



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

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—

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- (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- (4) Where an election under this section has been revoked, the underlying profits of each member of a multinational group in respect of which the election was in force are to be adjusted in the first accounting period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.

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.

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- (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 (["^{F1}and those preceding periods are referred to collectively as] “the look-back period”) in accordance with subsection (2).

- (2) To spread the net gain across those periods take the following steps—

^{F2}Step 1

For each standard member of the group in the territory in the first accounting period of the look-back period (“the carry-back period”), determine whether it has net losses 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

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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.

^{F3}Step 9

Determine which of the standard members of the group ("current gain members") located in the territory have net gains from the disposal of local tangible assets in the election period.

A current gain member is not to be regarded as a current gain member in any accounting period in which—

- (a) it is not a standard member of the group, or
- (b) it is not located in the territory.

Step 10

For the election period and each accounting period that is in the look-back period, adjust the underlying profits for that period ("the adjustment period") of each current gain member by adding the amount given by multiplying—

- (a) the result of Step 8, by
- (b) the amount given by dividing—
 - (i) the net gains of the current gain member from the disposal of local tangible assets in the election period, by
 - (ii) the sum of net gains from the disposal of local tangible assets in the election period of all current gain members in the adjustment period.

Step 11

Where there are no current gain members in an accounting period in the look-back period, adjust the underlying profits for that period of each standard member located in the territory for that period by adding the amount given by multiplying—

- (a) the result of Step 8, by
- (b) the amount given by dividing 1 by the number of standard members of the group in the territory in that accounting period.

Step 12

Where there are no standard members of the group in the territory in one or more accounting periods in the look-back period, further adjust the underlying profits for the election period of each current gain member by adding the amount given by multiplying—

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- (a) the result of Step 8 multiplied by the number of accounting periods in the look-back period in which no standard members of the group were located in the territory, by
 - (b) the amount given by dividing—
 - (i) the net gains of the current gain member from the disposal of local tangible assets in the election period, by
 - (ii) the sum of net gains from the disposal of local tangible assets in the election period of all current gain members.]
- (3) For the purposes of [this section](#) any gain or loss arising from the transfer of assets between ^{F4}... 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.

Textual Amendments

- F1** Words in [s. 163\(1\)](#) substituted (22.2.2024 with effect for accounting periods beginning on or after 31.12.2023 in accordance with Sch. 12 para. 1(2) of the amending Act) by [Finance Act 2024 \(c. 3\)](#), [Sch. 12 para. 13\(2\)](#)
- F2** Words in [s. 163\(2\)](#) substituted (22.2.2024 with effect for accounting periods beginning on or after 31.12.2023 in accordance with Sch. 12 para. 1(2) of the amending Act) by [Finance Act 2024 \(c. 3\)](#), [Sch. 12 para. 13\(3\)\(a\)](#)
- F3** Words in [s. 163\(2\)](#) substituted (22.2.2024 with effect for accounting periods beginning on or after 31.12.2023 in accordance with Sch. 12 para. 1(2) of the amending Act) by [Finance Act 2024 \(c. 3\)](#), [Sch. 12 para. 13\(3\)\(b\)](#)
- F4** Word in [s. 163\(3\)](#) omitted (22.2.2024 with effect for accounting periods beginning on or after 31.12.2023 in accordance with Sch. 12 para. 1(2) of the amending Act) by virtue of [Finance Act 2024 \(c. 3\)](#), [Sch. 12 para. 13\(4\)](#)

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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](#).
- (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
 - [^{F5}(a) either—
 - [^{F6}(i)] those gains or losses are subject to covered taxes (as taxable gains or allowable losses) in that territory, or
 - [^{F6}(ii)] 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 [^{F7}, and
 - (b) in the case of gains or losses falling within [section 142\(2\)\(b\)](#), the gains or losses are not in respect of an interest to which [section 142\(3\)](#) applies.]
- (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

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- (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.

Textual Amendments

- F5** Words in [s. 165\(2\)](#) inserted (22.2.2024 with effect for accounting periods beginning on or after 31.12.2023 in accordance with Sch. 12 para. 1(2) of the amending Act) by [Finance Act 2024 \(c. 3\)](#), [Sch. 12 para. 50\(6\)\(a\)](#)
- F6** [S. 165\(2\)\(a\)\(b\)](#) become [s. 165\(2\)\(a\)\(i\)\(ii\)](#) (22.2.2024 with effect for accounting periods beginning on or after 31.12.2023 in accordance with Sch. 12 para. 1(2) of the amending Act) by [Finance Act 2024 \(c. 3\)](#), [Sch. 12 para. 50\(6\)\(b\)](#)
- F7** [S. 165\(2\)\(b\)](#) and word inserted (22.2.2024 with effect for accounting periods beginning on or after 31.12.2023 in accordance with Sch. 12 para. 1(2) of the amending Act) by [Finance Act 2024 \(c. 3\)](#), [Sch. 12 para. 50\(6\)\(c\)](#)

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,
 - (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](#).

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