SCHEDULES

SCHEDULE 12

PILLAR TWO

PART 2

MULTINATIONAL TOP-UP TAX

Tax equity partnerships

16 (1) After section 176C (as inserted by paragraph 8), insert—

"*Tax equity partnerships*

176D Tax credits etc allocated under tax equity partnerships

(1) Where—

(a) a member of a multinational group is an investor in a tax equity partnership arrangement, and

(b) an election under section 165 (excluded equity gains and losses included) applies in relation to the member for an accounting period,

qualifying flow-through tax benefits provided to the member under that arrangement in that period are to be excluded from the covered tax balance of that member for that period.

(2) "Flow-through tax benefits" means tax credits, other than qualifying refundable tax credits, and the value of amounts of tax deductible losses made available to be used by an investor in a tax equity partnership arrangement under that arrangement (whether or not those credits or losses are used by the investor).

(3) Section 176E (proportional amortisation method) applies for the purposes of determining the extent to which flow-through tax benefits are "qualifying" where—

(a) in determining the underlying profits of the investor, the proportional amortisation method is used to account for the arrangement, or

(b) the filing member of the multinational group of which the investor is a member has elected that section 176D should apply for those purposes in relation to the member.

(4) Otherwise, section 176F (subtraction method) applies for those purposes.

(5) For the purposes of this Part, a member of a multinational group is an investor in a tax equity partnership arrangement if—

(a) the member has made an investment in an entity that is tax transparent in the territory in which the member is located,

(b) the investment is treated as an equity interest for tax purposes in the territory in which the member is located,

(c) the investment would, under an authorised accounting standard of the territory in which the entity operates, be treated as an equity interest,

(d) the entity is not a member of the multinational group, and

(e) it is reasonable to expect, at the time of making the investment, that the return on the investment would be negative in the absence of the provision of flow-through tax benefits.

(6) But a member of a multinational group is not to be regarded as an investor in a tax equity partnership arrangement if—

(a) the investment in the entity does not represent a genuine economic interest in that entity such that the member is exposed to the possibility of a loss on the investment, or

(b) the territory in which the member is located limits the use of tax equity partnership arrangements to arrangements that involve a multinational group subject to multinational top-up tax or its equivalent under the law of a territory outside the United Kingdom.

(7) Flow-through tax benefits provided to a member of a multinational group in an accounting period that are not qualifying are to be reflected as a credit in the covered tax balance for that period.

(8) Flow-through tax benefits (whether qualifying or not) provided to a member of a multinational group are not to be reflected in the underlying profits of that member, even if that would be the effect of the election under section 165.

(9) For the purposes of subsection (3)(a), the "proportional amortisation method" means a method of accounting under which—

(a) the initial capital investment in the arrangement is amortised over the term of the investment with the amortisation expense for an accounting period based on the proportion of the flow-through tax benefits expected to be provided over the term of the arrangement that are expected to be provided in that period, and

(b) the difference between the flow-through tax benefits received in an accounting period and that amortisation expense for that period is reflected as tax expense.

(10) For the purposes of this section and sections 176E and 176F, the value of an amount of tax deductible losses made available to be used by an investor is given by multiplying the amount multiplied by the tax rate that applies to the investor.

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

176E Flow-through tax benefits: proportional amortisation method

(1) Where this section applies, to determine the extent to which flow-through tax benefits provided to an investor in an accounting period under a tax equity partnership arrangement are qualifying, take the following steps—

Step 1

Determine the amount of capital investment provided by the investor to the arrangement at its commencement.

Step 2

Divide the flow-through through tax benefits provided under the arrangement in the accounting period by the total flow-through tax benefits expected to be provided over the whole term of the arrangement.

Step 3

Multiply the result of Step 1 by the result of Step 2.

Step 4

Add the following together—

(a) the amounts, if any, of tax credits made available to be used by the investor under the arrangement in the accounting period;

(b) the value of the amounts, if any, of tax deductible losses made available to be used by the investor under the arrangement in the accounting period;

(c) the amounts, if any, of distributions made to the investor in the accounting period;

(d) the amounts, if any, received by the investor for the sale of any part of its investment in the arrangement in the accounting period.

Step 5

If the result of Step 3 is equal to or greater than the result of Step 4, all of the flow-through tax benefits provided under the arrangement in the accounting period are qualifying.

Otherwise proceed to Step 6.

Step 6

Subtract the result of Step 3 from the result of Step 4.

Step 7

The amount of the flow-through benefits provided under the arrangement in the accounting period that is qualifying is the amount given by reducing the amount of those benefits (but not below nil) by the result of Step 6.

(2) Accordingly, the amount by which those benefits are reduced in accordance with Step 7 represents non-qualifying flow-through tax benefits which are to be reflected as a credit in the investor's covered tax balance.

176F Flow-through tax benefits: subtraction method

Where this section applies, to determine the extent to which flow-through tax benefits provided to an investor in an accounting period under a tax equity partnership arrangement are qualifying, take the following steps—

Step 1

Determine the amount of capital investment provided by the investor to the arrangement at its commencement.

Step 2

Subtract the following from that amount—

(a) the amounts, if any, of tax credits made available to be used by the investor under the arrangement since the commencement of the arrangement, other than tax credits that are not qualifying refundable tax credits that were made available in the accounting period;

(b) the value of the amounts, if any, of tax deductible losses made available to be used by the investor under the arrangement since its commencement, other than losses made available in the accounting period;

(c) the amounts, if any, of distributions made to the investor since the arrangement's commencement;

(d) the amounts, if any, received by the investor for the sale of any part of its investment in the arrangement.

Step 3

If the result of Step 2 is nil or less, no flow-through tax benefits provided under arrangement in the accounting period are qualifying.

If the result of that step is more than nil, proceed to Step 4.

Step 4

Subtract the flow-through tax benefits provided to the investor in the accounting period under the arrangement from the result of Step 2.

Step 5

If the result of Step 4 is nil or greater, all of the flow-through tax benefits provided under the arrangement in the accounting period are qualifying.

Otherwise, the amount of those benefits that is qualifying is the amount of those benefits that when subtracted from the result of Step 2 would give a result of nil."

(2) In Schedule 15 (elections), in paragraph 2(1), before paragraph (a) insert—

"(za) section 176D(3)(b);".

Changes to legislation:
There are outstanding changes not yet made by the legislation.gov.uk editorial team to Finance Act 2024. Any changes that have already been made by the team appear in the content and are referenced with annotations.
View outstanding changes

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 9 para. 132(1) Sch. 9 para. 132 renumbered as Sch. 9 para. 132(1) by S.I. 2024/356 reg. 4(23)(a)
- Sch. 9 para. 125(1)(c) and word inserted by S.I. 2024/356 reg. 4(3)(b)
- Sch. 9 para. 125(3A) inserted by S.I. 2024/356 reg. 4(6)
- Sch. 9 para. 126(1)(c) inserted by S.I. 2024/356 reg. 4(9)(c)
- Sch. 9 para. 126(3A) inserted by S.I. 2024/356 reg. 4(10)
- Sch. 9 para. 127A and cross-heading inserted by S.I. 2024/356 reg. 4(12)
- Sch. 9 para. 128(6)(a)(zi) inserted by S.I. 2024/356 reg. 4(13)
- Sch. 9 para. 129(1)(c)(d) inserted by S.I. 2024/356 reg. 4(15)(b)
- Sch. 9 para. 129(2)(c) and word inserted by S.I. 2024/356 reg. 4(16)(b)
- Sch. 9 para. 130A and cross-heading inserted by S.I. 2024/356 reg. 4(21)
- Sch. 9 para. 132(2)-(5) inserted by S.I. 2024/356 reg. 4(23)(c)
- Sch. 9 para. 132A and cross-heading inserted by S.I. 2024/356 reg. 4(24)
- Sch. 9 para. 132(1) words inserted by S.I. 2024/356 reg. 4(23)(b)