

Pillar Two transitional safe harbour: arbitrage arrangements

1 (1) In Schedule 16 to F(No.2)A 2023, after paragraph 6 insert—

“Deduction and non-inclusion arrangements and duplicate loss arrangements

6A (1) Where the aggregate profit (loss) before income tax of the standard members of a multinational group in a territory reflects disqualified expense, the aggregate profit (loss) before income tax is to be adjusted to exclude it.

(2) Disqualified expense means any expense or loss of a member of a multinational group reflected in the financial statements of the member arising as a result of qualifying arrangements that involve another member of the group—

(a) to the extent that—

(i) the expense or loss is a result of the member directly or indirectly being provided credit by the other member or the other member otherwise making an investment in the member under the arrangements, and

(ii) the credit or investment is neither reflected as an increase in the revenue, or a gain, in the financial statements of the other member that corresponds to the expense or loss, nor is reflected as an increase in the taxable income of the other member over the life of the arrangements that corresponds to the expense or loss, or

(b) to the extent that—

(i) the expense or loss is also included as an expense or loss in the financial statements of another member of the group, or

(ii) the expense or loss is mirrored by an amount that can be deducted from the taxable income of another member of the group that is located in a different territory to the member.

(3) But—

(a) an expense or a loss is not disqualified expense as a result of sub-paragraph (2)(a) if it is solely referable to the provision of qualifying tier one capital, and

(b) an expense or loss is not disqualified expense as a result of sub-paragraph (2)(b)(i) or (ii) to the extent it is offset against revenue that is included in the financial statements of each member whose financial statements reflect the expense or loss.

(4) An expense or loss included in the financial statements of a member of a multinational group that is regarded as tax transparent in the territory in which it was created is to be ignored to the extent that expense or loss is included in the financial

statements of members of the group with a direct or indirect ownership interest in it.

- (5) Where as a result of sub-paragraph (2)(b)(i) more than one standard member in a territory has disqualified expense in respect of the same expense or loss, sub-paragraph (1) applies to all but one of those amounts of disqualified expense.
- (6) For the purposes of sub-paragraph (2)(a)(ii), ignore any increase in the taxable income of the other member—
 - (a) that is offset by a devalued tax loss, or
 - (b) where—
 - (i) the payment that gives rise to the expense or loss in question also results in a taxable deduction or loss of a further member of the group located in the same territory as the other member, and
 - (ii) that deduction or loss is not reflected in the aggregate profit (loss) before income tax for that territory for the purposes of determining whether an election under paragraph 3 that applies in relation to that further member can be made.
- (7) For the purposes of sub-paragraph (6)(a), a “devalued tax loss” means a loss of a member of a multinational group—
 - (a) whose value as a tax attribute is reflected in financial statements of the member at less than the amount of the loss multiplied by the tax rate that applies to the member, or
 - (b) whose value as a tax attribute would be so reflected if the qualifying arrangements that result in disqualified expense or disqualified tax expense (see paragraph 6B) were ignored.
- (8) For the purposes of this paragraph and paragraph 6B, arrangements are “qualifying” if—
 - (a) they were entered into on or after 16 December 2022, or
 - (b) they were entered into before that date, but—
 - (i) the arrangements are amended on or after that date (including by way of a substitution of one or more of the parties),
 - (ii) the performance of rights or obligations under the arrangements is altered on or after that date (for example where payments under the arrangements are reduced or ceased), or
 - (iii) the accounting treatment of the arrangements is varied on or after that date.
- (9) In this paragraph and in paragraph 6B reference to the financial statements of a member of a multinational group is—
 - (a) in relation to an accounting period in which an election under paragraph 3 that applies in relation to the member

was made, or for the purposes of determining whether such an election can be made, to the financial statements, or financial accounts, that form the basis of qualified financial statements in relation to the member for the purposes of this Part of this Schedule, or

- (b) otherwise, to the underlying profits accounts of that member (see section 136).

Duplicate tax recognition arrangements

- 6B (1) Where the aggregate qualifying income tax expense of the standard members of a multinational group in a territory reflects disqualified tax expense, the aggregate qualifying income tax expense is to be adjusted to exclude it.
- (2) Disqualified tax expense means any qualifying income tax expense of a member of a multinational group reflected in the financial statements of the member that, as a result of qualifying arrangements, is also reflected in—
 - (a) the covered tax balance of one or more other members of the group, or
 - (b) the qualifying income tax expense of one or more other members of the group.
- (3) But qualifying income tax expense is not to be regarded as disqualified tax expense—
 - (a) if the income to which the tax expense relates is reflected in the financial statements of each member of the group falling within sub-paragraph (2)(a) and (b) to at least the same extent to which the tax expense is reflected in the covered tax balance, or qualifying income tax expense, of each of those members;
 - (b) to the extent that the duplication of the tax expense would not arise if the adjustments that would have been made in determining the member's covered tax balance (and that are not required to be made for the purpose of determining the member's qualifying income tax expense) had been made."
- (2) The amendment made by sub-paragraph (1) has effect in relation to—
 - (a) disqualified expense accruing on or after 14 March 2024, and
 - (b) disqualified tax expense attributable to profits accruing on or after 14 March 2024.
- (3) In paragraph 4 (qualified financial statements and basis of calculations), in sub-paragraph (4), in the words after paragraph (b) for "paragraph 6" substitute "paragraphs 6 to 6B".
- (4) In section 155 (qualifying tier one capital), in subsection (3), for "section" substitute "Part".

- (5) In Schedule 17, in the table, at the appropriate place insert—
- “qualifying tier one capital section 155(3)”.