 3

Adjust the underlying profits of each such member by reducing the member’s losses (but not below nil) by the amount allocated to it under Step 2.

Step 4

If there remains an amount of the net gain which was not used to reduce members’ losses in accordance with Step 3, carry out Steps 1 to 3 again, but as if—

- (a) the reference in Step 2 to the net gain were to that amount, and
- (b) the reference to the first accounting period of the look-back period were to the second accounting period of the look-back period.

Step 5

If there still remains an amount of the net gain which was not used to reduce the members’ losses, carry out Steps 1 to 3 again but as if—

- (a) the reference in Step 2 to the net gain were to that amount, and
- (b) the reference to the first accounting period of the look-back period were to the third accounting period of the look-back period.

Step 6

If there still remains an amount of the net gain which was not used to reduce the members’ losses, carry out Steps 1 to 3 again but as if—

- (a) the reference in Step 2 to the net gain were to that amount, and
- (b) the reference to the first accounting period of the look-back period were to the fourth accounting period of the look-back period.

Step 7

If there still remains an amount of the net gain which was not used to reduce the members’ losses, carry out Steps 1 to 3 again but as if—

- (a) the reference in Step 2 to the net gain were to that amount, and
- (b) the reference to the first accounting period of the look-back period were to the election period.

Step 8

If there still remains an amount of the net gain which was not used to reduced the members’ losses, divide the amount remaining by 5.

Step 9

For each accounting period of the look-back period, determine whether any member of the group in the territory has net gains from the disposal of local tangible assets.

Step 10

For each accounting period in the look-back period where at least one standard member in the territory has such gains, adjust the underlying profits of each

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member who has such gains in that period by adding the amount given by multiplying the result of Step 8 by the amount given by dividing the amount of those gains by the amount of net gains from the disposal of local tangible assets of all members in that territory for that period.

Step 11

For each accounting period in the look-back period where no member has any such gains, adjust the underlying profits of each member in the territory by adding the amount given by multiplying the result of Step 8 by the amount given by dividing 1 by the number of members of the group in that territory.

- (3) For the purposes of [this section](#) any gain or loss arising from the transfer of assets between standard members of a multinational group is to be ignored.
- (4) Where, as a result of an election under [this section](#), the underlying profits of a member of a multinational group in an accounting period is adjusted, the following are to be recalculated for that period—
 - (a) the effective tax rate for the member and the other members of that group located in the same territory, and
 - (b) the top-up amounts that those members would have.
- (5) [Section 206](#)—
 - (a) makes provision about the consequences of a recalculation (which may include the generation of an additional top-up amount), and
 - (b) applies to recalculations under [subsection \(4\)](#).
- (6) Where an election under [this section](#) has effect in relation to a member of a multinational group, any amount of tax with respect to any gains or loss in respect of the disposal of local tangible assets in the election year is to be excluded from the calculation of the member’s covered tax balance.
- (7) [Paragraph 2 of Schedule 15](#) (annual elections) applies to an election under [this section](#).
- (8) In [this section](#) “local tangible asset” means immovable property in the same territory as the member disposing of it is located.

164 Election to exclude intra-group transactions

- (1) The filing member of a multinational group may elect that standard members of the group that are located in the same territory and are included in a tax consolidation group are to apply the consolidated accounting treatment of the ultimate parent to eliminate income, expenses, gains and losses arising from transactions between those members.
- (2) Where an election under [this section](#) has effect—
 - (a) the underlying profits of those members are to be adjusted accordingly in the accounting periods for which the election has effect, and
 - (b) the underlying profits of those members are to be adjusted for the first accounting period for which the election has effect so as to ensure that there are no duplications or omissions of items of income, expenses, gains or losses arising from the making of the election.
- (3) [Paragraph 1 of Schedule 15](#) (long term elections) applies to an election under [this section](#).

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- (4) Where an election under [this section](#) is revoked, the underlying profits of the members to whom the election applied are to be adjusted in the first accounting period in which the revocation has effect so as to ensure that there are no duplications or omissions of items of income, expenses, gains or losses arising from the revocation of the election.
- (5) For the purposes of this section, members of a multinational group in a territory are included in a “tax consolidation group” if under the law of that territory the income, expenses, gains or losses of those members may for tax purposes be aggregated, surrendered to each other or otherwise shared or transferred between them as a result of a connection between those members.

165 Election to have excluded equity gains and losses included

- (1) The filing member of a multinational group may elect that qualifying excluded equity gains or losses of the standard members of the group in a territory are to be treated as not being excluded equity gains or losses for the purposes of [section 142](#).
- (2) Excluded equity gains or losses are “qualifying” if—
 - (a) those gains or losses are subject to covered taxes (as taxable gains or allowable losses) in that territory, or
 - (b) in the case of gains or losses falling within [section 142\(2\)\(a\)](#) that are not subject to covered taxes in that territory, gains or losses on the disposal of the qualifying interest in question are subject to covered taxes in that territory.
- (3) Paragraph 1 of [Schedule 15](#) (long term elections) applies to an election under [subsection \(1\)](#).
- (4) But a revocation of the election under that paragraph does not have effect in relation to equity gains or losses in respect of an ownership interest if—
 - (a) any member’s adjusted profits have included a loss in respect of that ownership interest as a result of [subsection \(1\)](#), and
 - (b) that loss would otherwise have been excluded from those profits as a result of [section 142\(1\)](#).

Accordingly, [subsection \(1\)](#) will apply to equity gains and losses in respect of that ownership interest even after the election is revoked.

166 Election in relation to hedging currency risk in ownership interests

- (1) The filing member of a multinational group may elect that the underlying profits of a member of the group specified in the election are to be adjusted to exclude qualifying gains or losses arising from fluctuations in exchange rates.
- (2) A gain or loss arising from fluctuations in exchange rates is “qualifying” to the extent—
 - (a) the gain or loss is attributable to an instrument intended to act as a hedge against currency risk in ownership interests held by the member or another member of the group, other than an ownership interest in an entity falling within [subsection \(3\)](#),
 - (b) the gain or loss is recognised in other comprehensive income in the consolidated financial statements of the ultimate parent,
 - (c) the instrument is considered an effective net investment hedge under the authorised accounting standard upon which those statements are prepared,

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- (d) where the instrument is held by the member, the economic and accounting effect of the hedge has not been transferred to any other entity, and
 - (e) where the instrument is not held by the member, the economic and accounting effect of the hedge has been transferred to the member.
- (3) An ownership interest in an entity held by a member of a multinational group falls within [this subsection](#) if the members of that group do not, between them, have qualifying interests that entitle them to 10% or more of the entity's —
- (a) profits,
 - (b) capital,
 - (c) reserves, and
 - (d) voting rights.
- (4) Paragraph 1 of [Schedule 15](#) (long term elections) applies to an election under [this section](#).

Dealing with transparency and entities subject to qualifying dividend regime

167 Underlying profits of hybrids

- (1) This section applies where a member of a multinational group (“M”)—
- (a) is not regarded as tax transparent in the territory in which it is located, and
 - (b) is regarded as tax transparent in a territory in which a member of the group with an ownership interest in it (“G”) is located.
- (2) Where—
- (a) the adjusted profits of G reflect profits of M, and
 - (b) the basis for the profits of M being so reflected is that M (along with any other entities through which G holds that interest) is regarded as tax transparent in the territory in which G is located,
- such profits as are reflected on that basis are to be allocated to M (and included in the adjusted profits of M to the extent not already included) and excluded from the adjusted profits of G.

168 Underlying profits of transparent and reverse hybrid entities

- (1) [This section](#) applies where a member of a multinational group (“M”) is a flow-through entity.
- (2) An entity is a flow-through entity if—
- (a) it is regarded as tax transparent in the territory in which it is created, and
 - (b) it is not subject to a covered tax on its profits in another territory.
- (3) A proportion of the underlying profits of M is to be allocated to each entity (“O”) with an ownership interest in M in relation to which condition A or B is met.
- (4) The proportion to be allocated to O is equal to the proportional ownership interest O has in M in relation to which condition A or B is met (subject to subsection (7)).
- (5) Condition A is that—
- (a) O is not regarded as tax transparent in the territory in which O is located,
 - (b) M is regarded as tax transparent in the territory in which O is located, and

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- (c) if O’s ownership interest in M is an indirect ownership interest in M—
 - (i) each entity through which O holds that interest is regarded as tax transparent in the territory in which O is located, and
 - (ii) this condition is not met in relation to any other entity through which O’s indirect ownership interest in M is held.
- (6) Condition B is that—
 - (a) O is a reverse hybrid entity,
 - (b) M is regarded as tax transparent in the territory in which O is located, and
 - (c) if O’s ownership interest in M is an indirect ownership interest—
 - (i) each entity through which it is held is regarded as tax transparent in the territory in which O is located, and
 - (ii) neither condition A nor this condition is met in relation to any other entity through which O’s indirect ownership interest in M is held.
- (7) Where—
 - (a) underlying profits of M are allocated to an entity (“H”) as a result of it meeting condition B, and
 - (b) underlying profits of M are allocated to an entity (“J”) as a result of it meeting condition A in relation to an ownership interest it holds through H,
 the underlying profits to be allocated to H are to be reduced by the profits allocated to J.
- (8) Where underlying profits of M are allocated to a member of the group of which M is a member, those profits are to be included in the member’s adjusted profits and excluded from the adjusted profits of M.
- (9) Where underlying profits of M are allocated to an entity which is not a member of the group of which M is a member, those profits are to be excluded from the adjusted profits of M.
- (10) Any amount of M’s underlying profits not allocated to an entity in accordance with this section is to be included in the adjusted profits of M.
- (11) For the purposes of [this section](#), an entity (“R”) is a “reverse hybrid entity” if R is regarded as tax transparent in the territory in which it is located and there is a territory—
 - (a) in which an entity with a direct ownership interest in R is located, and R is regarded in that territory as not being tax transparent, or
 - (b) in which an entity with an indirect ownership interest in R is located, and—
 - (i) R is regarded in that territory as not being tax transparent, and
 - (ii) each entity through which that ownership interest is held is regarded in that territory as tax transparent.

169 Certain non tax resident entities to be treated as flow-through entities

- (1) This section applies to a member of a multinational group that—
 - (a) is not tax resident in any territory,
 - (b) is not subject to covered taxes,
 - (c) does not have a place of business in the territory where it is created, and
 - (d) is not regarded as tax transparent in the territory in which it is created.

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- (2) A member of a multinational group to which this section applies is to be treated as being regarded as tax transparent in the territory it is created to the extent that—
 - (a) it is tax transparent in the territory in which its owners are located, and
 - (b) its income, expenditure, profits and losses are not attributable to a permanent establishment.
- (3) Accordingly, such a member is to be treated as a flow-through entity.

170 Adjustments for ultimate parent that is a flow-through entity

- (1) Where—
 - (a) the ultimate parent of a multinational group is a flow-through entity, and
 - (b) on determining its adjusted profits for an accounting period (ignoring this section), it has made a profit for that period,those profits are to be further adjusted so as to exclude any amount of its profits that is qualifying.
- (2) An amount of profits is qualifying if—
 - (a) it represents an amount of the ultimate parent's profits to which the holder of an ownership interest (direct or indirect) in the ultimate parent is entitled as a result of that interest, and
 - (b) condition A, B or C is met.
- (3) Condition A is that the holder of the ownership interest is subject to tax on the amount for a taxable period that ends within 12 months of the accounting period of the group and—
 - (a) the holder is subject to tax on the full amount of the ultimate parent's profits to which it is entitled at a nominal rate equal to, or in excess of, 15%, or
 - (b) it is reasonable to expect that the sum of—
 - (i) the covered taxes payable by the ultimate parent in respect of the amount of the ultimate parent's profits to which the holder is entitled, and
 - (ii) taxes payable by the holder of the ownership interest in respect of the amount of the ultimate parent's profits to which the holder is entitled, is equal to, or more than, 15% of the amount of the profits of the ultimate parent to which the holder of the interest is entitled.
- (4) Condition B is that the holder of the ownership interest is an individual that—
 - (a) is tax resident in the territory of the ultimate parent, and
 - (b) does not hold ownership interests that together entitle the person to more than 5% of the profits and assets of the ultimate parent.
- (5) Condition C is that the holder of the ownership interest is a governmental entity, an international organisation, a non-profit organisation or a pension fund that—
 - (a) is located in the territory of the ultimate parent, and
 - (b) does not hold ownership interests that together entitle that entity to more than 5% of the profits and assets of the ultimate parent.
- (6) Where the adjusted profits of the ultimate parent of a multinational group for an accounting period are reduced as a result of [subsection \(1\)](#), its covered tax balance (see [section 174](#)) is—

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- (a) in the case of a positive covered tax balance, to be reduced by the same proportion that the underlying profits were reduced, or
 - (b) in the case of a negative covered tax balance, to be increased by that same proportion.
- (7) Where—
- (a) the ultimate parent of a multinational group is a flow-through entity,
 - (b) on determining its adjusted profits for an accounting period (ignoring this section), it has made a loss for that period,
- those profits are to be further adjusted so as to exclude any disqualified amount of that loss.
- (8) An amount of that loss is disqualified if the holder of an ownership interest in the ultimate parent is allowed to use that amount in computing the holder's taxable income.
- (9) **This section** applies to a member of a multinational group as it applies to the ultimate parent if the member is—
- (a) a permanent establishment through which the ultimate parent wholly or partly carries out its business, if the ultimate parent is a flow-through entity, or
 - (b) a permanent establishment through which the business of a flow-through entity is carried out, if the ultimate parent's interest in that entity is held directly or through one or more entities all of which are regarded as tax transparent in the territory in which the ultimate parent is located.

171 Ultimate parent subject to qualifying dividend regime

- (1) Where—
- (a) the ultimate parent of a multinational group that is subject to a qualifying dividend regime distributes a qualifying dividend within 12 months of the end of its accounting period, and
 - (b) on determination of its adjusted profits for the period, it has made a profit,
- its adjusted profits for that period are to be reduced (but not below nil) by the amount of that dividend if any one of conditions A to C is met.
- (2) Condition A is that the qualifying dividend is subject to tax in the hands of the dividend recipient for a taxable period that ends within 12 months of the end of the ultimate parent's accounting period and—
- (a) its recipient is subject to tax on the full amount of the dividend at a nominal rate equal to, or in excess of, 15%,
 - (b) it is reasonable to expect that the sum of the adjusted covered taxes payable by the ultimate parent in respect of the profits represented by the dividend and taxes payable by the dividend recipient in respect of the dividend income is at least the amount given by multiplying the amount of that income by 15%, or
 - (c) the ultimate parent is a supply cooperative and the recipient is an individual.
- (3) For the purposes of **subsection (2)** patronage dividends made by a supply cooperative are subject to tax to the extent they reduce an expense or cost that is deductible in the computation of the recipient's taxable income.
- (4) Condition B is that the recipient of the qualifying dividend is an individual that—
- (a) is tax resident in the territory of the ultimate parent, and

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- (b) does not hold ownership interests in the ultimate parent held directly, or through entities that are regarded as tax transparent in the territory in which the individual is tax resident, that together entitle the individual to more than 5% of the profits and assets of the ultimate parent.
- (5) Condition C is that the recipient of the qualifying dividend is located in the territory of the ultimate parent and is—
- (a) a governmental entity,
 - (b) an international organisation,
 - (c) a non-profit organisation, or
 - (d) a pension fund that is not a pension services entity.
- (6) Where the underlying profits of the ultimate parent of a multinational group for an accounting period are reduced as a result of [subsection \(1\)](#)—
- (a) its covered tax balance, excluding any tax in respect of which a deduction for the dividend was allowed, is—
 - (i) in the case of a positive covered tax balance, to be reduced by the same proportion that underlying profits were reduced, or
 - (ii) in the case of a negative covered tax balance, to be increased by that same proportion, and
 - (b) its adjusted profits are to be further reduced by an amount equal to the amount by which its covered tax balance was adjusted under [paragraph \(a\)](#).
- (7) References in [this section](#) to “the recipient” of a qualifying dividend means—
- (a) the direct recipient of the qualifying dividend, or
 - (b) an entity or individual with ownership interests in the direct recipient if—
 - (i) in the case of an entity, it is located in a territory in which the direct recipient, and every entity through which that ownership interest is held, is regarded as tax transparent, or
 - (ii) in the case of an individual, they are tax resident in a territory in which the direct recipient, and every entity through which that ownership interest is held, is regarded as tax transparent.
- (8) Where there is more than one recipient of a dividend as a result of [paragraph \(b\)](#) of [subsection \(7\)](#)—
- (a) [this section](#) is to be applied separately in relation to each recipient,
 - (b) where a recipient falls within that paragraph, references to the dividend is to so much of the dividend to which that recipient is entitled to as a result of its ownership interests in the direct recipient.

But a reduction of adjusted profits may not be made more than once in respect of a dividend or a part of it (where more than one individual or entity can be regarded as a recipient of the whole dividend or a part of it).

- (9) For the purposes of [this section](#) and [section 172](#)—
- “qualifying dividend regime” means a tax regime designed to result in a single level of taxation on the owners of an entity through—
- (a) a deduction from the income of the entity for distributions of profits to the owners,
 - (b) a regime where certain of the profits (“the relevant profits”) of a UK REIT or overseas REIT equivalent are not taxed provided a sufficient proportion of the relevant profits is distributed, or

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(c) a regime applicable to a supply cooperative that exempts the cooperative from taxation on profits in connection with its distribution of patronage dividends;

“qualifying dividend” means—

(a) in the case of a qualifying dividend regime falling within paragraph (a) of the definition of qualifying dividend regime, a dividend or other distribution made to an owner of the entity,

(b) in the case of a qualifying dividend regime falling within paragraph (b) of the definition of qualifying dividend regime, a dividend or other distribution which would count towards satisfying the condition that a sufficient proportion of the relevant profits of the UK REIT or overseas REIT equivalent have been distributed (assuming that condition had not already been met), or

(c) in the case of a qualifying dividend regime falling within paragraph (c) of the definition of qualifying dividend regime, a patronage dividend;

“supply cooperative” means a cooperative that acquires goods or services and sells them to its members or patrons;

“cooperative” means an entity that collectively markets or acquires goods or services on behalf of its members and that is subject to a tax regime in the territory in which it is located that is designed to ensure tax neutrality in respect of—

(a) property or services of the members sold through the cooperative, or

(b) property or services acquired by members through the cooperative;

“patronage dividend” means a distribution by a cooperative to its members.

172 Application of section 171 to members in the same territory as the ultimate parent

(1) **Subsection (2)** applies to a distribution of a qualifying dividend by a member of a multinational group where conditions X and Y are met.

(2) Where **this subsection** applies, **subsections (1) and (6)** of **section 171** apply to the distribution made by the member as it applies to a distribution by the ultimate parent in relation to which one of conditions A to C in that section apply.

(3) Condition X is that the member—

(a) is located in the same territory as the ultimate parent,

(b) the member and the ultimate parent are subject to the same qualifying dividend regime,

(c) all of the ultimate parent’s ownership interests in the member are—

(i) direct, or

(ii) held solely through other members of the group who are located in that territory and subject to the regime.

(4) Condition Y is that—

(a) the distribution of the qualifying dividend is made—

(i) to the ultimate parent, or

(ii) to one of the members referred to in **subsection (3)(c)(ii)**,

(b) in the case of a distribution made to the ultimate parent, the whole of the qualifying dividend is distributed by the ultimate parent and one of the

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conditions A to C in [section 171](#) applies to each of the distributions made from the qualifying dividend, and

- (c) in the case of a distribution made to one of the members referred to in [subsection \(3\)\(c\)\(ii\)](#)—
 - (i) the whole of the dividend is distributed to the ultimate parent, or to one of the members referred to in that subsection provided the whole amount is eventually distributed to the ultimate parent via one or more further distributions to members referred to in that subsection, and
 - (ii) the ultimate parent distributes the whole of the dividend and one of conditions A to C in [section 171](#) applies to each of the distributions made from the qualifying dividend.
- (5) For the purposes of this section, it is to be assumed that —
- (a) where the ultimate parent, or a member referred to in [subsection \(3\)\(c\)\(ii\)](#), has received the whole of the qualifying dividend, but has also received other distributions or has other income, any subsequent distribution by the ultimate parent or member is funded first by the qualifying dividend and then by any other amounts, and
 - (b) where the ultimate parent receives amounts from members referred to in [subsection \(3\)\(c\)\(ii\)](#), those amounts fund distributions that meet one of conditions A to C in [section 171](#) before distributions that do not.

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