Finance (No. 2) Act 2023

2023 CHAPTER 30

PART 3

MULTINATIONAL TOP-UP TAX

CHAPTER 1

INTRODUCTION AND CHARGE

121 Introduction to multinational top-up tax

(1) The purpose of this Part is to implement the provisions of the Pillar Two rules relating to top-up tax under the IIR (within the meaning of those rules).

(2) For that purpose, this Part makes provision for a tax payable in respect of members of multinational groups who are located in territories (outside the United Kingdom) where their rate of tax (as determined in accordance with this Part) is less than 15%.

(3) The tax is to be known as "multinational top-up tax".

(4) Sections 122 to 124 set out the charge to multinational top-up tax and describe how it is to be calculated.

(5) Chapter 2 of this Part—

(a) sets out the meaning of "multinational group";

(b) describes who the members of such a group are;

(c) identifies the ultimate parent of such a group;

(d) limits the application of this Part to multinational groups with an annual revenue of at least 750 million euros and that have at least one member in the United Kingdom (such a group is referred to in this Part as "qualifying");

(e) sets out how to determine which members of a multinational group ("responsible members") are responsible for paying the tax and which members they are responsible for.

122 Chargeable persons

(1) A person is chargeable to multinational top-up tax for an accounting period of a multinational group if the group is a qualifying multinational group in that period and—

(a) the person—

(i) is a responsible member of the multinational group at any time in that period,

(ii) is a body corporate or a partnership that is not a body corporate, and

(iii) is located in the United Kingdom, or

(b) the person is chargeable to tax in respect of an entity that is a responsible member of the multinational group at any time in that period.

(2) A person is chargeable to tax in respect of a responsible member of a multinational group if—

(a) the profits of the responsible member would, on the relevant assumptions, be the profits of the person for the purposes of income tax or corporation tax,

(b) the responsible member is located in the United Kingdom, and

(c) the responsible member is not—

(i) a body corporate, or

(ii) a partnership that is not a body corporate.

(3) The relevant assumptions are—

(a) that the responsible member has profits that are chargeable to income tax or corporation tax, and

(b) that the person is resident in the United Kingdom for the purposes of that tax.

(4) Where a partnership that is not a body corporate is chargeable to multinational top-up tax as a result of subsection (1)(a)—

(a) the responsible partners are liable to pay the tax, and

(b) the liability of the responsible partners to do so is joint and several.

(5) The references in subsection (4) to "the responsible partners" are to each member of the partnership at any time during the accounting period who—

(a) in the case of a partner that is an entity, is located in the United Kingdom, or

(b) in the case of a partner that is an individual, is tax resident in the United Kingdom.

(6) A partnership is to be regarded for the purposes of this section as continuing to be the same partnership regardless of a change in membership, provided that a person who was a member before the change remains a member after the change.

(7) Where more than one person is chargeable to tax in relation to the same responsible member of a qualifying multinational group as a result of the application of subsection (2), each of those persons is jointly and severally liable to multinational top-up tax.

123 Amount charged by reference to "top-up amounts"

Where a person is chargeable to multinational top-up tax for an accounting period as a responsible member of a qualifying multinational group or in respect of a responsible

member of a qualifying multinational group, the amount (if any) the person must pay is determined as follows—

Step 1

Determine which, if any, of the multinational group's members that the responsible member is responsible for have top-up amounts or additional top-up amounts for that period and the extent of those amounts.

Step 2

Determine how much of each of those amounts is to be attributed to the responsible member.

Step 3

Add together the amounts attributed to the responsible member.

Step 4

If the result of Step 3 is not expressed in sterling, convert the result of that Step to sterling.

124 How to calculate top-up amounts and attribute them

(1) Generally, a member of a multinational group in a territory will have a top-up amount for an accounting period if—

(a) the effective tax rate of the members of the group in that territory for that period is less than 15%, and

(b) that member has profits for that period.

(2) Chapter 3 of this Part sets out how to determine the effective tax rate of the members of a multinational group in a territory by reference to the profits of, and the taxes payable by, those members in that territory.

(3) Chapter 4 of this Part sets out how to calculate the profits of members of a multinational group.

(4) Chapter 5 of this Part sets out—

(a) which taxes (referred to in this Part as "covered taxes") are to be considered in determining the effective tax rate of those members, and

(b) how to determine the amount of covered taxes allocated to those members.

(5) Chapter 6 of this Part sets out how to use the effective tax rate and profits of the members of a multinational group to determine the top-up amounts of those members.

(6) Chapter 7 of this Part sets out how to attribute those top-up amounts to a responsible member of the group.

(7) Chapter 8 of this Part contains provisions about—

(a) additional top-up amounts, and

(b) further adjustments that may need to be made (including provision about adjustments for restructuring of multinational groups).

(8) Chapter 9 of this Part sets out special provision for investment entities, joint venture groups and minority owned members (including provision that applies to those entities instead of provision in the previous Chapters).

(9) Chapter 10 of this Part contains definitions and other provisions relevant to the calculations and other determinations to be made for the purposes of multinational top-up tax and Chapter 11 contains general provision.

125 Administration of multinational top-up tax

Schedule 14 makes provision for—

(a) information returns which must be made in respect of multinational groups,

(b) assessments to multinational top-up tax,

(c) penalties, and

(d) other administrative matters.

CHAPTER 2

QUALIFYING MULTINATIONAL GROUPS AND THEIR MEMBERS

Multinational groups

126 Meaning of "multinational group" and "ultimate parent"

(1) References in this Part to a multinational group are to a consolidated group where at least one of the members of that group is not located in the same territory as the others.

(2) A "consolidated group" means the following entities (which are its members)—

(a) an entity (the "ultimate parent")—

(i) in which no other entity has a controlling interest, and

(ii) which has a controlling interest in other entities, and

(b) the entities whose assets, liabilities, income, expenses and cash flows—

(i) are included in the consolidated financial statements of the ultimate parent, or

(ii) are not included in those statements only because of an exclusion on size or materiality grounds or on the grounds that the entity in question is held for sale.

127 Excluded entities

(1) For the purposes of this Part, excluded entities are to be treated as not being members of a multinational group.

(2) But subsection (1) does not apply for the purposes of the following provisions—

(a) section 126 (and accordingly an excluded entity that is the ultimate parent of multinational group remains the ultimate parent of that group),

(b) this section, and

(c) section 129 (determining whether a multinational group is qualifying).

(3) The following are excluded entities—

(a) a governmental entity;

(b) an international organisation;

(c) a pension fund;

(d) a non-profit organisation;

(e) a qualifying non-profit subsidiary;

(f) a qualifying service entity;

(g) a qualifying exempt income entity.

(4) The following are also excluded entities if they are the ultimate parent of a multinational group, or would be but for the fact they do not produce consolidated financial statements that include assets, liabilities, income expenses and cash flows of entities in which they have ownership interests—

(a) an investment fund,

(b) a UK REIT, or

(c) an overseas REIT equivalent.

(5) An entity is a qualifying non-profit subsidiary in an accounting period if—

(a) it is 100% owned by one or more entities that are non-profit organisations,

(b) the revenue (see section 129(5)) of the multinational group of which the entity is a member would not exceed the threshold set out in section 129(4) for that period if the revenue of every member that is a non-profit organisation, a qualifying service entity or a qualifying exempt income entity were ignored,

(c) the revenue of the group for that period that is ignored for the purposes of paragraph (b) is less than 25% of the total revenue of the group, and

(d) no election under subsection (8) is in force in relation to the entity.

(6) An entity is a qualifying service entity if—

(a) it is 95% owned by one or more qualifying excluded entities,

(b) either—

(i) the entity only carries out activities that are ancillary to the activities of those owners, or

(ii) all, or almost all, of its activities, ignoring activities falling within sub-paragraph (i), consist of the holding of assets or the investment of funds for the benefit of those owners, and

(c) no election under subsection (8) is in force in relation to the entity.

(7) An entity is a qualifying exempt income entity if—

(a) it is 85% owned by one or more qualifying excluded entities,

(b) almost all of the entity's income is excluded dividends or excluded equity gains (or a mixture of both), and

(c) no election under subsection (8) is in force in relation to the entity.

(8) The filing member of a multinational group (see paragraph 2 of Schedule 14) may make an election that a member of that group that would otherwise be an excluded entity as a result of subsection (5), (6) or (7) is not to be an excluded entity.

(9) Schedule 15 makes provision about elections under this Part.

(10) Paragraph 1 of that Schedule (long term elections) applies to an election under subsection (8).

(11) For the purposes of subsection (5), the reference to an entity being 100% owned by one or more entities that are non-profit organisations is to those entities together having that percentage of ownership interest in that entity.

(12) For the purposes of subsections (6) and (7)—

(a) despite section 232(3) (permanent establishments treated as distinct from main entity), the conditions in subsection (6)(b) and (7)(b) are only met in relation to a permanent establishment or a main entity if the conditions are

met by the main entity and all of its permanent establishments taken together as if they were a single entity;

(b) an excluded entity is "qualifying" if it is not a pensions service entity, and

(c) references to an entity being 95% or 85% owned by qualifying excluded entities are to those entities together having at least that percentage of the ownership interests in that entity (see section 245 for how to calculate ownership interests in excluded entities).

Responsible members

128 Responsible members

(1) The ultimate parent of a multinational group is a responsible member of that group if it is subject to Pillar Two IIR tax.

(2) An ultimate parent that is a responsible member of a multinational group is responsible for all of its members that are not located in the territory it is located in.

(3) An intermediate parent member of a multinational group (see section 237(2)) that is located in a Pillar Two territory is a responsible member of that group if it is subject to Pillar Two IIR tax and—

(a) no intermediate parent member of that group that is subject to Pillar Two IIR tax has a controlling interest in it,

(b) the ultimate parent is not subject to Pillar Two IIR tax, and

(c) it has an ownership interest in a member of the group that has a top-up amount.

(4) Such an intermediate parent member is responsible for all of the members of the group it has an ownership interest in that are not located in the territory it is located in.

(5) A partially-owned parent member of a multinational group (see section 237(1)) that is located in a Pillar Two territory is a responsible member if it is subject to Pillar Two IIR tax and—

(a) it is not wholly owned by another partially-owned parent member of that group that is subject to Pillar Two IIR tax, and

(b) it has an ownership interest in a member of the group that has a top-up amount.

(6) Such a partially owned parent member is responsible for all of the members of the group it has an ownership interest in that are not located in the same territory it is located in.

(7) For the purposes of this Part an entity is subject to Pillar Two IIR tax if—

(a) the entity is located in the United Kingdom and is not an excluded entity, or

(b) the entity—

(i) is located in another Pillar Two territory in which a tax equivalent to multinational top-up tax is in force, and

(ii) is not excluded from the application of that tax as a result of provision equivalent to section 127.

Qualifying multinational groups

129 Qualifying multinational groups

(1) For the purposes of this Part, a multinational group is "qualifying" in an accounting period if conditions A and B are met.

(2) Condition A is that the group's members have revenue that exceeds the threshold set out in subsection (4) in at least 2 accounting periods of the previous 4 accounting periods.

(3) Condition B is that at least one of the group's members is located in the United Kingdom.

(4) The threshold for an accounting period is the amount given by multiplying 750 million euros by the amount given by dividing the number of days in the accounting period by 365.

(5) For the purposes of this section, and section 127(5), the revenue of the members of a multinational group for a period is to be determined by reference to the consolidated financial statements of the ultimate parent for that period.

130 Change in composition of multinational group

(1) This section applies for the purpose of determining whether condition A in section 129(2) is met by a multinational group in an accounting period ("the qualifying period") where its composition has changed—

(a) in that period, or

(b) during the previous 4 accounting periods ("the testing period").

(2) Reference in subsection (1) to a change in the composition of a multinational group includes its formation as a result of the acquisition by one entity of ownership interests in another.

(3) Where a member of the multinational group was not a member of any consolidated group in one or more of the accounting periods in the testing period—

(a) its revenues for those accounting periods are to be determined by reference to its financial statements or any consolidated financial statements in which its revenue is included (and, if necessary, apportioned on a just and reasonable basis to those accounting periods), and

(b) those revenues are to be treated as forming part of the revenues of the multinational group in those periods (whether or not the group existed in those periods).

(4) Where a multinational group is the result of a merger of two or more consolidated groups in the qualifying period or the testing period, for each accounting period of those periods in which they were separate groups, add together the revenues of each consolidated group for that period (determined by reference to the consolidated financial statements of the ultimate parent of each group and if necessary, apportioned on a just and reasonable basis to the accounting period of the merged group) to determine whether the threshold in section 129(4) is met for that period.

(5) For the purposes of this section "merger" means any arrangement that results in two or more consolidated groups becoming a single consolidated group.

131 Whether de-merged groups meet the revenue threshold

(1) Where a multinational group is the result of a qualifying de-merger ("a de-merged group"), section 129 has effect in relation to that group for its first accounting period that ends after the de-merger, and in the 3 accounting periods that follow it as if for subsection (2) there were substituted—

"(2) A de-merged group meets condition A if—

(a) in its first accounting period that ends after the de-merger, if its members have revenue for that period that exceeds the threshold set out in section 129(4), and

(b) in any of the second to fourth accounting periods ending after the de-merger, if its members have revenue that exceeds the threshold set out in that section in any two of the following periods—

(i) that period;

(ii) any of the accounting periods that precede that period and end after the de-merger."

(2) In this section "qualifying de-merger" means the separation of members of a multinational group that meets condition A in section 129(2) into two or more consolidated groups, such that those members cease to all be consolidated by the same ultimate parent.

CHAPTER 3

EFFECTIVE TAX RATE OF MEMBERS OF A MULTINATIONAL GROUP IN A TERRITORY

132 Effective tax rate

(1) The effective tax rate of the standard members of a multinational group in a territory for an accounting period is determined as follows—

Step 1

Determine, in accordance with Chapter 4, the adjusted profits for that period of each standard member of that group in that territory.

Step 2

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

Step 3

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

Step 4

Determine the combined covered tax balance for the standard members of the group in that territory (which may be negative).

Step 5

If that balance is nil the effective tax rate is 0%. Otherwise, proceed to Step 6.

Step 6

Divide the combined covered tax balance by the result of Step 2.

Step 7

Except where Step 3 or 5 applies, the effective tax rate of the standard members of that group is X% where X (which will be negative if the combined covered tax balance is negative) is the result of Step 6 multiplied by 100.

(2) The combined covered tax balance for standard members of a multinational group in a territory is—

(a) where those members only have positive covered tax balances (see Chapter 5), the sum of those balances,

(b) where those members only have negative covered tax balances (see that Chapter), the sum of those balances expressed as a negative number, or

(c) where those members have a mixture of positive covered tax balances and negative covered tax balances, the amount (which may be positive or negative) given by subtracting the sum of those negative covered tax balances from the sum of those positive covered tax balances.

Section 164 contains provision about the determination of covered tax balances of members of multinational groups.

(3) For the purposes of this Part—

(a) a member of a multinational group is a "standard member" if it is not—

(i) an investment entity, or

(ii) a minority owned member, and

(b) a stateless member of a multinational group is to be treated as being the sole member of the group located in a nominal territory.

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
(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.

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.

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—

(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.

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.

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,

(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.

(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

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).

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

(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

(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).

(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.

(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;

(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.

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.

(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.

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

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

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.

(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,

(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

(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.

(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—

(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

(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

(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

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.

CHAPTER 5

COVERED TAX BALANCE

Amount of covered taxes

173 Covered taxes

(1) The following are covered taxes in relation to a member of a multinational group—

(a) taxes on profits of that member (including, where it has direct or indirect ownership interests in another member of the group, taxes on its share of the income or profits of that other member),

(b) taxes imposed on the member under an eligible distribution tax system,

(c) taxes imposed on the member as a substitute for a tax on profits that generally applies in the territory of the member, and

(d) taxes charged by reference to the capital of a company, or by reference to its capital and profits.

(2) But none of the following are to be regarded as covered taxes—

(a) multinational top-up tax, or any tax equivalent to multinational top-up tax;

(b) a qualifying domestic top-up tax (see section 256);

(c) a qualifying undertaxed profits tax (see section 257);

(d) a disqualified refundable imputation tax (see section 253);

(e) where the member carries on a life assurance business, taxes in respect of which amounts were charged to the member's policyholders.

174 Amount of covered tax balance

(1) To determine the covered tax balance of a member of a multinational group for an accounting period—

Step 1

Determine the amount of the qualifying current tax expense accrued by the member for that period.

Step 2

Determine whether any amounts need to be excluded from that expense under section 175 (and adjust it accordingly).

Step 3

Determine whether any amounts need to be reflected in that expense under section 176 (and adjust it accordingly).

Step 4

If any amount of covered taxes is taken into account more than once in the covered tax balance expense, adjust it so that the amount is only taken into account once.

(2) For the purposes of this Part, current tax expense is to be expressed—

(a) as a positive number where it represents an expense, and

(b) as a negative number where it represents a credit.

(3) If the result of subsection (1) is a negative amount that amount (expressed as a positive number) is a "negative covered tax balance".

(4) If the result of subsection (1) is a positive amount, or nil, that amount is a "positive covered tax balance".

(5) In this Part—

references to the "covered tax balance" of a member of a multinational group are to a positive covered tax balance or a negative covered tax balance;

"qualifying current tax expense" means the amount of the current tax expense as reflected in the member's underlying profits to the extent the expense relates to covered taxes.

175 Amounts excluded from covered tax balance

(1) The amounts referred to in subsection (2) are to be excluded from a member of a multinational group's qualifying current tax expense (to the extent they would otherwise be included).

(2) Those amounts are as follows—

(a) any amount that relates to income or gains that are not included in the member's adjusted profits;

(b) any amount that relates to an uncertain tax position;

(c) any amount of credit or refund in respect of a qualifying refundable tax credit that is recorded as a reduction of qualifying current tax expense;

(d) any amount that is not expected to be paid before the end of the period of three years commencing with the first day after the end of the accounting period;

(e) any amount allocated to another member of the multinational group in accordance with this Part;

(f) any amount excluded under section 180(3)(b) (blended CFC regime).

176 Amounts to be reflected in covered tax balance

(1) The amounts referred to in subsection (2) are to be reflected in a member of a multinational group's qualifying current tax expense (to the extent they were not already reflected).

(2) Those amounts are as follows—

(a) any amount of covered taxes reflected in the member's underlying profits but which (ignoring this paragraph) is not reflected in the qualifying current tax expense;

(b) the total deferred tax adjustment amount (see section 182);

(c) any amount of covered taxes paid, or refunded, in the current accounting period that relates to an uncertain tax position where the amount was excluded under section 175(2)(b) for a previous accounting period;

(d) any amount of credit or refund in respect of a tax credit (whether refundable or not) that—

(i) is not a qualifying refundable tax credit, and

(ii) has not been reflected in its qualifying current tax expense in the current accounting period or a previous accounting period (see section 148);

(e) any amount of covered taxes refunded or credited to the member, other than a qualifying refundable tax credit;

(f) where section 187(5) applies in relation to the member, the amount of special loss deferred tax assets used, in accordance with section 187(7), by the member for the current accounting period;

(g) any amount of covered taxes recorded in other comprehensive income of the member relating to amounts included in determining its adjusted profits that are subject to covered taxes under the law of the territory in which the member is located;

(h) any amount of covered taxes relating to an amount reflected in the member's adjusted profits as a result of section 146 (adjustment for changes in accounting polices and prior period errors);

(i) any amount allocated to the member from another member of the multinational group.

(3) For the purposes of this Part—

(a) an amount of tax paid or tax expense is to be expressed as a positive number, and

(b) an amount of tax credit or refund is to be expressed as a negative number.

Allocation of covered taxes

177 Permanent establishments

(1) Any amount of qualifying current tax expense included in the underlying profits accounts of a member of a multinational group that is in respect of profits of a permanent establishment is to be allocated to the permanent establishment.

(2) Where profits of a permanent establishment are treated as income of the main entity as a result of section 160(5), covered taxes on those profits are to be allocated to the main entity.

(3) But the amount allocated in accordance with subsection (2) is not to exceed the amount given by multiplying the amount of those profits by the highest corporate tax rate on ordinary income in the territory where the main entity is located.

(4) Any deferred tax asset with respect to a loss arising in the territory of a permanent establishment that is treated as an expense of the main entity as a result of section 160(2) is to be ignored in determining the covered tax balance of either the main entity or the permanent establishment.

178 Reallocation of tax expense

(1) Where—

(a) profits have been allocated to a member of a multinational group ("O") under section 167 or 168 (allocation of profits of hybrid, transparent and reverse hybrid entities), and

(b) the member from whom the profits have been allocated has an amount of qualifying current tax expense in respect of those profits,

that qualifying tax expense is to be allocated to O.

(2) But the amount of qualifying current tax expense in respect of mobile income allocated to O is not to exceed the amount given by taking the following steps—

Step 1

Determine the effective tax rate of the members of the multinational group in the territory of O for the accounting period to which the qualifying current tax expense relates, ignoring that expense.

Step 2

Subtract the result of Step 1 from 15%.

Step 3

Multiply the result of Step 2 by the amount of mobile income to which the qualifying tax expense relates.

(3) For the purposes of this section and section 179, "mobile income" means income of a type mentioned in subsection (4) in respect of which a member of a multinational group is subject to tax—

(a) under a controlled foreign company tax regime (see section 179(4)), or

(b) as a result of an ownership interest in an entity regarded as tax transparent in the territory the member is located in but not so regarded in the territory in which that entity is located.

(4) Those types of income are—

(a) dividends or dividend equivalents,

(b) interest or interest equivalent,

(c) rent,

(d) a royalty,

(e) an annuity, or

(f) net gains from property of a type that produces income described in paragraphs (a) to (e).

179 Controlled foreign company tax regimes

(1) Where—

(a) a member of a multinational group ("C") is subject to a controlled foreign company tax regime, and

(b) C has an ownership interest in another member of the group ("F") that is a controlled foreign company in relation to C,

any amount of qualifying current tax expense included in C's underlying profits accounts with respect to tax on C's share of the profits of F are to be allocated to F (to the extent it has not already been allocated as a result of another provision of this Part).

(2) But the amount of qualifying current tax expense in respect of mobile income allocated to F is not to exceed the amount given by taking the following steps—

Step 1

Determine the effective tax rate of the members of the multinational group in the territory of F for the accounting period to which the qualifying current tax expense relates, ignoring that expense.

Step 2

Subtract the result of Step 1 from 15%.

Step 3

Multiply the result of Step 2 by the amount of mobile income to which the qualifying current tax expense relates.

(3) Subsection (1) does not apply to a controlled foreign company tax regime that is a blended CFC regime in accounting periods commencing on or before 31 December 2025 that end on or before 30 June 2027.

(4) In this Part—

"controlled foreign company tax regime" means a set of tax rules (other than multinational top-up tax or any tax equivalent to multinational top-up tax) under which an entity with an ownership interest in another entity located in a different territory ("the controlled foreign company") is subject to current taxation on its share of part or all of the income earned by the controlled foreign company, irrespective of whether that income is distributed currently to it;

"blended CFC regime" means a controlled foreign company tax regime—

(a) under which the income, losses and creditable taxes of all of the controlled foreign companies of the entity with ownership interests in them are aggregated for the purposes of calculating the entity's tax liability under the regime,

(b) that does not take into account the income of the entity, or members of a consolidated group of which the entity is a member, that arises in the location of the entity, apart from to the extent the entity may use its losses arising in that location to reduce its liability under the regime, and

(c) which operates by reference to a rate which reflects a threshold for low taxation.

180 Blended CFC regimes

(1) This section applies to accounting periods commencing on or before 31 December 2025 that end on or before 30 June 2027.

(2) Subsection (3) applies where—

(a) a member of a multinational group ("C") is subject to a blended CFC regime in an accounting period ("the relevant period"),

(b) C has an ownership interest in an entity ("F") that is a blended CFC entity in relation to C, and

(c) the blended CFC allocation key of F is greater than nil.

(3) The appropriate proportion of tax charged to C under that regime (after all deductions and use of any losses) is—

(a) where F is a member of the same multinational group as C, to be allocated to F, or

(b) where F is not a member of that group, to be excluded from the covered tax balance of C.

(4) The appropriate proportion is the proportion given by dividing the blended CFC allocation key for F for the relevant period by the sum of all blended CFC allocation keys for that period of blended CFC entities in which C has an ownership interest.

(5) The blended CFC allocation key for the relevant period of a blended CFC entity that C has an ownership interest in is the amount given by multiplying—

(a) the attributable income of C, by

(b) the percentage given by subtracting the applicable effective tax rate of the blended CFC entity for the relevant period from the applicable CFC rate for that period.

(6) But where—

(a) the result of subsection (5)(b) in relation to a blended CFC entity is less than nil, or

(b) the applicable effective tax rate of that entity is greater than 15%,

the blended CFC allocation key for that entity is to be treated as nil.

(7) The attributable income of C means C's share of the income of F for the relevant period determined as it would be determined for the purposes of the blended CFC regime.

(8) The applicable effective tax rate of a blended CFC entity for the relevant period is—

(a) where it is located in a territory in which the effective tax rate of members of the multinational group of which C is a member is calculated for that period, that effective tax rate as it would be calculated if—

(i) any tax arising under a blended CFC regime were ignored, and

(ii) where the blended CFC regime permits foreign tax credit in respect of a qualifying domestic top-up tax on the same basis it would be permitted for covered taxes, that qualifying domestic top-up tax were a covered tax, or

(b) where it is not located in such a territory, the effective tax rate that would be calculated for the relevant period for the blended CFC entities located in that territory in which C has an ownership interest if—

(i) those entities were members of a multinational group whose ultimate parent's accounting period is the same as the relevant period,

(ii) the consolidated financial accounts of that ultimate parent represented the aggregate income and taxes shown in the financial accounts of those companies,

(iii) any tax arising under a blended CFC regime were ignored, and

(iv) where the blended CFC regime permits foreign tax credit in respect of a qualifying domestic top-up tax on the same basis it would be permitted for covered taxes, that qualifying domestic top-up tax were a covered tax.

(9) The applicable CFC rate for the relevant period means the rate which reflects the threshold for low taxation by reference to which the blended CFC regime is generally operated, taking into account any credit for foreign taxes available under the regime.

(10) In this section "blended CFC entity" in relation to a member of a multinational group subject to a blended CFC regime means—

(a) a controlled foreign company in relation to that member,

(b) a permanent establishment of such a controlled foreign company,

(c) an entity whose profits are treated, for the purposes of the regime, as the profits of such a controlled foreign company.

181 Distributions from other members of a group

(1) Where qualifying current tax expense in respect of covered taxes accrued in an accounting period in the underlying profits accounts of a member of a multinational group ("R") is in respect of a distribution received from another member of the group ("D") in which R has a direct ownership interest, that expense is to be allocated to D.

(2) Reference in subsection (1) to a distribution received is to be treated as including deemed distributions taken account of for the purposes of taxes on a shareholder of an entity in respect of undistributed earnings or capital of the entity.

Dealing with deferred tax assets etc

182 Total deferred tax adjustment amount

(1) The total deferred tax adjustment amount for a member of a multinational group for an accounting period is the deferred tax expense relating to covered taxes reflected in the member's underlying profits, adjusted as follows.

(2) The deferred tax expense is to be adjusted to exclude the following—

(a) any amount of that expense that reflects items not reflected in the member's adjusted profits;

(b) any amount of that expense that reflects disallowed accruals or unclaimed accruals;

(c) the impact of a valuation adjustment or accounting recognition adjustment with respect to a deferred tax asset;

(d) any amount of that expense arising from a re-measurement with respect to a change in the rate of tax;

(e) any amount of that expense that reflects the generation or use of tax credits (but see section 183 which permits the inclusion of qualifying foreign tax credits).

(3) Where a deferred tax liability is reversed in an accounting period, and that deferred tax liability was treated as an unclaimed accrual in a previous accounting period, the deferred tax expense is to be increased by the amount of the deferred tax liability that has reversed.

(4) Where a deferred tax asset is not reflected in the deferred tax expense only as a result of the recognition criteria not being met, that deferred tax asset is to be reflected in the total deferred tax adjustment amount.

(5) Where the amount of a deferred tax asset is adjusted as a result of section 186, an amount equal to that adjustment is to be reflected in the total deferred tax adjustment amount.

(6) Where an amount of recaptured deferred tax liability (see section 184) that was determined for a previous accounting period is reversed during the accounting period, that amount is to be reflected in the total deferred tax adjustment amount.

(7) Where the deferred tax expense relates to covered taxes where the rate is greater than 15%, the amount of that expense (after adjustment under subsections (2) to (6)) is to be adjusted so that it reflects the amount it would have been had the rate been 15%.

(8) For the purposes of this section—

"disallowed accrual" means—

(a) any movement in deferred tax expense reflected in the member's underlying profits which relates to an uncertain tax position, or

(b) any movement in deferred tax expense reflected in those profits which relates to distributions from another member of that group;

"unclaimed accrual" means an increase in a deferred tax liability reflected in the member's underlying profits for an accounting period—

(a) that is not expected to be reversed before the end of the fifth accounting period after that period, and

(b) in respect of which the filing member has elected not to include in the total deferred tax adjustment amount for that period.

Paragraph 2 of Schedule 15 (annual elections) applies to an election not to include an unclaimed accrual in the total deferred tax adjustment amount.

183 Qualifying foreign tax credits (substitute loss carry forward assets)

(1) A qualifying foreign tax credit of a member of a multinational group is to be included in the member's total deferred tax adjustment amount.

(2) A foreign tax credit is qualifying if—

(a) the territory in which the member is located—

(i) requires that domestic losses are offset against relevant foreign income before foreign tax credits can be applied against tax on foreign income, and

(ii) permits foreign tax credits to be used to offset tax on domestic profits to the extent to which domestic losses have been offset against relevant foreign income in a previous taxable period,

(b) the member has used a domestic loss to offset (in whole or in part) relevant foreign income, and

(c) the foreign tax credit is in respect of tax imposed by another territory on that foreign income.

(3) The amount that may be included in the total deferred tax adjustment amount of the member is the lesser of—

(a) the foreign tax paid, and

(b) the amount of domestic loss used to offset the relevant foreign income, multiplied by the tax rate in respect of which the foreign tax was calculated.

(4) Section 182(7) (adjustment where rate of tax exceeds 15%) applies to a qualifying tax credit included in the member's total deferred tax adjustment amount as it applies to the member's deferred tax expense.

(5) In this section "relevant foreign income", in relation to a member of a multinational group, means income of a controlled foreign company of the member on which the member is taxed as a result of a controlled foreign company tax regime.

184 Recaptured deferred tax liabilities

(1) A member of a multinational group has a recaptured deferred tax liability if it has a deferred tax liability, other than an excluded liability, taken into account in its total deferred tax adjustment amount for an accounting period ("the initial period") that is not reversed before the end of the fifth accounting period after the initial period.

(2) Where a member of a multinational group has a recaptured deferred tax liability—

(a) the amount included in the total deferred tax adjustment amount for the initial period in relation to that recaptured deferred tax liability is to be excluded from its covered tax balance for that period, and

(b) the following are to be accordingly recalculated for the initial period—

(i) the effective tax rate for the member and the other members of that group located in the same territory, and

(ii) the top-up amounts that those members would have.

(3) Section 206 applies to recalculations under subsection (2).

(4) For the purposes of subsection (1) "excluded liability" means a tax expense attributable to changes in associated deferred tax liabilities in respect of—

(a) cost recovery allowances on tangible assets,

(b) the cost of a licence or similar arrangement from the government for the use of immovable property or exploitation of natural resources that entails significant investment in tangible assets,

(c) research and development expenses,

(d) de-commissioning and remediation expenses,

(e) fair value accounting on unrealised net gains,

(f) foreign currency exchange net gains,

(g) insurance reserves and insurance policy deferred acquisition costs,

(h) gains from the sale of tangible property located in the same territory as the member that are reinvested in tangible property in the same territory, or

(i) additional amounts accrued as a result of accounting principle changes with respect to things falling within any of paragraphs (a) to (h).

185 Inclusion of existing deferred tax assets and liabilities on entry into regime

(1) This section applies to deferred tax assets and deferred tax liabilities of a member of a multinational group as at the beginning of the first accounting period for which Pillar Two rules apply to it that is reflected in its underlying profits accounts (and the adjustments set out in this section apply instead of those set out in section 182(2) to (7)).

(2) Each such asset and liability is to be taken into account in determining the member's deferred tax expense—

(a) if the nominal tax rate in relation to the asset—

(i) is less than 15% and subsection (3) does not apply, at its nominal tax rate,

(ii) is 15% or more, as if the rate of tax to which the asset or liability related was 15%,

(b) in the case of a deferred tax asset, excluding the impact of a valuation adjustment or accounting recognition adjustment with respect to it.

(3) But where—

(a) the nominal tax rate in relation to the asset is less than 15%, and

(b) the member can demonstrate that a deferred tax asset is attributable to the fact of the member having a loss which would have been taken account of in determining adjusted profits had those profits been determined under this Part,

that asset is to be taken into account in determining the member's deferred tax expense as if the rate of tax to which the asset related was 15%.

(4) Where a deferred tax asset relates to a tax credit neither subsection (2)(a) nor (3) applies.

(5) If the nominal tax rate that applies on the reversal of such a tax asset exceeds 15%, the amount of the reversal is to be treated as if it were the amount given by multiplying—

(a) the amount given by dividing—

(i) the amount of the deferred tax expense in the underlying profits accounts in respect of that deferred tax asset, by

(ii) the nominal tax rate that applied on the reversal, by

(b) 15%.

(6) Subsection (7) applies to a deferred tax asset of a member of a qualifying multinational group that arises—

(a) as a result of a transaction made after 30 November 2021 and before the commencement of the first accounting period for which Pillar Two rules apply to it, and

(b) in relation to an item that either—

(i) is included in the member's taxable income but which would not be included in the member's adjusted profits (had those profits been determined under this Part), or

(ii) is not included in the member's taxable income but which would be included in the member's adjusted profits (had those profits been determined under this Part).

(7) A deferred tax asset to which this subsection applies is to be ignored in determining the member's deferred tax expense.

186 Deferred tax assets recorded at less than minimum rate

(1) This section applies where the value of a deferred tax asset of a member of a multinational group—

(a) is calculated on the basis of a tax rate of less than 15%, and

(b) is attributable to an accounting period in which the member's adjusted profits were a loss.

(2) But this section only applies in relation to a deferred tax asset if the filing member has made an election for it to apply to the member.

(3) Subsection (4) applies where the loss for the accounting period upon which the value of that asset was calculated does not exceed the loss established on determining the member's adjusted profits for that period.

(4) Where this subsection applies, the asset is to be treated as having the value it would have if the tax rate upon which it was calculated were 15%.

(5) Subsection (6) applies where the loss for the accounting period upon which the value of that asset was calculated exceeds the loss established on determining the member's adjusted profits for that period.

(6) The relevant part of the asset is to be treated as having the value of a deferred tax asset generated on the loss established on determining the member's adjusted profits on the basis of a tax rate of 15%.

(7) The "relevant part" of the asset means so much of the asset derived from an amount of loss that does not exceed the loss established on determining the member's adjusted profits.

(8) Paragraph 2 of Schedule 15 (annual elections) applies to an election under this section.

187 Election for losses to be treated as special loss deferred tax assets

(1) The filing member of a multinational group may elect that this section applies to all of the standard members of the group in a particular territory ("the relevant territory").

(2) An election under subsection (1)—

(a) must be made having effect for the first accounting period in which the Pillar Two rules apply to any standard member in the relevant territory,

(b) may not otherwise be made (and accordingly if the election is revoked it cannot be made again), and

(c) may not be made for a territory that has an eligible distribution tax system.

(3) Where this section applies to the standard members of a multinational group for an accounting period—

(a) none of those members has a total deferred tax adjustment amount for that period, and

(b) if the result of Step 2 in section 132(1) in relation to those members is nil or less (those members between them have made a loss), the amount of that result (expressed as a positive number) multiplied by 15% is a special loss deferred tax asset of those members.

(4) Subsection (5) applies where—

(a) this section applies in relation to the standard members of a multinational group in a territory for an accounting period,

(b) the result of Step 2 in section 132(1) in relation to those members is greater than nil, and

(c) those members have one or more special loss deferred tax assets.

(5) Where this subsection applies, the standard members of the group that have made a profit in that accounting period are to use those assets in that period to increase their covered tax balances in accordance with subsections (6) and (7).

(6) The amount of the special loss deferred tax assets that is to be used is the lesser of—

(a) the amount of the assets, and

(b) the amount which would cause the effective tax result of the standard members of the group in that territory to be 15%.

Any remainder continues to be a special loss deferred tax asset of the relevant members of the group (and is available for use in subsequent accounting periods where subsection (5) applies).

(7) Each of the standard members that made a profit in that period is to use the proportion of the amount to be used in accordance with subsection (6) that is equal to the proportion the adjusted profits of the member bears to the total adjusted profits of all of the standard members that made a profit.

188 Further provision about elections under section 187

(1) Paragraph 1 of Schedule 15 (long term elections) applies to an election under section 187.

(2) But that paragraph has effect for the purposes of such an election as if—

(a) sub-paragraph (4) were omitted (so that there is no restriction on revoking the election), and

(b) sub-paragraph (5) were omitted (as an election under this section cannot be made again once revoked).

Eligible distribution tax systems: deemed taxes

189 Deemed distribution tax election

(1) The filing member of a multinational group may make an election that section 190 (deemed distribution tax) applies to all of the standard members of the group in a particular territory for an accounting period.

(2) An election under subsection (1) may only be made in relation to a territory if that territory has an eligible distribution tax system.

(3) In this Part "eligible distribution tax system" means a system of tax on company profits that—

(a) is generally only payable when a company distributes, or is deemed to distribute, those profits to its members, or when it incurs certain non-business expenses,

(b) is charged at a rate of at least 15%, and

(c) was in force on or before 1 July 2021.

(4) Paragraph 2 of Schedule 15 (annual elections) applies to an election under this section.

190 Deemed distribution tax amount

(1) Where this section applies to the standard members of a multinational group in a territory for an accounting period, those members have a deemed distribution tax amount for that period.

(2) The deemed distribution tax amount is the lesser of—

(a) the amount that, when added to the result of Step 4 in section 132(1), would result in the effective tax rate of those members for that period being 15%, and

(b) the amount of tax that would have been due in that territory if all of those members had distributed all of their profits of that period.

(3) The combined covered tax balance of those members for that period, as determined under Step 4 in section 132(1), is to be increased by adding that deemed distribution tax amount.

(4) In the following accounting period, those members have a "recapture amount" in respect of the previous accounting period that is (initially) equal to the deemed distribution tax amount for that period.

(5) Those members continue to have a recapture amount in respect of an accounting period until the earlier of—

(a) the end of the fourth accounting period after the period in which the recapture amount first arose, and

(b) the time when the recapture amount has reduced to nil.

(6) Section 191 sets out how recapture amounts reduce.

(7) If the recapture amount in respect of an accounting period has not reduced to nil by the end of the fourth accounting period after that period the following are to be recalculated for the period in which the recapture amount arose, with the amount of the recapture amount remaining subtracted from the combined covered tax balance (after the addition of the deemed distribution tax amount)—

(a) the effective tax rate for those members, and

(b) the top-up amounts that those members would have following that recalculation.

191 Reduction of recapture amount

(1) Where standard members of a multinational group in a territory have a recapture amount in an accounting period ("the relevant period") in respect of a previous accounting period that amount is to be reduced in accordance with subsections (3) to (5).

(2) If those members have more than one recapture amount in the relevant period, those reductions are to be applied first to the recapture amount in respect of the earliest accounting period, then the next earliest and so on.

(3) First, if any of the members have accrued qualifying taxes in the relevant period reduce the recapture amount (but not below nil) by the amount of qualifying taxes accrued by the members in that period that is available.

(4) Then, if the members have a collective loss for the relevant period (and if the recapture amount has not been reduced to nil) reduce the recapture amount (but not below nil) by the amount of that loss that is available multiplied by 15%.

(5) Finally, if the members have a qualifying carried forward loss (and if the recapture amount has not been reduced to nil) reduce the recapture amount (but not below nil) by the amount of the qualifying carried forward loss that is available.

(6) An amount is "available" to the extent it has not been used to reduce another recapture amount (in the case of a qualifying carried forward loss, whether in that period or a previous period).

(7) For the purposes of subsections (3) to (6)—

"qualifying taxes" means taxes accrued in the relevant period on actual or deemed distributions of profits;

members of the group have a "collective loss" for an accounting period if the result of Step 2 in section 132(1) is less than nil, and the amount of that loss is that result expressed as a positive number,

members of the group have a "qualifying carried forward loss" if —

(a) they had a collective loss in a period, and

(b) after making reductions in accordance with subsections (2) to (5) an amount of that collective loss remains available,

and the amount of that qualifying carried forward loss is the amount of the collective loss that remained available.

(8) Any amount of qualifying taxes accrued by a member of the group that is used to reduce a recapture amount is excluded from that member's covered tax balance.

192 Recalculation where member leaves the group

(1) This section applies where—

(a) in an accounting period ("the relevant period"), a standard member of a multinational group ("D") in a territory ("the relevant territory")—

(i) leaves the group,

(ii) transfers all, or substantially all, of its assets to an entity who is not a member of the group or to an individual, or

(iii) transfers all, or substantially all, of its assets to a member of the group that is not located in the relevant territory, and

(b) the standard members (including D) of the group in the relevant territory ("the relevant members") had, in previous accounting periods, one or more recapture amounts (each a "recapture period").

(2) Where this section applies, the following are to be recalculated for each recapture period—

(a) the effective tax rate for the relevant members, and

(b) the top-up amounts that those members would have in accordance with that recalculation.

(3) In recalculating that rate and those amounts for each of those periods, deduct the amount of each recapture amount that was outstanding in the period (after any reduction under section 191 in that period) from the combined covered tax balance of those members for the period.

(4) The relevant members have a special additional top-up tax amount under this section for the relevant period that is equal to the sum of the amounts given by—

(a) subtracting the amount of top-up amounts those members had for each recapture period from the sum of the top-up amounts those members would have for that period as recalculated under subsection (2)(b), and

(b) multiplying the result of paragraph (a) for each recapture period by the disposition recapture ratio for that period.

(5) Subject to subsections (6) and (7), the disposition recapture ratio for an accounting period is the amount given by dividing—

(a) the adjusted profits of D in that period, by

(b) the result of Step 2 in section 132(1) for the relevant members for that period.

(6) If either of the amounts described in paragraph (a) or (b) of subsection (5) is nil or less, the disposition recapture ratio is nil.

(7) If (ignoring this subsection) the disposition recapture ratio would be greater than 1, it is to be treated as 1.

(8) Sections 206 and 207 include further provision about special additional top-up tax amounts under this section.

(9) Each of the amounts mentioned in subsection (10) for each affected period is to be treated, for the purposes of this Part, as the amount given by multiplying—

(a) that amount, by

(b) the amount given by subtracting the disposition recapture ratio for that period from 1.

(10) Those amounts are—

(a) the result of Step 2 in section 132(1) for those members for that period;

(b) the combined covered tax balance of the standard members of the group in the relevant territory;

(c) any recapture amount those members have in that affected period;

(d) the substance based income exclusion for that period for that territory.

(11) An accounting period is an affected period if it is—

(a) a recapture period, or

(b) the relevant period and the standard members of the group in the territory have one or more recapture amounts in that period.

CHAPTER 6

CALCULATION OF TOP-UP AMOUNTS

193 Calculation of top-up amounts

Take the following steps to determine if a standard member of a multinational group ("the member in question") has a top-up amount for an accounting period and, if it does, the extent of it—

Step 1

Determine, under section 194, the total top-up amount for the accounting period for the territory the member in question is located in.

Step 2

If the total top-up amount for that territory is nil, the member in question does not have a top-up amount. Otherwise, proceed to Step 3.

Step 3

Determine the adjusted profits of the member in question for the period (in accordance with Chapter 4).

Step 4

If the member has not made a profit for the period (as determined by reference to its adjusted profits), the member in question does not have a top-up amount. Otherwise, proceed to Step 5.

Step 5

If there are no other standard members of the multinational group located in the same territory as the member in question, the member's top-up amount is equal to the total top-up amount for that territory for the period. Otherwise, proceed to Step 6.

Step 6

Determine (in accordance with Chapter 4) the adjusted profits for the period of all of the other standard members of the group that are located in same territory as the member in question.

Step 7

Add together the adjusted profits of all standard members of the group in that territory that have profits (including those of the member in question).

Step 8

Divide the member in question's adjusted profits by the result of Step 7.

Step 9

The member's top-up amount is the result of multiplying the total top-up amount for the territory by the result of Step 8.

194 Total top-up amount for a territory

(1) Take the following steps to determine the total top-up amount for an accounting period for a territory—

Step 1

Subtract the effective tax rate of the standard members of the group in that territory for that period (as determined in accordance with section 132) from 15%.

Step 2

If the result of Step 1 is nil or less, the total top-up amount for that territory is nil. Otherwise, proceed to Step 3.

Step 3

Subtract the sum of the losses of those members of the group that made a loss for the period (as determined by reference to their adjusted profits) from the sum of the profits of those members of the group that made a profit in that period (as determined by reference to their adjusted profits).

Step 4

Subtract the substance based income exclusion for that period for that territory (if any) from the result of Step 3.

Step 5

If the result of Step 4 is nil or less, the total top-up amount for that territory is nil. Otherwise, proceed to Step 6.

Step 6

Multiply the result of Step 1 (which will be a percentage) by the result of Step 4.

(2) But where those members have a QDT credit for that territory for the accounting period, the total top-up amount is to be reduced in accordance with subsections (4) to (7).

(3) For the purposes of this Part, standard members of a multinational group in a territory have a "QDT credit" for a territory for an accounting period if qualifying domestic top-up tax (see section 256) is accrued by one or more of those members in that territory in that period.

(4) Where—

(a) the standard members do not have a collective additional amount under section 206 for the period, and

(b) the result of Step 6 in subsection (1) is equal to or greater than the sum of amounts of qualifying domestic top-up tax accrued by those members in that period,

the total top-up amount is to be reduced by the sum of those amounts.

(5) Where—

(a) the standard members do not have a collective additional amount under section 206 for the period, and

(b) the result of Step 6 in subsection (1) is less than the sum of amounts of qualifying domestic top-up tax accrued by those members in the period,

the total top-up amount is to be reduced to nil.

(6) Where—

(a) the standard members have a collective additional amount under section 206 for the period, and

(b) the sum of the result of Step 6 in subsection (1) and that collective additional amount is less than the sum of amounts of qualifying domestic top-up tax accrued by those members in the period,

the total top-up amount is to be reduced to nil.

(7) Where—

(a) the standard members have a collective additional amount under section 206, and

(b) the sum of the result of Step 6 in subsection (1) and that collective additional amount is equal to or greater than the sum of amounts of qualifying domestic top-up tax accrued by those members in the period,

the total top-up amount is to be reduced by the amount given by multiplying the sum of those amounts of qualifying domestic top-up tax by the amount given by dividing the result of Step 6 in subsection (1) by the sum of the result of that step and that collective additional amount.

195 Substance based income exclusion

(1) The substance based income exclusion for a period for a territory is calculated by taking the following steps—

Step 1

Determine the payroll carve-out amount for that period for each standard member of the group in that territory.

Step 2

Determine the tangible asset carve-out amount for that period for each standard member of the group in that territory.

Step 3

Add together the amounts determined at steps 1 and 2.

(2) But if the filing member for the group elects not to calculate the substance based income exclusion for the period, the exclusion is nil.

(3) Paragraph 2 of Schedule 15 (annual elections) applies to an election under subsection (2).

(4) The payroll carve-out amount for a member is 5% of the eligible payroll costs incurred by the member in the period.

(5) The tangible asset carve-out amount for a member is 5% of the eligible tangible asset amount of the member in the period.

(6) Section 196 sets out how to calculate the eligible payroll costs of a member.

(7) Section 197 sets out how to calculate the eligible tangible asset amount of a member.

(8) Section 198 sets out special rules on calculating the eligible payroll costs and eligible tangible asset amount of a member that is a permanent establishment or a flow-through entity.

196 Eligible payroll costs

(1) The eligible payroll costs of a member for a period are all costs incurred by the member in the period in connection with the employment of an employee of that member, provided that—

(a) the employee is an individual,

(b) the costs are payable primarily in respect of work done in the course of the ordinary operating activities of the member or the group,

(c) those activities are substantially performed in the territory in which the member is located, and

(d) the costs are not excluded costs.

(2) The costs may include in particular—

(a) salaries, wages and other expenditures that provide a direct and personal benefit to the employee,

(b) payroll and other employment taxes payable by the member, and

(c) social security contributions payable by the member.

(3) "Employee" means—

(a) a person regarded as an employee under the law of the territory in which the member is located, and

(b) any other person while they are acting exclusively under the direction or control of the member or the group (including on a part-time basis),

and "employment" is to be construed accordingly.

(4) "Excluded costs" are the following—

(a) costs taken into account in determining the underlying profits of a permanent establishment of the member;

(b) costs taken into account in a carrying value used to calculate the eligible tangible asset amount (see section 197);

(c) costs that are core international shipping costs (see section 157);

(d) costs that are ancillary international shipping costs (see section 158), subject to subsections (5) and (6).

(5) Where the member has an ancillary international shipping profit cap adjustment of more than nil for the period, only the eligible proportion of costs that are ancillary international shipping costs are excluded costs.

(6) The eligible proportion is the proportion given by dividing—

(a) the member's ancillary international shipping profits for the period, by

(b) the amount given by subtracting the member's ancillary international shipping costs from the member's ancillary international shipping revenue for the period.

197 Eligible tangible asset amount

(1) The eligible tangible asset amount of a member for a period is the average of—

(a) the sum of the carrying values of each eligible tangible asset held by the member, as those values are recorded at the start of the period;

(b) the sum of the carrying values of each eligible tangible asset held by the member, as those values are recorded at the end of the period.

(2) Where a value is not recorded at a time referred to in subsection (1), the value is to be calculated as if it were recorded at that time.

(3) "Recorded" means recorded for the purposes of preparing the consolidated financial statements of the ultimate parent.

(4) For the purposes of this section "carrying value" means the carrying value of the asset including—

(a) accumulated depreciation, amortisation or depletion,

(b) amounts attributable to the capitalisation of eligible payroll costs and costs that would be eligible payroll costs were they not excluded costs under section 196(4), and

(c) amounts attributable to any purchase accounting adjustment relating to the asset,

but not including any positive difference between the value of an asset recorded from time to time and the value of an asset when it was acquired by the member, where that difference is solely attributable to a revaluation.

(5) An asset is an eligible tangible asset if it is—

(a) of a type referred to in subsection (6), and
(b) not an excluded asset.

(6) The types of asset are—
(a) property, plant or equipment located in the same territory as the member;
(b) natural resources located in that territory;
(c) a right to use a tangible asset located in that territory under a lease;
(d) a license or similar right to use a tangible asset located in that territory, provided that—
(i) the right is granted by a government of that territory, and
(ii) it is expected in granting the right that the member will, in using that right, incur significant expenditure in enhancing the value of tangible assets in that territory (whether or not those assets are subject to the right).

(7) An asset is an excluded asset if it is of one of the following types—
(a) property (including land or buildings) that is held for sale, lease or investment (whether such sale, lease or investment is to be carried out in the period or not);
(b) an asset used in the course of core international shipping activity (see section 157);
(c) an asset used in the course of ancillary international shipping activity (see section 158), subject to subsections (8) and (9).

(8) Where the member has an ancillary international shipping profit cap adjustment of more than nil for the period, only the eligible proportion of an asset used in the course of ancillary international shipping activity is to be treated as an excluded asset.

(9) The eligible proportion is the proportion given by dividing—
(a) the member's ancillary international shipping profits for the period, by
(b) the amount given by subtracting the member's ancillary international shipping costs from the member's ancillary international shipping revenue for the period.

198 Eligible payroll costs and eligible tangible asset amount: permanent establishments and flow-through entities

(1) In calculating the eligible payroll costs and eligible tangible asset amount of a permanent establishment, the only amounts to be taken into account are amounts that would be taken into account in determining the adjusted profits of the establishment.

(2) But if, following the application of subsection (1), the value of an eligible tangible asset used in the business of the establishment has not been taken into account in calculating the eligible tangible asset amount of the establishment, the value of that asset is to be taken into account as well.

(3) In calculating the eligible payroll costs and eligible tangible asset amount of a flow-through entity, the only amounts to be taken into account are amounts that would be taken into account in determining the adjusted profits of the entity.

199 Election to treat total top-up amount as nil

(1) The filing member of a multinational group may elect that the total top-up amount for an accounting period ("the current period") for a territory is to be treated as nil.

(2) An election under this section may be made only if—

(a) the average revenue for an accounting period of the standard members of the group in that territory is less than 10 million euros, and

(b) the average of the adjusted profits of those members for an accounting period is less than 1 million euros.

(3) The average revenue for an accounting period of the standard members of a multinational group in a territory is determined by adding together all of the revenue of those members in each qualifying accounting period, and dividing the result by the number of qualifying accounting periods.

(4) The average of the sum of the adjusted profits of the standard members of a multinational group in a territory is determined by taking the following steps—

Step 1

Determine the sum of the adjusted profits of each of those members for each qualifying accounting period.

Step 2

Add together the results of Step 1.

Step 3

Divide the result of Step 2 by the number of qualifying accounting periods.

(5) The current period is a qualifying accounting period.

(6) Each of the previous two accounting periods is a qualifying period unless—

(a) none of the standard members of the group in the territory had revenue in that period, and

(b) none of the standard members of the group in the territory made a loss in that period.

(7) Where a qualifying period is longer or shorter than a year, the adjusted profits and revenue of the members are to be treated for the purposes of this section as the amounts given by multiplying the profits and revenue by the amount given by dividing 365 by the number of days in the period.

(8) An election under this section may not be made in respect of the nominal territory of a stateless member of a multinational group.

(9) Paragraph 2 of Schedule 15 (annual elections) applies to an election under this section.

CHAPTER 7

ALLOCATING TOP-UP AMOUNTS TO RESPONSIBLE MEMBERS

200 Top-up amounts multiplied by inclusion ratio

(1) The amount of a top-up amount of a member of a multinational group that is attributed to a responsible member (see section 128) is found by multiplying the top-up amount by the responsible member's inclusion ratio for the member whose top-up amount it is.

(2) Where the responsible member's ("the first responsible member") interest in the member is through another responsible member, the first responsible member's top-up amount is to be reduced (but not below nil) by the amount attributed under this section to that other responsible member.

201 Inclusion ratio

(1) A responsible member's inclusion ratio for a member with a top-up amount ("the relevant member") is found as follows—

Step 1

Determine the adjusted profits of the relevant member with the top-up amount (in accordance with Chapter 4).

Step 2

Determine how much of those profits are attributable to ownership interests held by entities other than the responsible member.

Step 3

Subtract the amount determined under Step 2 from the amount determined under Step 1.

Step 4

The inclusion ratio is given by dividing the amount determined under Step 3 by the amount determined under Step 1.

(2) The amount of profits of the relevant member attributable to ownership interests held by entities other than the responsible member is the amount that would, in hypothetical consolidated financial statements prepared by the responsible member (whether or not it actually prepared consolidated financial statements), have been treated in those statements as attributable to such entities under the principles of the authorised accounting standard used, or treated as used (see section 249(1)(d)), in the ultimate parent's consolidated financial statements.

(3) For the purposes of determining what that amount would be in those hypothetical consolidated financial statements of the responsible member, use the following assumptions—

(a) the relevant member's profits were its adjusted profits as determined in accordance with Chapter 4;

(b) the responsible member had a controlling interest in the relevant member such that all of its income and expenses were consolidated on a line-by-line basis with those of the responsible member;

(c) all of the profits of the relevant member were attributable to transactions with persons who are not members of the multinational group;

(d) all ownership interests that are not directly or indirectly held by the responsible member were held by persons other than members of the multinational group.

(4) Where the relevant member is a flow-through entity, none of the adjusted profits of the relevant member are to be regarded as attributable to ownership interests held by entities that are not members of the group (and any such entity is to be ignored for the purposes of this section).

CHAPTER 8

FURTHER ADJUSTMENTS

Covered taxes less than nil

202 Covered taxes balance less than nil when members in a territory have a profit

(1) This section applies to the standard members of a multinational group in a territory ("the relevant territory") in an accounting period ("the current period") if—

(a) those members do not have a collective loss for the current period, and

(b) the combined covered tax balance for those members for the current period is less than nil (including as a result of this section or section 205 having applied in a previous accounting period).

(2) Where this section applies—

(a) the amount of the combined covered tax balance for the current period is to be added to the combined covered tax balance for the standard members in the relevant territory in the next accounting period in which those members do not have a collective loss (which as the balance for the current period is negative will reduce the combined covered tax balance for that next period), and

(b) the combined covered tax balance for those members for the current period is to be treated as nil (and as a result of Step 5 in section 132(1) their effective tax rate for the current period will be 0%).

(3) For the purposes of this section and sections 203 to 205, the standard members of a multinational group in a territory have a collective loss for a period if the result of Step 2 in section 132(1) is nil or less for those members for that period.

203 Additional top-up amounts where covered taxes less than expected

(1) This section applies in an accounting period in relation to standard members of a multinational group in a territory where—

(a) those members have a collective loss for that period, and

(b) the combined covered tax balance for those members for the current period is less than nil, and

(c) the collective negative covered tax balance expressed as a positive number is greater than the amount given by multiplying the collective loss expressed as a positive number by 15% ("the expected covered tax amount").

(2) Where this section applies, those members in that territory collectively have an additional top-up amount (a "collective additional amount") equal to the difference between the expected covered tax amount and the combined covered tax balance.

(3) Where those members have a QDT credit for the accounting period, the collective additional amount under this section is to be reduced in accordance with subsections (4) to (7).

(4) Where—

(a) the standard members do not have a collective additional amount under section 206 for the period, and

(b) the collective additional amount under this section (before reduction by relevant QDT credit) is equal to or greater than the sum of amounts of qualifying domestic top-up tax accrued by those members in that period,

the collective additional amount under this section is to be reduced by the sum of those accrued amounts.

(5) Where—

(a) the standard members do not have a collective additional amount under section 206 for the period, and

(b) the collective additional amount under this section (before reduction by relevant QDT credit) is less than the sum of amounts of qualifying domestic top-up tax accrued by those members in that period,

the collective additional amount under this section is to be reduced to nil.

(6) Where—

(a) the standard members have a collective additional amount under section 206 for the period, and

(b) the sum of the collective additional amount under this section (before reduction by relevant QDT credit) and the collective additional amount under section 206 is less than the sum of amounts of qualifying domestic top-up tax accrued by those members in that period,

the collective additional amount under this section is to be reduced to nil.

(7) Where—

(a) the standard members have a collective additional amount under section 206 for the period, and

(b) the sum of the collective additional amount under this section (before reduction by relevant QDT credit) and the collective additional amount under section 206 is equal to or greater than the sum of amounts of qualifying domestic top-up tax accrued by those members in that period,

the collective additional amount under this section is to be reduced by the amount given by multiplying the sum of those amounts of qualifying domestic top-up tax by the amount given by dividing the collective additional amount under this section by the sum of that collective additional amount and the collective additional amount under section 206.

204 Allocation of collective additional amount under section 203 to members

(1) Where the standard members of a multinational group in a territory have a collective additional amount under section 203, an amount of that amount is to be allocated to each member that has a negative covered tax balance, expressed as a negative number, which is less than the adjusted profits of that member (which may be positive or negative) multiplied by 15%.

(2) To determine the amount of the collective additional amount to be allocated to each such member, take the following steps—

Step 1

For each such member determine the amount given by subtracting the member's negative covered tax balance, expressed as a negative number, from its adjusted profits multiplied by 15%.

Step 2

Add together the amounts determined under Step 1.

Step 3

For each such member, divide the amount determined for that member under Step 1 by the result of Step 2.

Step 4

Allocate to each member the amount given by multiplying the result of Step 3 for that member by the collective additional amount.

(3) For the purposes of this Part, an amount of a collective additional amount allocated to a member of a multinational group under this section is an additional top-up amount.

(4) Chapter 7 (allocation of top-up amounts to responsible members) applies to an additional top-up amount allocated to a member of a multinational group under this section as it applies to a top-up amount of that member as if the adjusted profits of that member were the amount given by dividing the additional top-up amount by 15%.

205 Election to carry forward and reduce collective additional amount

(1) This section applies where the standard members of a multinational group in a territory ("the relevant territory") have a collective additional amount for an accounting period ("the current period") and the filing member of the group has elected for this section to apply for that period.

(2) Where this section applies—

(a) the qualifying amount of the collective additional amount for the current period is to be subtracted from the combined covered tax balance for the standard members of the group in the relevant territory in the next accounting period in which those members do not have a collective loss, and

(b) the collective additional amount for the current period is to be reduced by the qualifying amount of that collective additional amount (including to nil where the whole amount is qualifying).

(3) The amount of the collective additional amount that is "qualifying" is the amount given by subtracting the amount of any deferred tax asset deemed to arise under section 217(7) for the period.

(4) Paragraph 2 of Schedule 15 (annual elections) applies to an election under this section.

Additional top-up amounts on recalculations

206 Additional top-up amounts where recalculations required

(1) This section applies to the standard members of a multinational group in an accounting period ("the current period") in a territory where—

(a) a recalculation is required in the current period in relation to one or more previous accounting periods (each a "prior period") as a result of any of the following sections—

(i) section 163(4);

(ii) section 184(2);

(iii) section 217(5);

(iv) section 219(1), or

(b) the members have a special additional top-up tax amount under section 192 for the current period.

(2) Where—

(a) the sum of the top-up amounts that those members would have for a prior period, determined in accordance with a recalculation required under one of the sections mentioned in subsection (1)(a), is greater than the sum of the top-up amounts those members had for that prior period, or

(b) this section applies as a result of subsection (1)(b) (whether or not it also applies as a result of subsection (1)(a)),

the members collectively have an additional top-up amount (a "collective additional amount") under this section for the current period.

(3) Take the following steps to determine the collective additional amount under this section—

Step 1

Where one or more recalculations are required in accordance with any of the sections mentioned in subsection (1)(a), for each prior period carry out the recalculation or recalculations required in respect of that period to establish the top-up amounts those members would have had for the prior period (taking account of all recalculations required for that period).

Step 2

For each prior period, subtract the sum of the top-up amounts those members had for that prior period from the sum of top-up amounts that those members would have for that period.

Step 3

Add together all of the results of Step 2 that are greater than nil.

Step 4

Where the members have a special additional top-up tax amount under section 192 for the current period, add that amount to the result of Step 2 (which may be nil).

(4) Where those members have a QDT credit for the accounting period, the collective additional amount under this section is to be reduced in accordance with subsections (5) to (8).

(5) Where—

(a) the standard members do not have a collective additional amount under section 203 for the period,

(b) the total top-up amount for the current period for the members for the members' territory is nil, and

(c) the collective additional amount under this section (before reduction by relevant QDT credit) is equal to or greater than the sum of amounts of qualifying domestic top-up tax accrued by those members in that period,

the collective additional amount under this section is to be reduced by the sum of those accrued amounts.

(6) Where—

(a) the standard members do not have a collective additional amount under section 203 for the period,

(b) the total top-up amount for the current period for the standard members in the territory is nil, and

(c) the collective additional amount under this section (before reduction by relevant QDT credit) is less than the sum of amounts of qualifying domestic top-up tax accrued by those members in that period,

the collective additional amount under this section is to be reduced to nil.

(7) Where—

(a) the standard members have a collective additional amount under section 203 for the period or the total top-up amount for the current period for members for the members' territory is greater than nil, and

(b) the sum of the collective additional amount under this section (before reduction by relevant QDT credit), any collective additional amount under section 203 and the total top-up amount for the current period for the members for the member's territory is less than the sum of amounts of qualifying domestic top-up tax accrued by those members in that period,

the collective additional amount under this section is to be reduced to nil.

(8) Where—

(a) the standard members have a collective additional amount under section 203 for the period or the total top-up amount for the current period for members for the members' territory is greater than nil, and

(b) the sum of the collective additional amount under this section (before reduction by relevant QDT credit), any collective additional amount under section 203 and the total top-up amount for the current period for the members for the member's territory is equal to or greater than the sum of amounts of qualifying domestic top-up tax accrued by those members in that period,

the collective additional amount under this section is to be reduced by the amount given by multiplying the sum of those amounts of qualifying domestic top-up tax by the amount given by dividing the collective additional amount under this section by the sum of that collective additional amount, any collective additional amount under section 203 and the total-up up amount for the current period.

207 Allocation of collective additional amounts under section 206 to members

(1) Where the standard members of a multinational group in a territory have a collective additional amount under section 206 for an accounting period ("the current period"), that amount is to be allocated to those members as follows—

Step 1

Determine the sum of the top-up amounts that those members would have (in prior accounting periods) in accordance with the recalculation, or recalculations, that relate to that collective additional amount.

Step 2

Determine the sum of the top-up amounts that each of those members would have in accordance with the recalculation, or recalculations, that relate to the collective additional amount.

Step 3

For each member where the result of Step 2 is greater than nil, divide that result by the result of step 1.

Step 4

Each such member has an additional top-up amount under this section equal to the amount given by multiplying the collective additional amount by the result of Step 3 for that member.

(2) Chapter 7 (allocation of top-up amounts to responsible members)—

(a) applies to an additional top-up amount allocated to a member of a multinational group under this section as it applies to a top-up amount of that member, and

(b) if the result of Step 2 in section 132(1) in relation to the standard members of the group for the current period is nil or less (those members between them have made a loss), has effect as if the adjusted profits of that member were the amount given by dividing the additional top-up amount by 15%.

Restructuring of groups

208 Member joining or leaving multinational group

(1) Subsection (2) applies to an entity where, in an accounting period ("the transfer period") of a multinational group, the entity—

(a) becomes a member of that multinational group (including, where it was previously a member of a different group, as a result of it becoming the ultimate parent of a new group), or

(b) ceases to be a member of that multinational group.

(2) The entity is to be treated as a member of that group for the whole of the transfer period (whether or not that results in it being treated as a member of two or more groups) if any portion of its assets, liabilities, income, expenses or cash flows are included on a line-by-line basis in the consolidated financial statements of the ultimate parent for that period.

(3) But in applying this Part in relation to the entity as a member of the multinational group it has become or ceased to be a member of, only its profits, covered taxes and (where applicable) eligible payroll costs that are taken into account in the consolidated financial statements of the ultimate parent are to be taken account of.

(4) Any purchase accounting consolidation adjustments arising from the transfer of the ownership interests resulting in an entity becoming a member of a multinational group are to be ignored in determining the adjusted profits and covered tax balance of that entity as a member of that group in the transfer period and in subsequent accounting periods.

(5) When (where applicable) determining the eligible tangible asset amount of an entity that becomes a member of a multinational group as a member of that group in the transfer period, adjust that amount by multiplying it by the amount given by dividing the number of days in the post-transfer period by the number of days in the transfer period.

(6) For the purposes of subsection (5) the "post-transfer period" means the period beginning with the day on which the member became or (as the case may be) ceased to be a member of a multinational group and ending with the last day of the transfer period.

(7) When (where applicable) determining the eligible tangible asset amount of an entity that ceased to be a member of a multinational group as a member of that group in the transfer period, adjust that amount by multiplying it by the amount given by dividing the number of days in the pre-transfer period by the number of days in the transfer period.

(8) For the purposes of subsection (7) the "pre-transfer period" means the period beginning with the commencement of the transfer period and ending with the day before the day on which the ownership interests were transferred.

(9) Subsections (10) and (11) apply where an entity that becomes a member of a multinational group ("group A") as a result of a transfer of direct or indirect ownership interests in it was a member of another multinational group immediately before the transfer ("group B").

(10) The amount of deferred tax assets and tax liabilities (which for these purposes does not include a special loss deferred tax asset) of the entity that existed immediately before the transfer to be taken into account in relation to that entity as a member of group A is the amount that would have been taken into account had group A had a controlling interest in the entity at the time the assets and liabilities arose.

(11) Where a deferred tax liability of the entity was included in the total deferred tax adjustment amount for that member in group B—

(a) that deferred tax liability is to be deemed to have reversed without the need to reflect the reversal in any calculation made for the purposes of this Part in relation to group B, and

(b) the deferred tax liability is to be treated as arising in the transfer period for the purpose of determining the total deferred tax adjustment amount for the member in group A,

(c) any resulting reduction in the covered tax balance of the entity as a member of group A (see sections 182 and 184) is only to have effect in the accounting period in which the deferred tax liability is recaptured.

209 When transfer of controlling interest treated as acquisition of assets and liabilities

(1) This section applies to the acquisition or disposal of a controlling interest in a member of a multinational group where—

(a) the acquisition or disposal of that controlling interest is treated in the same, or a similar manner, as a transfer of assets and liabilities of the member (rather than ownership interests in it) by—

(i) in the case of the acquisition or disposal of a controlling interest in an entity which is tax transparent under the law of the territory in which it was created, the territory in which the assets are located, or

(ii) in any other case, the territory in which the member is located, and

(b) that territory imposes a covered tax on the seller based on the difference between the tax basis and either the consideration paid in exchange for the controlling interest or the fair value of the assets and liabilities.

(2) Where this section applies to an acquisition or disposal of a controlling interest in a member of a multinational group, that acquisition or disposal is to be treated

as an acquisition or disposal of the assets and liabilities of the member (and accordingly, section 208 will not apply in relation to that transfer).

(3) Any covered tax arising in relation to the disposal of a controlling interest in a member of a multinational group described in subsection (1)(b) is to included in the covered tax balance of that member.

210 Transfer of assets or liabilities from a member of a multinational group

(1) Where a member of a multinational group transfers assets or liabilities to another entity in the course of a qualifying reorganisation (see section 212), any gain or loss on the transfer is to be excluded from the adjusted profits of the member, except to the extent it is a non-qualifying gain or loss.

(2) In this section, and in sections 211 and 212, "non-qualifying gain or loss" means a gain or loss of the transferee on the transfer of assets or liabilities, and is the lesser of—

(a) the amount of that gain or loss that is subject to tax in the territory the transferee is located in, and

(b) the amount of that gain or loss reflected in the underlying profits accounts of the transferee.

211 Transfer of assets or liabilities to a member of a multinational group

(1) Where there has been a transfer of assets or liabilities to a member of a multinational group—

(a) if the transfer forms part of a qualifying reorganisation (see section 212), the value of the assets or liabilities is, for the purpose of determining the adjusted profits of the member, the carrying value of the assets or liabilities in the hands of the transferor immediately before the transfer, or

(b) otherwise, the value of the assets or liabilities, for that purpose, is the carrying value of the assets or liabilities immediately after the transfer as determined under the accounting standard used in determining the underlying profits of the member for the purposes of this Part and subject to the adjustments to those profits made in accordance with Chapter 4.

(2) But subsection (3) applies where—

(a) subsection (1)(b) applies to the transfer,

(b) the transfer is from another member of the group, and

(c) neither a gain nor a loss is recorded in the underlying profits accounts of the transferor in respect of that transfer.

(3) Where this subsection applies the adjusted profits of both the transferor and the transferee are to be adjusted to secure that the transfer is reflected on an arm's length basis (see section 149(7)).

(4) Where a member of a multinational group transfers assets or liabilities to another entity in the course of a qualifying reorganisation, and recognises a non-qualifying gain or loss as a result of that transfer—

(a) that gain or loss, to the extent it is non-qualifying, is to be included in the adjusted profits of the member, and

(b) where the other entity is a member of a multinational group, the value of the assets or liabilities is, for the purposes of determining the adjusted profits of

that member, to be adjusted to exclude the non-qualifying gain or loss in a manner consistent with the tax treatment of the assets or liabilities.

212 Meaning of "qualifying reorganisation"

(1) For the purposes of sections 210 and 211, a transfer of assets or liabilities is made in the course of a qualifying reorganisation if the transfer takes place as a result of a merger, de-merger, liquidation or a change in form of an entity, or a similar event, and conditions A, B and C are met.

(2) Condition A is that—

(a) any consideration for the transfer is, or the transfer involves, wholly or mostly equity interests issued by the transferee, or by a person connected with the transferee,

(b) in the case of a liquidation, any consideration for the transfer is, or the transfer involves, wholly or mostly, the cancellation of equity interests in the entity subject to the liquidation, or

(c) the reorganisation does not result in a change in the ownership of an entity.

(3) Condition B is that any gain or loss of the transferor that arises from the transfer is not, in whole or in part, subject to tax.

(4) Condition C is that, under the law of the territory the transferee is located in, the value of the assets or liabilities for the purpose of determining the transferee's taxable income is the tax basis value of the assets or liabilities in the hands of the transferor, adjusted for any non-qualifying gain or loss.

(5) Sections 719 to 724A of CTA 2010 (change in company ownership) have effect for the purposes of determining whether there has been a change in ownership of an entity as if—

(a) references in those sections to "company" were to "entity";

(b) references in those sections to ordinary share capital or shares (however expressed), in relation to a company, were to ownership interests in an entity;

(c) in section 721—

(i) in subsection (1), "for the purposes of Chapters 2 to 5A" were omitted,

(ii) in subsection (3), for the words from "major change" to the end there were substituted "a change in the ownership of the company",

(iii) in subsection (4), the words from "for" to "5A" were omitted,

(iv) in that subsection, paragraph (a) were omitted, and

(v) in that paragraph (a) of that subsection, for "share capital" there were substituted "ownership interests";

(d) section 722, and references to it in those sections, were omitted;

(e) in section 724—

(i) in subsection (2) for "conditions A, B and C are met" there were substituted "the parent entity has at least 75% of the ownership interests in the subsidiary entity", and

(ii) subsections (3) to (6) were omitted;

(f) in section 724A—

(i) in subsection (1), in the words before paragraph (a), "for the purposes of Chapters 2 to 6" were omitted, and

(ii) in that subsection, paragraphs (b) and (c) were omitted, and

(iii) subsection (8) were omitted.

Elections in relation to investment entities

213 Investment entity tax transparency election

(1) The filing member of a multinational group may make an investment entity tax transparency election in relation to a member of the group that is an investment entity ("M") and a member of the group with ownership interests in that entity ("O").

(2) For the purposes of determining whether O has ownership interests in M, only interests that give rise to a share of profits are to be taken into account.

(3) An investment entity tax transparency election is an election that, for the purposes of sections 168 (underlying profits of transparent entities) and 178 (covered taxes of transparent entities)—

(a) M is to be treated as a flow-through entity,

(b) M is to be treated as regarded as tax transparent in the territory of O, and

(c) O is to be treated as having direct ownership interests in M.

(4) To determine the percentage of direct ownership interest O is to be treated as having in M, section 246(1) applies as if paragraph (b) were omitted, and for those purposes only interests that give rise in a share of profits are relevant.

(5) The filing member may only make such an election if—

(a) an election under section 214 is not in effect in relation to M and O, and

(b) either—

(i) O is subject to tax (in the territory in which O is located) on increases in the fair value of its ownership interests in M, and the rate of tax applicable to such increases is equal to or exceeds 15%, or

(ii) O is a regulated mutual insurance entity.

(6) An entity is a "regulated mutual insurance entity" if—

(a) it is regulated or authorised to carry on insurance business, and

(b) it is wholly owned by persons with which it has entered into insurance contracts.

(7) Paragraph 1 of Schedule 15 (long term elections) applies to an election under this section.

(8) Subsection (9) applies where—

(a) an election under this section has been revoked, and

(b) the adjusted profits of M fall to be determined for the first accounting period in respect of which the election no longer applies (the "revocation period").

(9) In determining those profits, the value of any gain or loss from the disposition of an asset or liability by M is to be determined by reference to the fair value of the asset or liability as at the first day of the revocation period.

(10) Subsection (11) applies where—

(a) an election under this section has been revoked, and

(b) the adjusted profits of M fall to be determined for an accounting period—

(i) after the revocation period, but

(ii) before an accounting period for which a further election under this section has been made.

(11) In determining those profits, the value of any gain or loss from the disposition of an asset or liability by M is to be determined by reference to—

(a) if M's assets and liabilities are accounted for on a realisation basis, the fair value of the asset or liability as at the first day of the revocation period;

(b) if M's assets and liabilities are accounted for on a fair value basis, the fair value of the asset or liability as accounted for at the end of the previous accounting period.

214 Taxable distribution method election

(1) The filing member of a multinational group may elect that a member of the group (an "owner") with direct ownership interests in an investment entity that is a member of the group is to have those interests treated in accordance with this section.

(2) The filing member may only make such an election if—

(a) an election under section 213 is not in effect in relation to the owner,

(b) the owner is not itself an investment entity, and

(c) the owner can reasonably be expected to be subject to tax (in the territory in which it is located) on distributions from the entity at a rate equal to or exceeding 15%.

(3) If an election is made under this section, in calculating amounts under this Part—

(a) distributions and deemed distributions from the investment entity to the owner in an accounting period are to be included in the adjusted profits of the owner in that period;

(b) credit the owner receives to reduce the tax payable by the owner in an accounting period to reflect tax payable or to be paid by the entity in that period is to be included in the adjusted profits of the owner in that period;

(c) if the owner receives such credit, such tax payable or to be paid by the entity in an accounting period is to be taken into account in determining the covered tax balance of the owner in that period.

(4) If an election is made under this section—

(a) an undistributed income amount for the entity for an accounting period is to be determined under section 215, and

(b) any positive undistributed income amount is to be added to the top-up amount of that entity as determined under section 220(1) (see section 220(2)).

(5) Paragraph 1 of Schedule 15 (long term elections) applies to an election under this section.

(6) Subsection (7) applies where—

(a) an election under this section has been revoked, and

(b) the adjusted profits of the investment entity fall to be determined under section 220 for the first accounting period in respect of which the election no longer applies.

(7) Those profits are to include any positive undistributed income amount for the entity for the previous accounting period.

215 Undistributed income amount

(1) The undistributed income amount for an investment entity for an accounting period is the entity's adjusted profits for the income period less the amounts referred to in subsection (2).

(2) The amounts are—

(a) the covered taxes payable by the entity (determined in accordance with Chapter 5) in the income period;

(b) distributions and deemed distributions paid by the entity and received by shareholders other than other investment entities in the review period;

(c) if, on determining the adjusted profits for the accounting periods in the review period, the entity has made a loss for one or more of those periods the made a loss, the sum of those losses;

(d) the investment loss carry-forward amount for the review period.

(3) But an amount referred to in subsection (2) is not to be deducted from the undistributed income amount for an accounting period if it has already been deducted from the undistributed income amount for a previous accounting period.

(4) In this section—

(a) the "income period" is the third accounting period before the accounting period for which the undistributed income amount falls to be determined;

(b) the "review period" is the period beginning with the first day of the income period and ending with the last day of the accounting period for which the undistributed income amount falls to be determined;

(c) a "deemed distribution" is an amount arising from the transfer of an ownership interest held by the owner to a person that is not a member of the group;

(d) the amount of a deemed distribution is to be calculated as the undistributed income amount for the accounting period in which the transfer occurs (disregarding the deemed distribution) multiplied by the transfer factor;

(e) the transfer factor is the value of the ownership interest transferred divided by the sum of that value and the value of the remaining ownership interest held by the owner;

(f) the "investment loss carry-forward amount" for a review period is the amount of any losses not deducted from the undistributed income amount for any accounting period preceding the review period.

Other adjustments

216 Election where assets and liabilities adjusted to fair value for tax purposes

(1) This section applies to a member of a multinational group if the filing member has made an election under this section in respect of a relevant tax adjustment made in an accounting period ("the adjustment period") in relation to that member.

(2) A "relevant tax adjustment" is an adjustment to the value of assets or liabilities of a member of a multinational group for tax purposes so that they reflect fair value that is required or permitted, under the law of the territory the member is located in, as a result of the occurrence of an event.

(3) But adjustments made in connection with transfer pricing, or in connection with the sale of assets in the course of carrying on a trade, are not relevant tax adjustments.

(4) Where this section applies to the member—

(a) the member has an adjustment amount in respect of each asset or liability that is subject to the relevant adjustment, and

(b) the value of an asset or liability subject to the relevant adjustment is to be treated, for the purpose of determining the member's adjusted profits in the adjustment period and subsequent accounting periods, as its fair value immediately after occurrence of the event that caused, or enabled, the adjustment to be made.

(5) An adjustment amount is to be—

(a) included in the adjusted profits of the member for the adjustment period, or

(b) split into 5 equal amounts to be included in the adjusted profits of the member in that period and the subsequent 4 accounting periods.

(6) But where the adjustment amount is split between those accounting periods and the member leaves the multinational group before the end of the 4th subsequent accounting period, any amount of the adjustment amount that has not been included in the adjusted profits of the member for a previous accounting period is to be included in the adjusted profits of the member for the final accounting period in which it was a member of the group.

(7) The adjustment amount of a member of a multinational group in respect of an asset or liability subject to a relevant adjustment is the amount given by—

(a) subtracting the carrying value of the asset or liability immediately before the event that caused, or enabled, the adjustment to be made from the fair value of the asset immediately after occurrence of that event, and

(b) if that event resulted in a non-qualifying gain or loss (within the meaning given by section 210(2)) for the member—

(i) in the case of a non-qualifying gain, reducing the result of paragraph (a) by the amount of that gain, or

(ii) in the case of a non-qualifying loss, increasing the result of paragraph (a) by the amount of that loss.

(8) Paragraph 2 of Schedule 15 (annual elections) applies to an election under this section.

217 Post filing adjustments of covered taxes

(1) This section applies where, in an accounting period ("the current period"), the liability of a member of a multinational group to covered taxes for a prior accounting period ("the prior period") as reflected in an information return, overseas information return or self-assessment return (see Schedule 14) has increased or decreased.

(2) Subsection (4) applies where—

(a) that liability has increased, or

(b) that liability has decreased and the decrease is to be treated as insignificant.

(3) Subsection (5) applies where that liability has decreased, unless the decrease is to be treated as insignificant.

(4) Where this subsection applies, the covered tax balance of the member for the current period is to be adjusted so as to reflect the amount of that increase or decrease if not already reflected in that balance.

(5) Where this subsection applies—

(a) the following are to be recalculated for the prior period to take account of the decrease—

(i) the effective tax rate for the member and the other members of that group located in the same territory,

(ii) the top-up amounts that those members would have, and

(iii) if the liability to covered taxes has decreased because of a reduction of the member's profits, its adjusted profits but only to the extent necessary to prevent the effective tax rate from decreasing,

(b) the adjusted profits of those members in subsequent accounting periods are to be adjusted in consequence of the decrease, and the matters referred to in paragraph (a) recalculated accordingly, and

(c) if the amount of the decrease is reflected in the covered tax balance of the member for the current period, that balance is to be adjusted to exclude it.

(6) Section 206 applies to a recalculation under subsection (5).

(7) Where subsection (5) applies in relation to a decrease in liability to covered taxes that arises as a result of the member offsetting a loss in a later accounting period against profits in the prior period, the member is treated for the purposes of this Part—

(a) as having a deferred tax asset that arises in the later period that is equal to the amount offset multiplied by the lesser of—

(i) 15%, and

(ii) the tax rate that applied to the profits the amount was offset against, and

(b) as having used that asset in the prior accounting period.

(8) For the purposes of this section, a decrease of liability is to be treated as insignificant if—

(a) the aggregate decrease in liability for covered taxes for the prior period is less than 1 million euros, and

(b) the filing member has made an election for decreases in the prior period to be treated as insignificant.

Paragraph 2 of Schedule 15 (annual elections) applies to an election under this subsection.

218 Effect of rate changes to deferred tax expense

(1) Where—

(a) the rate of tax for a member of a multinational group changes in an accounting period,

(b) the change in rate is to some extent relevant, and

(c) the effect of the rate change would reduce the member's covered tax balance in a previous accounting period if the deferred tax expense in that period were recalculated to take account of the change in the rate,

section 217 applies to so much of that reduction as reflects the extent of the change in rate that is relevant as it applies to a decrease in liability to covered taxes.

(2) Where—

(a) the rate of tax for a member of a multinational group changed in a previous accounting period,

(b) the change in rate is to some extent relevant,

(c) the member's deferred tax expense for the current accounting period reflects the reversal of deferred tax assets or liabilities that were recognised in an accounting period prior to the rate change at a different rate, and

(d) the effect of the rate change would increase the member's covered tax balance in a previous accounting period if the deferred tax expense in that period were recalculated to take account of the change in the rate,

section 217 applies to so much of that increase as reflects the extent of the change in rate that is relevant as it applies to a increase in liability to covered taxes.

(3) For the purposes of subsections (1) and (2), a change of a rate of tax is relevant to the extent that—

(a) in the case of a rate that is increasing, it reflects an increase from below 15% to the lesser of—

(i) the rate it is changed to, and

(ii) 15%, and

(b) in the case of a rate that is decreasing, it reflects a decrease from the lesser of—

(i) the previous rate, and

(ii) 15%.

219 Adjustment where covered taxes not paid

(1) Where an amount of current tax expense included in the covered tax balance of a member of a multinational group for an accounting period is not paid before the end of the period of 3 years commencing with the last day of that accounting period, the following are to be recalculated excluding that amount—

(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.

(2) But subsection (1) does not apply unless the total of amounts included in the covered tax balance for that accounting period which are not paid before the end of that 3 year period exceeds 1 million euros.

(3) Section 206 applies to a recalculation under subsection (1).

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).

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.

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—

(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

(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).

Joint venture group

226 Joint venture group

(1) For the purposes of this Part "joint venture group" means a joint venture parent of a qualifying multinational group and its joint venture subsidiaries (together its "members").

(2) An entity is a joint venture parent of a multinational group if—

(a) the financial results of that entity are reported under the equity method in the consolidated financial statements of the ultimate parent of that group,

(b) the ultimate parent holds at least 50% of the ownership interests in the entity,

(c) the entity is not the ultimate parent of a qualifying multinational group,

(d) the entity is not an excluded entity,

(e) the entity is not an entity owned by an excluded entity—

(i) that only carries out activities that are ancillary to the activities of the excluded entity,

(ii) whose activities consist, wholly or almost wholly, of the holding of assets or the investment of funds for the benefit of the excluded entity, or

(iii) whose income is, wholly or almost wholly, excluded dividends or excluded equity gains (or a mixture of both),

(f) the multinational group of which the entity is a member is not composed exclusively of excluded entities, and

(g) the entity is not a joint venture subsidiary in relation to another joint venture parent.

(3) An entity is a joint venture subsidiary of a joint venture parent if its assets liabilities, income, expenses and cash flows are included in the consolidated financial statements of the joint venture parent.

(4) Where the main entity of a permanent establishment is a joint venture parent of a multinational group or a joint venture subsidiary, that permanent establishment is to be treated as a separate joint venture subsidiary of the same multinational group joint venture group.

227 Application of Part to joint venture groups

(1) This Part applies to a joint venture group as it applies to a multinational group, but Chapters 3 to 6 and 8 of this Part and Schedule 16 apply as if—

(a) references to the ultimate parent were to the joint venture parent of that group,

(b) references to a member of a multinational group were to the members of the joint venture group, and.

(c) references to the filing member were to the filing member of the multinational group whose ultimate parent holds at least 50% of the ownership interests in the joint venture parent.

(2) For the purposes of the other provisions of this Part, the members of the joint venture group are treated as members of the multinational group whose ultimate parent directly or indirectly holds at least 50% of the ownership interests in the joint venture parent.

(3) But no member of the joint venture group is to be regarded as an intermediate parent member or a partially owned parent member of that group.

Minority owned members

228 Minority owned members

(1) For the purposes of this Part, a member of a multinational group is a "minority owned member" if—

(a) the ultimate parent holds no more than 30% of the ownership interests in that member, and

(b) the member is not an investment entity.

(2) If—

(a) a minority owned member ("M") holds (directly or indirectly) ownership interests in another minority owned member, and

(b) no other minority owned member holds (directly or indirectly) ownership interests in M,

M is the minority owned parent of a minority subgroup, and the minority owned members in which M has ownership interests are also members of that group.

(3) For the purpose of determining the effective tax rate and top-up amounts of members of a minority subgroup, this Part applies as if references to standard members of a multinational group were instead to members of that subgroup.

(4) For the purposes of determining the effective tax rate and top-up amounts of a minority owned member that is not a member of a minority subgroup, this Part applies as if references to standard members of a multinational group were instead to that member.

Application to multi-parent groups

229 Multi-parent groups

(1) Where two or more consolidated groups form part of a multi-parent group—

(a) those groups ("the constituent groups") are to be treated as a single multinational group (and accordingly multinational top-up tax will be charged in relation to that single group), and

(b) the group's members include (as well as the members who are members as a result of section 126) entities who would not be a member of any of the constituent groups but in which a controlling interest is held by one or more members of the constituent groups,

(2) This Part has effect, in its application to a multi-parent group, as if—

(a) references (however framed) to the consolidated financial statements of the ultimate parent were to the multi-parent consolidated financial statements,

(b) references to the ultimate parent were to all of the ultimate parents of the constituent groups, other than the reference in section 128(3)(b) (responsible members).

(3) Where ownership interests in an intermediate parent member of a multi-parent group are held by more than one of the ultimate parents of the multi-parent group, section 127(3) has effect as if for paragraph (b) there were substituted—

"(b) any of the ultimate parents of the constituent groups that have ownership interest in the intermediate parent member are not subject to Pillar Two IIR tax, and".

(4) Where an intermediate parent member of a multi-parent group is not a member of any of the constituent groups, section 128 has effect in relation to it as if—

(a) paragraph (b) of subsection (3) were omitted, and

(b) for subsection (4) there were substituted—

"(4) Such an intermediate parent member is responsible for each member of the group it has an ownership interest provided the conditions in subsection (4A) are met in relation to that member ("the owned member").

(4A) Those conditions are that—

(a) the owned member is not located in the same territory as the intermediate parent member, and

(b) any of the ultimate parents of the constituent groups that has an ownership interest in the owned member is not subject to Pillar Two IIR tax."

(5) Unless a nomination under paragraph 2(2) of Schedule 14 is in force in relation to a multi-parent group—

(a) the ultimate parents of the constituent groups are jointly the filing member of the multi-parent group, and

(b) any liability for a penalty for a failure to comply with the obligations of the filing member is the joint and several liability of those ultimate parents.

(6) For the purposes of this section—

two or more consolidated groups form part of a "multi-parent group" if—

(a) the ultimate parents of those groups are party to an arrangement that is a stapled structure or a dual-listed arrangement, and

(b) at least one of the controlled entities of those groups is not in the same territory as another of the other controlled entities of those groups;

"controlled entity" in relation to two or more consolidated groups means—

(a) a member of any of those groups, and

(b) any entity, other than a member of any of those groups, in which a controlling interest is held by one or more members of those groups;

"stapled structure" means an arrangement entered into by two or more ultimate parents of consolidated groups where the following conditions are met—

(a) as a result of the arrangements, 50% or more of the ownership Interests in the ultimate parents of the consolidated groups—

(i) are by reason of form of ownership, restrictions on transfer, or other terms or conditions combined with each other, and

(ii) cannot be transferred or traded independently;

(b) if the combined ownership Interests are listed, they are quoted at a single price;

(c) one of those ultimate parents prepares, or together those parents prepare, consolidated financial statements—

(i) in which the assets, liabilities, income, expenses and cash flows of the controlled entities of those consolidated groups are presented together as those of a single economic unit, and

(ii) that are required by a regulatory regime to be externally audited;

"dual-listed arrangement" means an arrangement entered into by two or more ultimate parents of consolidated groups to combine their businesses by contract (rather than by the holding of ownership interests in one another) where the following conditions are met—

(a) the arrangements provide for the ultimate parents of the groups to make distributions (with respect to dividends and in liquidation) to their shareholders based on a fixed ratio,

(b) the arrangements provide for the management of those businesses as a single economic entity while retaining their separate legal identities,

(c) ownership interests in the ultimate parents are quoted, traded or transferred independently in different capital markets, and

(d) one of those ultimate parents prepares, or together those parents prepare, consolidated financial statements—

(i) in which the assets, liabilities, income, expenses and cash flows of the controlled entities of those consolidated groups are presented together as those of a single economic unit, and

(ii) that are required by a regulatory regime to be externally audited;

"multi-parent consolidated financial statements" means—

(a) in relation to a multi-parent group that is a multi-parent group as a result of a stapled structure, the consolidated financial statements referred to in paragraph (c) of the definition of stapled structure, or

(b) in relation to a multi-parent group that is a multi-parent group as a result of a dual-listed arrangement, the consolidated financial statements referred to in paragraph (d) of the definition of dual-listed arrangement.

CHAPTER 10

DEFINITIONS ETC

Introduction

230 Meaning of terms and concepts used in this Part

(1) The provisions of this Chapter define or otherwise explain terms and concepts used in this Part.

(2) Unless the contrary appears, those provisions have effect for the purposes of this Part.

Meaning of "entity" etc

231 Meaning of entity

(1) In this Part "entity" means—

(a) a company,

(b) a partnership,

(c) a trust, or

(d) any other arrangement that results in the preparation of separate financial accounts in respect of the activities carried out under the arrangement.

(2) An entity which is, or is part of, a national, regional or local government is not to be regarded as an entity for the purposes of this Part.

(3) Sections 232 to 238 make further provision about entities including provision—

(a) treating permanent establishments as entities,

(b) defining various particular types of entities, and

(c) about when entities are "tax transparent".

232 Permanent establishments treated as entities

(1) A "permanent establishment" of an entity ("the main entity") means a place of business of the main entity that—

(a) is located in a territory other than the territory of the main entity, and

(b) meets any of the conditions in paragraphs (a) to (d) of subsection (2).

(2) Those conditions are—

(a) that the place of business is situated in a territory where it is treated as a permanent establishment in accordance with an applicable tax treaty in force provided that such territory taxes the income attributable to it in accordance with a provision similar to Article 7 of the OECD tax model;

(b) that the place of business is in a territory where there is no applicable tax treaty in force and the territory, under its domestic law, taxes the income attributable to such place of business on a net basis similar to the manner in which it taxes its own tax residents;

(c) that the place of business is in a territory that has no corporate income tax system, but would be treated as a permanent establishment in accordance with the OECD tax model provided that such territory would have had the right to tax the income attributable to it in accordance with Article 7 of that model;

(d) that—

(i) the place of business does not meet any of the conditions in paragraphs (a) to (c), and

(ii) the territory of the main entity exempts the income attributable to the place of business's operations.

(3) For the purposes of this Part, a permanent establishment is to be treated as an entity distinct from the entity it is a permanent establishment of (whether that would otherwise be the case or not).

(4) In this section "place of business" means a place of business as construed in accordance with the OECD tax model, and includes a deemed place of business for the purpose of that model, a tax treaty or the domestic law of a territory.

(5) In this Part, a reference to "the main entity" in relation to a permanent establishment is to be construed in accordance with this section.

233 Treatment of protected cell companies

(1) For the purposes of this Part—

(a) a protected cell company is not to be regarded as an entity, and

(b) each part of a protected cell company is to be treated as an entity distinct from the others.

(2) Accordingly—

(a) the fact an entity is a part of a protected cell company is irrelevant to determining whether it is a member of a consolidated group, and

(b) the accounts of the protected cell company are not to be regarded as consolidated financial statements.

(3) In this Part—

"protected cell company" means a protected cell company incorporated under Part 4 of the Risk Transformation Regulations 2017 (S.I. 2017/1212);

a "part" of a protected cell company means its core or a cell of the company;

"core" and "cell" have the meaning they have in those regulations.

234 Governmental, international and non-profit entities

(1) An entity is a "governmental entity" if—

(a) it is wholly owned by a national, regional or local government,

(b) it has the principal purpose of—

(i) carrying on a public function of that government, or

(ii) managing or investing the assets of that government through investment activities (such as the making and holding of investments or asset management),

(c) it is accountable to that government on its overall performance and provides annual information reporting to that government,

(d) it does not carry on a trade or business, other than an investment business described in paragraph (b)(ii),

(e) its assets vest in that government on its dissolution, and

(f) it does not make distributions of its profits to, or for the benefit of, any person other than that government.

(2) "International organisation" means an intergovernmental or supranational organisation, or an entity that acts for, is part of, or is wholly owned by such an organisation, provided—

(a) the organisation is comprised primarily of governments,

(b) the organisation has a headquarters, or privileges or immunities in respect of its establishments, in the territory in which it is established, and

(c) its governing documents, or the law of that territory, preclude the distribution of its profits for the benefit of private persons.

(3) An entity is a "non-profit organisation" if—

(a) it is established and operated in the territory it is located in—

(i) exclusively for religious, charitable, scientific, artistic, cultural, athletic, education, or other similar purposes, or

(ii) as a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare, and

(b) it meets all of the conditions mentioned in subsection (4).

(4) Those conditions are that—

(a) substantially all of the income from the activities it carries out for the purposes it was established is exempt from income tax in the territory where it is located,

(b) it has no shareholders or members who have any interest in its income or assets,

(c) the income or assets of the entity may not be distributed to, or applied for the benefit of, a private person or non-charitable entity other than—

(i) pursuant to the conduct of the entity in carrying out activities for the purposes for which it was established,

(ii) as payment of reasonable compensation for services rendered or for the use of property or capital, or

(iii) as payment representing the fair market value of property which the entity has purchased,

(d) upon termination, liquidation or dissolution of the entity, all of its assets must be distributed or revert to a non-profit organisation or to a governmental entity of the territory in which the entity is located, and

(e) the entity does not carry on a trade or business that is not directly related to the purposes for which it was established.

235 Pension funds and pension services entities

(1) An entity is a "pension fund" if—

(a) it is an entity that is established and operated in a territory exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals where—

(i) the entity is regulated as such in that territory, or

(ii) those benefits are secured or otherwise protected by national regulations and funded by a pool of assets held through a fiduciary arrangement or trust to secure the fulfilment of the corresponding pension obligations against a case of insolvency of the entity or the group the entity is a member of, or

(b) a pension services entity.

(2) An entity is a "pension services entity" if it is an entity established and operated exclusively or almost exclusively—

(a) to invest funds for the benefit of an entity falling with the description in subsection (1)(a), or

(b) to carry out activities that are ancillary to the regulated activities carried out by an entity falling with that description, provided that the entities are members of the same group.

236 Investment funds and investment entities

(1) An "investment fund" is an entity that meets all of the following conditions—

(a) it is designed to pool assets (which may be financial and non-financial) from a number of investors, at least some of which are not connected;

(b) it invests in accordance with a defined investment policy;

(c) it operates with a view to allowing its investors to reduce transaction, research, and analytical costs, or to spread risk collectively;

(d) it is primarily designed to generate investment income or gains, or protection against a particular or general event or outcome;

(e) investors have rights to the assets of the fund, or to income earned on those assets, based on the contributions made by those investors;

(f) the entity, or its management, is subject to a regulatory regime, that includes anti-money laundering and investor protection regulation, of—

(i) the territory in which the entity is established or managed, or

(ii) in the case of a permanent establishment, the territory in which the main entity is established or managed;

(g) it is managed by an investment management professional on behalf of the investors.

(2) An "insurance investment entity" is an entity that meets all of the following conditions—

(a) the entity is not an investment fund under subsection (1), but would be an investment fund if it were designed to pool assets from more than one investor or those investors were required not to be connected;

(b) the costs or risks the entity operates with a view to reducing are those associated with insurance or annuity contracts;

(c) the income or gains the entity is designed to generate are intended to offset, or the event or outcome the entity is designed to protect against consists of, losses arising or that may arise in connection with insurance or annuity contracts;

(d) no person other than members of the group has ownership interests in the entity;

(e) each person with direct ownership interests in the entity is subject to a regulatory regime in the territory in which it is established or managed, and that regime is specific to persons engaged in the business of entering into insurance or annuity contracts or of performing activities ancillary to such business.

(3) An entity is an investment entity if it is—

(a) an investment fund,

(b) a UK REIT or an overseas REIT equivalent,

(c) an entity—

(i) that is 95% owned by one or more entities falling within paragraph (a) or (b), and

(ii) whose activities consist, wholly or almost wholly, of the holding of assets or the investment of funds for the benefit of those owners,

(d) an entity—

(i) that is 85% owned by one or more entities falling within paragraph (a) or (b), and

(ii) whose income is wholly or almost wholly excluded dividends or excluded equity gains (or a mixture of both), or

(e) an insurance investment entity.

(4) For the purposes of subsection (3) references to an entity being 95% or 85% owned by one or entities falling within paragraph (a) or (b) of that subsection is to those entities together having at least that percentage of the ownership interests in that entity.

237 Intermediate and partially-owned parent members

(1) A member of a multinational group is a partially-owned parent member of that group if—

(a) it is not a permanent establishment, investment entity or the ultimate parent,

(b) it has (directly or indirectly) an ownership interest in another member of the group, and

(c) more than 20% of the ownership interests that represent an entitlement to a share of the profits of the member are held by persons that are not members of the group.

(2) A member of a multinational group is an intermediate parent member of the group if—

(a) it is not a permanent establishment, investment entity, a partially-owned parent member or the ultimate parent, and

(b) it has (directly or indirectly) an ownership interest in another member of the group.

238 Tax transparency of entities

An entity is regarded as tax transparent in a territory if the territory treats the income, expenditure, profits and losses of the entity, for the purposes of covered taxes, as the

income, expenditure, profits and losses of the direct owner of the entity in proportion to its interest in the entity.

Provision relating to location of entities

239 Location of entities

(1) The normal rule for determining, for the purposes of this Part, the territory in which an entity is located is that—

(a) if it is tax resident in a territory based on its place of management or place of creation, or based on similar criteria, it is located in that territory, or

(b) if it is not tax resident in any territory based on such criteria, it is located in the territory in which it was created.

(2) But subsection (1) does not apply to a flow-through entity or a permanent establishment (as to which, see section 240).

(3) Where, in an accounting period, an entity is tax resident based on its place of management, place of creation or similar criteria in more than one territory and—

(a) all of those territories are party to a tax treaty, and

(b) for the purposes of the treaty the entity is deemed resident in one of those territories,

the entity is treated as located in that territory for that period.

(4) Otherwise, where an entity is tax resident in an accounting period based on its place of management, place of creation or similar criteria in more than one territory—

(a) if the entity has accrued more covered taxes in an accounting period in one of those territories than in the others, ignoring any taxes accrued in accordance with a controlled foreign company tax regime, it is to be treated as located in that territory for that period,

(b) if paragraph (a) does not apply and the entity has a greater qualifying substance based income exclusion amount in one of those territories than in the others, it is to be treated as located in that territory for that period, or

(c) if neither paragraph (a) nor (b) applies—

(i) if the entity is the ultimate parent of a multinational group, it is to be treated as being located in the place where it was created for that period, or

(ii) otherwise, the entity is a stateless entity for that period.

(5) For the purposes of subsection (4)(b) "the qualifying substance based income exclusion amount" for an entity for a period in a territory is—

(a) if the substance based income exclusion is calculated for that period for that territory, the sum of the payroll carve-out amount and the tangible asset carve-out amount as would be determined under section 195(1) for the entity for that period if the entity were located in that territory, and

(b) if the substance based income exclusion is not calculated for that period for that territory, nil.

(6) Where—

(a) an entity is not (ignoring this subsection) subject to Pillar Two IIR tax within the meaning of section 128,

(b) it is tax resident based on its place of management, place of creation or similar criteria in the United Kingdom,

(c) as a result of the application of subsection (3) or (4) it is treated as not being located in the United Kingdom, and

(d) if it were located in the United Kingdom, it would be a responsible member of a multinational group,

the entity is instead to be treated as located in the United Kingdom for the purposes of sections 122 and 126 of this Part (but not otherwise).

(7) For the purposes of this Part—

(a) a "stateless entity" is to be treated as not being located in any territory;

(b) where an entity's location changes during an accounting period, it is to be treated as being located in the territory it was located, or was treated as being located, at the start of that period.

240 Location of flow-through entities and permanent establishments

(1) A flow-through entity which is a responsible member of a multinational group is located in the territory in which it was created.

(2) Any other flow-through entity is a stateless entity.

(3) A permanent establishment that is a permanent establishment falling within paragraph (a) of section 232(2) (entity treated as permanent establishment in accordance with tax treaty) is located in the territory where it is treated as a permanent establishment in accordance with the tax treaty in accordance with which it is treated as a permanent establishment.

(4) A permanent establishment that 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) is located in the territory where it is subject to net basis taxation based on its business presence.

(5) A permanent establishment that is a a permanent establishment falling within paragraph (c) of section 232(2) (permanent establishment located in territory without corporate income tax) is located in the territory in which it is situated.

(6) A permanent establishment that is a permanent establishment falling within paragraph (d) of section 232(2) (other permanent establishments) is a stateless entity.

241 Pillar Two territories

(1) In this Part "Pillar Two territory" means the United Kingdom and every other territory specified as such in regulations made by the Treasury.

(2) Regulations may only specify a territory as a Pillar Two territory if the Treasury consider that provisions equivalent to this Part—

(a) have effect under the law of that territory, or

(b) will have effect under the law of that territory on or before the specification has effect.

(3) Regulations under this section may provide that the specification of a territory is to have effect from a time before the regulations are made (but may not provide that

the specification of a territory previously specified ceases to have effect before the regulations are made).

Ownership of entities

242 Ownership interests and controlling interests

(1) In this Part "ownership interest" means a direct ownership interest or an indirect ownership interest.

(2) An entity or an individual ("A") has a direct ownership interest in an entity ("B") if—

(a) A has an interest (whether by way of shares, other security or otherwise) that gives rise to a share of the profits, capital or reserves of B or of a permanent establishment of B (whether on the making of a distribution of profits, winding up or otherwise), and

(b) that interest would, ignoring any requirement to consolidate the assets, liabilities, income, expenses and cash flows of B in the consolidated financial statements of A, be accounted for as equity in those statements.

(3) An entity or an individual ("C") has an indirect ownership interest in an entity ("D") if C has a direct ownership interest in—

(a) an entity that has a direct ownership interest in D, or

(b) an entity that has (as a result of the single or repeated application of this subsection) an indirect ownership interest in D.

(4) An entity ("R") has a controlling interest in another entity ("S") if condition A or B is met.

(5) Condition A is that as a result of an ownership interest R has in S—

(a) R is required to consolidate the assets, liabilities, income, expenses and cash flows of S on a line-by-line basis in accordance with an acceptable financial accounting standard, or

(b) R would have been required to do so if R had prepared consolidated financial statements.

(6) Condition B is that S is a permanent establishment of R.

243 Calculating percentage ownership interests of a specific entity or individual

(1) For the purpose of determining the percentage ownership interests in an entity ("A") held by a specific entity or individual ("B")—

(a) ignore any indirect ownership interest not held by B, and

(b) where B has an indirect ownership interest in A, reduce the direct ownership interest from which it is derived by the amount of that indirect ownership interest.

(2) But this section does not apply for the purpose of any provision that requires the calculation of direct ownership interests only.

244 Calculating percentage ownership interests of a class

(1) For the purpose of determining the percentage of ownership interests in an entity ("A") held by a class of entities ("B")—

(a) ignore any indirect ownership interest required to be ignored as described in subsection (2), and

(b) reduce any percentage direct ownership interest required to be reduced in accordance with subsection (3).

(2) An indirect ownership interest is to be ignored if—

(a) it is an indirect ownership interest held by an entity that is not a member of B, or

(b) it is an indirect ownership interest held by a member of B through another entity that is a member of B.

(3) Where a member of B holds an indirect ownership interest in A solely through an entity, or entities, that are not members of B, the direct ownership interest from which it is derived is to be reduced by the amount of that indirect ownership interest.

(4) This section does not apply—

(a) for the purpose of any provision that requires the calculation of direct ownership interests only, or

(b) for the purposes of section 127(6)(a) and (7)(a) (whether an entity is 95% or 85% owned by qualifying excluded entities).

245 Calculating percentage ownership interests: excluded entities

(1) For the purpose of determining, under section 127(6)(a) and (7)(a), the percentage of ownership interests in an entity ("A") held by qualifying excluded entities—

(a) ignore any indirect ownership interest apart from ownership interests held solely through one or more qualifying service entities or qualifying exempt income entities, and

(b) ignore any direct or indirect ownership interest required to be ignored as described in subsection (2).

(2) Where an entity holds an indirect ownership interest in A solely through an entity, or entities, that are qualifying service entities or qualifying exempt income entities, each direct and indirect ownership interest from which it is derived is to be ignored.

246 Calculating percentage direct and indirect ownership interests

(1) To determine the percentage of direct ownership interest an entity or individual ("E") has in an entity ("F")—

(a) add together the proportional entitlement of E to the following types of interest that are relevant—

(i) an interest that gives rise to a share of profits of F,

(ii) an interest that gives rise to a share of the capital of F, and

(iii) an interest that gives rise to a share of the reserves of F, and

(b) if—

(i) F issues all of those types of interest and all of those types are relevant, divide the result of paragraph (a) by 3, or

(ii) F only issues 2 of the relevant types of interest or there are only 2 types of interest that are relevant and E issues both of them, divide the result of paragraph (a) by 2.

(2) For the purposes of subsection (1)—

(a) where a provision under which a percentage of ownership interests is to be determined refers to types of interest mentioned in those sub-paragraphs, the types referred to are "relevant", and

(b) where such a provision does not refer to types of interest mentioned in sub-paragraphs (i) to (iii) of subsection (1)(a), all of those types of interest are "relevant".

(3) To determine the percentage indirect ownership interest an entity or individual ("G") has in an entity ("H")—

(a) determine the percentage indirect ownership interest arising as a result of each stack through which it has an indirect ownership interest in H, and

(b) add those percentage indirect ownership interests for those stacks together.

(4) For the purposes of subsection (3) a "stack" means a chain of entities through which G has an indirect ownership interest in H which is comprised of an entity ("J") which has a direct ownership interest in H and—

(a) where G has a direct ownership interest in J, G, or

(b) where G does not have a direct ownership interest in J—

(i) G,

(ii) an entity ("K") which has a direct ownership interest in J and that G has a direct or indirect ownership interest in, and

(iii) where G does not have a direct ownership interest in K, an entity which has a direct ownership interest in K and that G has a direct or indirect ownership interest in, and so on until an entity is reached that G has a direct ownership interest in.

(5) To determine G's percentage indirect ownership interest in H arising as a result of a stack—

(a) determine, in accordance with subsection (1)—

(i) J's percentage direct ownership interest in H, and

(ii) the percentage direct ownership interest each other member of the stack has in the member of the stack it has a direct ownership interest in, and

(b) multiply together the percentage direct ownership interests determined under paragraph (a).

247 Timing of transfers of interests

(1) Where ownership interests in an entity are transferred from one entity or individual to another entity or individual, that transfer is to be treated as effective at the earlier of—

(a) the time when the obligations of the parties to the transfer necessary to effect the transfer have been met, and

(b) the time when any of the substantive consideration for the transfer has been provided,

(instead of at any earlier time when the transfer is effective).

(2) In subsection (1)(b) the reference to "substantive consideration" means any amount of the consideration for the transfer other than any amount provided before the transfer which would not be refundable if the transfer did not take place as a result of the transferee not meeting its obligations under the arrangements to make the transfer.

248 Exclusion of indirect interests held through ultimate parent

For the purposes of determining whether an entity has an indirect ownership interest in a member of a multinational group (other than the ultimate parent), ignore any indirect interests arising only as a result of an ownership interest in the ultimate parent.

Financial statements and accounting period

249 Consolidated financial statements

(1) The consolidated financial statements of an entity are—

(a) where the entity is not the ultimate parent of a consolidated group whose only members are that entity and its permanent establishments, the financial statements prepared by the entity in accordance with acceptable accounting standards in which the assets, liabilities, income, expenses and cash flows of that entity and the entities it has a controlling interest in are presented as those of a single economic unit,

(b) where the entity is the ultimate parent of a consolidated group whose only members are that entity and its permanent establishments, the financial accounts of that entity that are prepared in accordance with an acceptable accounting standard,

(c) where the entity has prepared statements that would fall within paragraph (a) or (b) but they were not prepared in accordance with an acceptable accounting standard, those statements but adjusted to prevent material competitive distortions, or

(d) where no statements were prepared falling within paragraphs (a) to (c), the statements that would have been prepared (whether or not the entity was required to prepare such statements) in accordance with an authorised accounting standard that is either—

(i) an acceptable accounting standard, or

(ii) a financial accounting standard whose application is adjusted to prevent material competitive distortions.

(2) But subsection (1)(d) is not to be taken as imposing a requirement to consolidate entities where that is not required, or is not permitted, by an authorised accounting standard.

(3) "Authorised accounting standard" in relation to an entity means a set of generally acceptable accounting principles permitted by the body responsible for prescribing, establishing or accepting accounting standards for financial reporting purposes in the territory the entity is located in.

(4) There are "competitive distortions" in accounts not prepared in accordance with an acceptable accounting standard if the result of the application of one or more specific principles or procedures under the standard under which it was prepared results in differences between—

(a) the treatment of items in those accounts, and

(b) the treatment of those items in accounts prepared in accordance with the corresponding principles or procedures under international financial reporting standards.

(5) Competitive distortions are "material" if the sum of the differences between the treatment of items in the accounts referred to in subsection (4) exceeds 75 million euros.

250 Acceptable accounting standards

(1) In this Part "acceptable accounting standards" means—

(a) UK GAAP,

(b) acceptable overseas GAAP, or

(c) international financial reporting standards.

(2) "UK GAAP"—

(a) means generally accepted accounting practice in relation to accounts of UK companies (other than accounts prepared in accordance with international accounting standards or international financial reporting standards) that are intended to give a true and fair view, and

(b) has the same meaning in relation to entities other than companies, and companies that are not UK companies, as it has in relation to UK companies.

(3) "Acceptable overseas GAAP" means the generally accepted accounting practice and principles of any of the following—

Australia;
Brazil;
Canada;
an EEA state;
the Hong Kong Special Administrative Region of the People's Republic of China;
Japan;
Mexico;
New Zealand;
the People's Republic of China;
the Republic of India;
the Republic of Korea;
Singapore;
Switzerland;
the United States of America.

(4) The Treasury may by regulations amend subsection (3) to add or remove territories.

(5) In this section "UK companies" means companies incorporated or formed under the law of a part of the United Kingdom.

251 Accounting periods

(1) The general rule is that reference to an accounting period in relation to a multinational group, or any member of that group, is to an accounting period for which the ultimate parent prepares its consolidated financial statements.

(2) Where the ultimate parent does not prepare consolidated financial statements, references to accounting periods are to the period of a year commencing on 1 January.

(3) But—

(a) where an accounting period ("the default period") has started as a result of the rule in subsection (2), but the ultimate parent prepares consolidated financial statements during the default period for a period commencing with a date after the start of the default period, the default period is to end immediately before that date, and

(b) where the ultimate parent had previously prepared consolidated financial statements for accounting periods, the accounting period that follows the last period for which it had prepared consolidated financial statements begins immediately after that last period and ends immediately before 1 January in the following year.

Miscellaneous

252 Application to sovereign wealth funds

(1) A sovereign wealth fund that would, ignoring this subsection, be the ultimate parent of a multinational group is not to be regarded as the ultimate parent of that group and is to be ignored for the purposes of this Part.

(2) Accordingly, an entity ("A") in which such a sovereign wealth fund has a controlling interest as a result of direct ownership interests is to be regarded as the ultimate parent of a consolidated group consisting of—

(a) itself, and

(b) the entities that A has a controlling interest in.

(3) For the purposes of this section "sovereign wealth fund" means an entity which is a government entity for the purposes of this Part as a result of meeting the condition in section 234(1)(b)(ii).

253 Disqualified and qualified refundable imputation taxes

(1) An amount of tax payable by a member of a multinational group is "disqualified refundable imputation tax" if—

(a) it is—

(i) in respect of a dividend made by the member and is refundable to the beneficial owner of the dividend,

(ii) creditable by the beneficial owner of such a dividend against a tax liability other than a tax liability in respect of that dividend, or

(iii) refundable to an entity upon the distribution of a dividend, and

(b) it is not qualified refundable imputation tax.

(2) An amount of tax payable by a member of a multinational group is "qualified refundable imputation tax" to the extent—

(a) it is refundable or creditable to the beneficial owner of a dividend distributed by—

(i) the member, or

(ii) where the member is a permanent establishment, the main entity, and

(b) the refund is payable, or the credit is provided—

(i) under a foreign tax credit regime by a territory other than the territory that imposed the tax on the member,

(ii) to a beneficial owner of the dividend subject to tax in the territory imposing the tax payable by the member, provided the nominal rate of that tax that is at least 15%,

(iii) to a beneficial owner of the dividend who is an individual who is tax resident in that territory and who is subject to tax on the dividends as ordinary income,

(iv) to a governmental entity or an international organisation,

(v) to a resident non-profit organisation, a resident pension fund or a resident investment entity that is not a member of a multinational group, or

(vi) to a resident life insurance company to the extent the dividends are received in connection with a pension fund business and subject to tax in a similar manner as a dividend received by a pension fund.

(3) For the purposes of sub-paragraphs (v) and (vi) of subsection (2)(b), an entity is a resident entity if it is resident in the territory that imposed the tax, and for those purposes—

(a) a non-profit organisation or pension fund is resident in a territory if it is created and managed in that territory;

(b) an investment entity is resident in a territory if it is created and regulated in that territory;

(c) a life insurance company is resident in a territory if it is located there (see section 239).

254 Use of currency

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

255 Pillar Two rules

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

(a) the Pillar Two commentary, and

(b) any further commentaries or guidance published from time to time by the OECD that are relevant to the implementation of the Pillar Two model rules.

(2) In subsection (1)—

"Pillar Two model rules" means the model rules published by the Organisation for Economic Co-operation and Development as "Tax

Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS";

"Pillar Two commentary" means the following—

(a) the commentary on the Pillar Two model rules published by the Organisation for Economic Co-operation and Development as "Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two)", and

(b) the examples illustrating the application of the Pillar Two model rules published by the Organisation for Economic Co-operation and Development as "Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two) Examples".

(3) Pillar Two rules apply to a multinational group, or a member of a multinational group, in an accounting period if—

(a) the group is a qualifying multinational group, or

(b) the group would be a qualifying multinational group but is not only as a result of Condition B in section 129(3) (requirement that at least one member located in the United Kingdom).

256 Qualifying domestic top-up tax

(1) For the purposes of this Part a tax is a "qualifying domestic top-up tax" if it is—

(a) domestic top-up tax (see Part 4), or

(b) specified in a regulations made by the Treasury.

(2) A tax may only be specified in regulations if the Treasury consider that it is equivalent in substance to domestic top-up tax (see Part 4).

(3) A tax may be considered equivalent to domestic top-up tax despite being not being calculated in accordance with the financial accounting standard used in the consolidated financial statements of the ultimate parent if calculated in accordance with an authorised accounting standard that is either—

(a) an acceptable accounting standard, or

(b) another financial accounting standard that is adjusted to prevent material competitive distortions.

(4) Regulations under this section may provide that the specification of a tax is to have effect from a time before the regulations are made (but may not provide that the specification of a tax previously specified ceases to have effect before the regulations are made).

257 Qualifying undertaxed profits tax

(1) For the purposes of this Part a tax is a "qualifying undertaxed profits tax" if it is specified in regulations made by the Treasury.

(2) A tax may only be specified in regulations if the Treasury consider that the tax is an appropriate means of implementing the UTPR (within the meaning of the Pillar Two rules).

(3) Regulations under this section may provide that the specification of a tax is to have effect from a time before the regulations are made (but may not provide that the specification of a tax previously specified ceases to have effect before the regulations are made).

258 Meaning of "connected"

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

259 Other definitions

(1) In this Part—

"company" means a body corporate;

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

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

"HMRC" means His Majesty's Revenue and Customs;

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

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

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

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

"UK REIT" means—

(a) a company UK REIT within the meaning of Part 12 of CTA 2010 (see section 524 of that Act), or

(b) a company that is a member of a group UK REIT within the meaning of that Part (see sections 523 and 606 of that Act);

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

(2) For the purposes of this Part, an individual is "tax resident" in a territory if—

(a) in the case of the United Kingdom, the individual is resident for income tax purposes, and

(b) in any other territory, the individual is resident for the purposes of a tax on income imposed under the law of that territory.

(3) Where a term in this Part has a meaning for accounting purposes, unless the context otherwise requires, it has that meaning in this Part.

(4) Examples of such terms include—

carrying value;
current tax;
deferred tax;
deferred tax expense;
deferred tax asset;
deferred tax liability;
fair value;
impairment;
tax expense.

CHAPTER 11

GENERAL AND MISCELLANEOUS PROVISION

260 Transitional provision

Schedule 16 makes transitional provision.

261 Index of defined expressions

Schedule 17 contains a table that lists terms defined for this Part and the provisions that define or explain them.

262 Power to amend to ensure consistency with Pillar Two

(1) Where the Treasury consider it necessary for the purpose of ensuring consistency with the Pillar Two rules, the Treasury may by regulations—

(a) make further provision about the application of provisions of this Part or of Schedule 14 to Schedule 16, or

(b) amend this Part or Schedule 14 to Schedule 17.

(2) The power in this section may not be exercised after 31 December 2026.

263 Regulations

(1) A power to make regulations under this Part includes a power to make consequential, supplementary, incidental, transitional or saving provision.

(2) Regulations under this Part are to be made by statutory instrument.

(3) A statutory instrument containing (whether alone or with other provision) regulations made under section 262(1)(b) is subject to the made affirmative procedure.

(4) Otherwise, a statutory instrument containing regulations under this Part is subject to annulment in pursuance of a resolution of the House of Commons.

(5) Where a statutory instrument is subject to "the made affirmative procedure"—

(a) it must be laid before the House of Commons after being made, and

(b) it ceases to have effect at the end of the period of 28 sitting days beginning with the day on which the instrument is made, unless within that period the instrument is approved by a resolution of the House of Commons.

(6) Where regulations cease to have effect as a result of subsection (5), that does not—

(a) affect anything previously done under the regulations, or

(b) prevent the making of new regulations.

(7) In this section, "sitting day" means a day on which the House of Commons is sitting (and a day is only a day on which the House of Commons is sitting if the House begins to sit on that day).

264 Multinational top-up tax to apply from 31 December 2023

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

Changes to legislation:
There are currently no known outstanding effects for the Finance (No. 2) Act 2023, Part 3.