Finance (No. 2) Act 2023

2023 CHAPTER 30

PART 3

MULTINATIONAL TOP-UP TAX

CHAPTER 5

COVERED TAX BALANCE

Dealing with deferred tax assets etc

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.