



Finance (No. 2) Act 2023

2023 CHAPTER 30

PART 3

MULTINATIONAL TOP-UP TAX

CHAPTER 9

SPECIAL PROVISION FOR INVESTMENT ENTITIES, JOINT VENTURE GROUPS AND MINORITY-OWNED MEMBERS

Investment entities

220 Top-up amount of investment entity

- (1) The top-up amount for an accounting period of a member of a multinational group that is an investment entity is, subject to subsection (2), determined by taking the following steps—

Step 1

Determine the adjusted profits (if any) of the entity for the period in accordance with Chapter 4. If the adjusted profits are nil or less, the top-up amount is nil. Otherwise, proceed to Step 2.

Step 2

Adjust the result of Step 1 in accordance with section 223 (to the extent applicable). If the adjusted result is nil, the top-up amount is nil. Otherwise, proceed to Step 3.

Step 3

Determine the substance-based income exclusion for the entity for the period (see section 221).

Step 4

Adjust the result of Step 3 in accordance with section 223 (to the extent applicable).

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Step 5

Subtract the result of Step 4 from the result of Step 2. If the result is nil or less, the top-up amount is nil. Otherwise, proceed to Step 6.

Step 6

Determine the investment entity effective tax rate for the territory for the period (see section 222).

Step 7

Subtract the result of Step 6 from 15%. If the result is nil or less, the top-up amount is nil. Otherwise, proceed to Step 8.

Step 8

Multiply the result of Step 7 by the result of Step 5. This is the top-up amount for the entity.

- (2) If an election under section 214 (taxable distribution method election) has been made in relation to the entity, the top-up amount for an accounting period of the entity is the top-up amount determined under subsection (1) added together with any positive undistributed income amount for the entity for the period (see section 215).
- (3) For the purposes of applying Chapter 4 in relation to an investment entity, the references in section 33(2) to “standard members” of a multinational group are instead to members of the multinational group that are investment entities.

221 Substance based income exclusion for investment entity

- (1) The substance based income exclusion for an investment entity is to be determined by adding together—
 - (a) the payroll carve-out amount of the entity, and
 - (b) the tangible asset carve-out amount of the entity,
- (2) Section 195(4) applies to the determination of the payroll carve-out amount of the entity as it applies for members of the group that are not investment entities.
- (3) Section 195(5) applies to the determination of the tangible asset carve-out amount of the entity as it applies for members of the group that are not investment entities.
- (4) If the filing member for the group elects not to calculate the substance based income exclusion for the period in a self-assessment (see Schedule 12), the exclusion is nil.
- (5) Paragraph 2 of Schedule 15 (annual elections) applies to an election under subsection (4).

222 Investment entity effective tax rate

The investment entity effective tax rate in a territory for an accounting period is determined by taking the following steps—

Step 1

Determine the adjusted profits made by each of the investment entities in the territory, as determined under Chapter 4 and adjusted under section 223.

Step 2

Subtract the sum of the losses of those investment entities that made a loss in that period from the sum of the profits of those investment entities that made a profit in that period.

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Step 3

If the result of Step 2 is nil or less, the investment entity effective tax rate is to be treated as 15%. Otherwise, proceed to Step 4.

Step 4

Determine the covered tax balance of each such investment entity in accordance with Chapter 5.

Step 5

Adjust the amounts determined in Step 4 in accordance with section 223 (to the extent applicable).

Step 6

Add together the amounts determined in Step 5 that are adjusted positive covered tax balances.

Step 7

Add together the amounts determined in Step 5 that are adjusted negative covered tax balances.

Step 8

Subtract the result of Step 7 from the result of Step 6.

Step 9

Divide the result of Step 8 by the result of Step 1. This is the investment entity effective tax rate.

223 Adjustments

- (1) In this section each of the following amounts is a “relevant amount”—
 - (a) the adjusted profits of an investment entity;
 - (b) a substance based income exclusion for an investment entity;
 - (c) the covered tax balance of an investment entity.
- (2) An external holding adjustment is to be made to each relevant amount if a person that is not a member of the multinational group has ownership interests in the entity and no election under section 213 (tax transparency election) has been made in relation to the entity.
- (3) An election adjustment is to be made to each relevant amount if an election under section 213 (tax transparency election) or 214 (taxable distribution method election) has been made in relation to the entity.
- (4) Where both an external holding adjustment and an election adjustment are to be made, the election adjustment is to be made after the external holding adjustment (and accordingly is to be an adjustment of a relevant amount as adjusted by the external holding adjustment).
- (5) An adjustment under this section is a reduction of the relevant amount by an adjustment amount.
- (6) An adjustment amount is the adjustment factor for the type of adjustment multiplied by the relevant amount.
- (7) The adjustment factor for an external holding adjustment is the value obtained by dividing—

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- (a) the amount of profits of the entity attributable to ownership interests held by persons that are not members of the group, by
 - (b) the total amount of profits of the entity determined under Chapter 4.
- (8) The adjustment factor for an election adjustment is the value obtained by dividing—
- (a) the amount of profits of the entity attributable to ownership interests held by the owners in relation to which an election has been made, by
 - (b) the total amount of profits of the entity attributable to ownership interests held by members of the group.
- (9) The amount of profits attributable to ownership interests is to be determined in accordance with the method in section 201(2) for determining the amount of profits attributable to the ownership interests referred to in that section.
- (10) Where the covered tax balance of an investment entity includes an amount allocated to it under section 179(1) or 180(3)(a) (allocation of tax imposed under controlled foreign company tax regimes), only so much of its covered tax balance as is not comprised of amounts allocated under those sections is subject to adjustment under this section.

224 Additional top-up amounts of investment entities

- (1) Sections 202 to 207 apply in respect of a member of a multinational group that is an investment entity such that the member may have additional top-up amounts.
- (2) For that purpose—
- (a) references in those sections to the standard members of a multinational group in a territory apply as if they were references to the investment entities of the group in the territory;
 - (b) the reference in section 202(3) to Step 2 in section 132(1) applies as if it were a reference to Step 2 in section 222;
 - (c) sections 204(4) and 207(2) do not apply.

225 Attribution of top-up amounts and additional top-up amounts to responsible member

- (1) In this section “top-up amount” includes an additional top-up amount determined under section 224.
- (2) Section 200 applies to the attribution of a top-up amount of a member of a multinational group that is an investment entity (“the relevant member”) to a responsible member as it applies to a top-up amount of any other member of the group.
- (3) Section 201 applies for the purpose of determining the inclusion ratio of the responsible member, but—
- (a) in carrying out Step 1 in section 201(1)—
 - (i) the adjusted profits of the entity determined in that Step are to be further adjusted in accordance with section 223 (to the extent applicable);
 - (ii) if an election under section 214 (taxable distribution method election) has been made in relation to the entity, the adjusted profits of the entity are to be treated as including the undistributed income amount for the entity determined under section 215, and

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- (b) subsection (4) of that section applies whether or not the relevant member is a flow-through entity (so that entities that are not members of the group are always ignored).

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 131(2)(3) substituted for s. 131(2) by 2024 c. 3 Sch. 12 para. 5(3)
- s. 147A inserted by 2024 c. 3 Sch. 12 para. 8(1)
- s. 148A-148C inserted by 2024 c. 3 Sch. 12 para. 8(3)
- s. 150(6A) inserted by 2024 c. 3 Sch. 12 para. 50(5)(b)
- s. 151(1)(c) and word inserted by 2024 c. 3 Sch. 12 para. 9(2)(d)
- s. 151(1)(aa) inserted by 2024 c. 3 Sch. 12 para. 9(2)(c)
- s. 151(6A) inserted by 2024 c. 3 Sch. 12 para. 9(4)
- s. 151(8) inserted by 2024 c. 3 Sch. 12 para. 9(6)
- s. 159(1)(a)(b) substituted for words by 2024 c. 3 Sch. 12 para. 12(2)
- s. 159(2)(a)(b) substituted for words by 2024 c. 3 Sch. 12 para. 12(3)
- s. 159(3)(a)(b) substituted for words by 2024 c. 3 Sch. 12 para. 12(4)
- s. 159(4) inserted by 2024 c. 3 Sch. 12 para. 12(5)
- s. 165(2)(a)(i)(ii) s. 165(2)(a)(b) become s. 165(2)(a)(i)(ii) by 2024 c. 3 Sch. 12 para. 50(6)(b)
- s. 168(12) inserted by 2024 c. 3 Sch. 12 para. 14(8)
- s. 170(2A) inserted by 2024 c. 3 Sch. 12 para. 14(9)(b)
- s. 176A-176C and cross-heading inserted by 2024 c. 3 Sch. 12 para. 8(6)
- s. 176D-176F and cross-heading inserted by 2024 c. 3 Sch. 12 para. 16(1)
- s. 178(1A)(1B) inserted by 2024 c. 3 Sch. 12 para. 17(4)
- s. 178(5)(6) inserted by 2024 c. 3 Sch. 12 para. 17(6)
- s. 179(1A) inserted by 2024 c. 3 Sch. 12 para. 17(7)(a)
- s. 179(3A)(3B) inserted by 2024 c. 3 Sch. 12 para. 17(7)(b)
- s. 180(8)(b)(ii)(iia) substituted for s. 180(8)(b)(ii) by 2024 c. 3 Sch. 12 para. 19(4)
- s. 183A inserted by 2024 c. 3 Sch. 12 para. 20(5)
- s. 195(7A) inserted by 2024 c. 3 Sch. 12 para. 25(1)
- s. 196(1)(e) and words inserted by 2024 c. 3 Sch. 12 para. 22(1)(b)
- s. 196(1A) inserted by 2024 c. 3 Sch. 12 para. 21(1)(b)
- s. 197(4)(d)(e) inserted by 2024 c. 3 Sch. 12 para. 23(b)
- s. 197(5)(c) and word inserted by 2024 c. 3 Sch. 12 para. 22(2)(e)
- s. 197(6A) inserted by 2024 c. 3 Sch. 12 para. 21(2)
- s. 197(7A) inserted by 2024 c. 3 Sch. 12 para. 24
- s. 197A inserted by 2024 c. 3 Sch. 12 para. 25(2)
- s. 198A inserted by 2024 c. 3 Sch. 12 para. 26
- s. 211(1)-(1C) substituted for s. 211(1) by 2024 c. 3 Sch. 12 para. 27(a)
- s. 213(6A) inserted by 2024 c. 3 Sch. 12 para. 28
- s. 232(3A) inserted by 2024 c. 3 Sch. 12 para. 4(6)
- s. 232A inserted by 2024 c. 3 Sch. 12 para. 2(2)
- s. 236(2A) inserted by 2024 c. 3 Sch. 12 para. 31(3)
- s. 251A inserted by 2024 c. 3 Sch. 12 para. 29(1)
- s. 253(2)(b)(va) inserted by 2024 c. 3 Sch. 12 para. 56(10)(c)(iii)
- s. 255(2A) inserted by 2024 c. 3 Sch. 12 para. 34(1)(a)
- s. 255(4)-(6) inserted by 2024 c. 3 Sch. 12 para. 34(1)(c)
- s. 256A inserted by 2024 c. 3 Sch. 12 para. 35(1)
- s. 262(1A)-(1D) inserted by 2024 c. 3 Sch. 12 para. 36
- s. 267(3A) inserted by 2024 c. 3 Sch. 12 para. 42(1)(a)
- s. 267(3B)-(3D) inserted by 2024 c. 3 Sch. 12 para. 43(1)(b)
- s. 267A inserted by 2024 c. 3 Sch. 12 para. 42(2)
- s. 268A inserted by 2024 c. 3 Sch. 12 para. 2(4)

- s. 272(8)(da) inserted by 2024 c. 3 Sch. 12 para. 44(1)
- s. 272(9)-(11) inserted by 2024 c. 3 Sch. 12 para. 43(3)(b)
- s. 272A inserted by 2024 c. 3 Sch. 12 para. 42(3)
- s. 273(3)(ba) inserted by 2024 c. 3 Sch. 12 para. 44(2)
- s. 273(4)(pa) inserted by 2024 c. 3 Sch. 12 para. 57(3)(c)
- s. 273A273B inserted by 2024 c. 3 Sch. 12 para. 45(1)
- s. 273C inserted by 2024 c. 3 Sch. 12 para. 46
- s. 276(c)(iiia) inserted by 2024 c. 3 Sch. 12 para. 45(2)(b)
- s. 276(aa) inserted by 2024 c. 3 Sch. 12 para. 45(2)(a)
- s. 311A inserted by 2024 c. 3 s. 21(3)
- Sch. 14 para. 37A37B and cross-heading inserted by 2024 c. 3 Sch. 12 para. 2(6)(b)
- Sch. 14 para. 39(1)(aa) inserted by 2024 c. 3 Sch. 12 para. 2(6)(c)(ii)
- Sch. 14 para. 39(2)(aa) inserted by 2024 c. 3 Sch. 12 para. 2(6)(c)(iii)
- Sch. 14 para. 33A inserted by 2024 c. 3 Sch. 12 para. 37(3)
- Sch. 14 para. 6(1A) inserted by 2024 c. 3 Sch. 12 para. 58(1)(a)
- Sch. 14 para. 34(2A) inserted by 2024 c. 3 Sch. 12 para. 58(1)(b)(ii)
- Sch. 14 para. 3(3)-(5) substituted for Sch. 14 para. 3(3) by 2024 c. 3 Sch. 12 para. 2(6)(a)(iii)
- Sch. 15 para. 2(1)(za) inserted by 2024 c. 3 Sch. 12 para. 16(2)
- Sch. 15 para. 2(1)(k) inserted by 2024 c. 3 Sch. 12 para. 40(2)
- Sch. 15 para. 2(1)(l) inserted by 2024 c. 3 Sch. 12 para. 41(4)
- Sch. 15 para. 1(1)(aa) inserted by 2024 c. 3 Sch. 12 para. 58(2)(a)
- Sch. 15 para. 2(1)(ea) inserted by 2024 c. 3 Sch. 12 para. 58(2)(b)(i)
- Sch. 15 para. 2(1)(fa) inserted by 2024 c. 3 Sch. 12 para. 58(2)(b)(ii)
- Sch. 16 para. 10(1) Sch. 16 para. 10 renumbered as Sch. 16 para. 10(1) by 2024 c. 3 Sch. 12 para. 58(3)(a)
- Sch. 16 para. 2(11)(b) inserted by 2024 c. 3 Sch. 12 para. 34(2)(d)(ii)
- Sch. 16 para. 2(3A) inserted by 2024 c. 3 Sch. 12 para. 38(3)
- Sch. 16 para. 2(12)(13) inserted by 2024 c. 3 Sch. 12 para. 38(8)
- Sch. 16 para. 4(3)(d) and word inserted by 2024 c. 3 Sch. 12 para. 39(3)(a)(ii)
- Sch. 16 Pt. 3 inserted by 2024 c. 3 Sch. 12 para. 40(1)
- Sch. 16 para. 10(2)(3) inserted by 2024 c. 3 Sch. 12 para. 58(3)(d)
- Sch. 16 para. 2(1)(b)(ba) substituted for Sch. 16 para. 2(1)(b) by 2024 c. 3 Sch. 12 para. 34(2)(a)
- Sch. 16 para. 3(1)(1A) substituted for Sch. 16 para. 3(1) by 2024 c. 3 Sch. 12 para. 39(2)
- Sch. 16 para. 3(7)-(9) substituted for Sch. 16 para. 3(7)(8) by 2024 c. 3 Sch. 12 para. 29(2)
- Sch. 16 para. 10(1)(a) word substituted by 2024 c. 3 Sch. 12 para. 58(3)(c)
- Sch. 16 para. 10(1) words inserted by 2024 c. 3 Sch. 12 para. 58(3)(b)(ii)
- Sch. 16 para. 10(1) words substituted by 2024 c. 3 Sch. 12 para. 58(3)(b)(i)
- Sch. 16A inserted by 2024 c. 3 Sch. 12 para. 41(1)