
33 Hybrid and other mismatches

The Schedule contains provision that counteracts, for corporation tax purposes, hybrid and other mismatches that would otherwise arise.

Withdrawn - do not use

SCHEDULE TO CLAUSE 33

HYBRID AND OTHER MISMATCHES

PART 1

MAIN PROVISIONS

1 In TIOPA 2010, after Part 6 insert –

“PART 6A

HYBRID AND OTHER MISMATCHES

CHAPTER 1

INTRODUCTION

259A Overview of Part

- (1) This Part contains provision for the counteraction, for corporation tax purposes, of certain cases that would otherwise give rise to –
 - (a) an amount being deductible from a person’s ordinary income without a corresponding amount of ordinary income arising to another person (“deduction/non-inclusion mismatches”), or
 - (b) an amount being deductible from more than one person’s ordinary income or being deductible from a person’s ordinary income for the purposes of more than one tax (“double deduction mismatches”).
- (2) The cases with which this Part is concerned involve –
 - (a) payments or quasi-payments under or in connection with financial instruments or repos, stock lending arrangements or other transfers of financial instruments,
 - (b) hybrid entities, or
 - (c) dual resident companies.
- (3) Chapter 2 contains some key definitions for the purposes of this Part, see in particular –
 - (a) section 259B which provides that “tax” means income tax, corporation tax on income, the diverted profits tax, the CFC charge, foreign tax or a foreign CFC charge,
 - (b) section 259BB which defines “payment”, “quasi-payment”, “payment period”, “relevant deduction”, “payer” and “payee”,
 - (c) section 259BC which defines “ordinary income” and “taxable profits”, in relation to taxes other than the CFC charge and foreign CFC charges,

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- (d) section 259BD which contains corresponding provision for the CFC charge and foreign CFC charges, and
 - (e) section 259BE which defines “hybrid entity” and other related terms.
- (4) Chapter 3 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments under, or in connection with, financial instruments.
 - (5) Chapter 4 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments and involving certain repos, stock lending arrangements or other arrangements for, or relating to, transfers of financial instruments.
 - (6) Chapter 5 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments in relation to which the payer is a hybrid entity.
 - (7) Chapter 6 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments in relation to which a payee is a hybrid entity.
 - (8) Chapter 7 contains provision for the counteraction of certain double deduction mismatches arising from a company being a hybrid entity.
 - (9) Chapter 8 contains provision for the counteraction of certain double deduction mismatches involving dual resident companies.
 - (10) Chapter 9 contains provision about imported mismatches.
 - (11) Chapter 10 contains provision for adjustments to be made where a reasonable supposition made for the purposes of this Part turns out to be mistaken or otherwise ceases to be reasonable.
 - (12) Chapter 11 contains definitions and other provision about the interpretation of this Part.

CHAPTER 2

KEY DEFINITIONS

Meaning of “tax”

259B Tax means certain taxes on income and includes foreign tax etc

- (1) In this Part “tax” means –
 - (a) income tax,
 - (b) the charge to corporation tax on income,
 - (c) diverted profits tax,
 - (d) the CFC charge,
 - (e) foreign tax, or
 - (f) a foreign CFC charge.
- (2) In subsection (1) “foreign tax” means a tax chargeable under the law of a territory outside the United Kingdom so far as it –

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- (a) is charged on income and corresponds to United Kingdom income tax, or
 - (b) is charged on income and corresponds to the United Kingdom charge to corporation tax on income.
- (3) A tax is not outside the scope of subsection (2) by reason only that it—
- (a) is chargeable under the law of a province, state or other part of a country, or
 - (b) is levied by or on behalf of a municipality or other local body.
- (4) In this Part—
- “CFC” and “the CFC charge” have the same meanings as in Part 9A (see section 371VA);
 - “foreign CFC charge” means a charge (by whatever name known) under the law of a territory outside the United Kingdom which is similar to the CFC charge (and reference to a “foreign CFC” is to be read accordingly).

Equivalent provision to this Part under foreign law

259BA References to equivalent provision to this Part under the law of a territory outside the United Kingdom

- (1) A reference in this Part to provision under the law of a territory outside the United Kingdom that is equivalent to—
 - (a) this Part, or
 - (b) a provision of this Part,is to be read in accordance with subsection (2).
- (2) The reference is to provision under the law of a territory outside the United Kingdom that it is reasonable to suppose—
 - (a) is also based on the Final Report on Neutralising the Effects of Hybrid Mismatch Arrangements published by the Organisation for Economic Cooperation and Development (“OECD”) on 5 October 2015 or any replacement or supplementary publication, and
 - (b) has effect for the same, or similar, purposes to this Part or (as the case may be) the provision of this Part.
- (3) In paragraph (a) of subsection (2) “replacement or supplementary publication” means any document that is approved and published by the OECD in place of, or to update or supplement, the report mentioned in that paragraph (or any replacement of, or supplement to, it).

Payments and quasi-payments etc

259BB Meaning of “payment”, “quasi-payment”, “payer”, “payee” etc

- (1) In this Part “payment” means any transfer—
 - (a) of money or money’s worth directly or indirectly from one person (“the payer”) to one or more other persons, and
 - (b) in relation to which (disregarding this Part and any equivalent provision under the law of a territory outside the

United Kingdom) an amount (a “relevant deduction”) may be deducted from the payer’s ordinary income for a taxable period (“the payment period”) for the purposes of calculating the payer’s taxable profits.

- (2) For the purposes of this Part, there is a “quasi-payment”, in relation to a taxable period (“payment period”) of a person (“the payer”), if (disregarding this Part and any equivalent provision under the law of a territory outside the United Kingdom) –
- (a) an amount (a “relevant deduction”) may be deducted from the payer’s ordinary income for that period for the purposes of calculating the payer’s taxable profits, and
 - (b) making the assumptions in subsection (4), it would be reasonable to expect an amount of ordinary income to arise to one or more other persons as a result of the circumstances giving rise to the relevant deduction.
- (3) But a quasi-payment does not arise under subsection (2) if –
- (a) the relevant deduction is an amount that is deemed, under the law of the payer jurisdiction, to arise for tax purposes, and
 - (b) the circumstances giving rise to the relevant deduction do not include any economic right in substance, existing between the payer and a person mentioned in subsection (2)(b).
- (4) The assumptions are that (so far as would not otherwise be the case) –
- (a) any question as to whether an entity is a distinct and separate person from the payer is determined in accordance with the law of the payer jurisdiction,
 - (b) any persons to whom amounts arise, or potentially arise, as a result of the circumstances giving rise to the relevant deduction adopt the same approach to accounting for those circumstances as the payer, and
 - (c) any persons to whom amounts arise, or potentially arise, as a result of those circumstances are within the charge to a tax under the law of the payer jurisdiction.
- (5) In this Part –
- (a) references to a quasi-payment include all the circumstances giving rise to the relevant deduction mentioned in subsection (2)(a), and
 - (b) references to a quasi-payment being made are to those circumstances arising.
- (6) In this Part “payee” means –
- (a) in the case of a payment, any person –
 - (i) to whom the transfer is made as mentioned in subsection (1)(a), or
 - (ii) to whom an amount of ordinary income arises as a result of the payment, and
 - (b) in the case of a quasi-payment, any person –
 - (i) to whom it would be reasonable to expect an amount of ordinary income to arise as mentioned in subsection (2)(b), or

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- (ii) to whom an amount of ordinary income arises as a result of the quasi-payment.
- (7) For the purposes of this Part, in the case of a quasi-payment, the payer is “also a payee” if—
- (a) an entity is not a distinct and separate person from the payer for the purposes of a tax charged under the law of the United Kingdom,
 - (b) that entity is a distinct and separate person from the payer for the purposes of a tax charged under the law of the payer jurisdiction, and
 - (c) it would be reasonable to expect an amount of ordinary income to arise to that entity as mentioned in subsection (2)(b).
- (8) In this section “payer jurisdiction” means the jurisdiction under the law of which the relevant deduction may (disregarding this Part and any equivalent provision under the law of a territory outside the United Kingdom) be deducted.

Ordinary income

259BC The basic rules

- (1) This section has effect for the purposes of this Part.
- (2) “Ordinary income” means income that is brought into account, before any deductions, for the purposes of calculating the income or profits on which a relevant tax is charged (“taxable profits”).
- (3) But an amount of income is not brought into account for those purposes to the extent that it is excluded, reduced or offset by any exemption, exclusion, relief or credit—
- (a) that applies specifically to all or part of the amount of income (as opposed to ordinary income generally), or
 - (b) that arises as a result of, or otherwise in connection with, a payment or quasi-payment that gives rise to the amount of income.
- (4) If all the relevant tax charged on taxable profits is, or falls to be, refunded, none of the income brought into account in calculating those taxable profits is “ordinary income”.
- (5) If a proportion of the relevant tax charged on taxable profits is, or falls to be, refunded, the amount of any income brought into account in calculating those taxable profits that is “ordinary income” is proportionally reduced.
- (6) For the purposes of subsections (4) and (5) an amount of relevant tax is refunded if and to the extent that—
- (a) any repayment of relevant tax, or any payment in respect of a credit for relevant tax, is made to any person, and
 - (b) that repayment or payment is directly or indirectly in respect of the whole or part of the amount of relevant tax,
- but an amount refunded is to be ignored if and to the extent that it results from qualifying loss relief.

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- (7) In subsection (6) “qualifying loss relief” means –
- (a) any means by which a loss might be used for corporation tax or income tax purposes to reduce the amount in respect of which a person is liable to tax, or
 - (b) any corresponding means by which a loss corresponding to a relevant tax loss might be used for the purposes of a relevant tax other than corporation tax or income tax to reduce the amount in respect of which a person is liable to tax,
- (and in paragraph (b) “relevant tax loss” means a loss that might be used as mentioned in paragraph (a)).
- (8) References to an amount of ordinary income being “included in” taxable profits are to that amount being brought into account for the purposes of calculating those profits.
- (9) In this section “relevant tax” means a tax other than the CFC charge or a foreign CFC charge.
- (10) Section 259BD contains provision for ordinary income to arise to chargeable companies by virtue of the CFC charge or a foreign CFC charge.

259BD Chargeable companies in respect of CFC and foreign CFCs

- (1) This section has effect for the purposes of this Part.
- (2) Subsections (3) to (7) apply where an amount of income arises to an entity (“C”) that is a CFC, a foreign CFC or both and all or part of that amount (“the relevant income”) –
- (a) is not ordinary income of C under section 259BC, or
 - (b) arises as a result of a payment or quasi-payment under, or in connection with, a financial instrument or hybrid transfer arrangement and –
- (3) is (disregarding subsection (4)) ordinary income of C under section 259BC for a taxable period, but
- (4) is not under taxed.

- (5) The following steps determine whether, and to what extent, the relevant income is “ordinary income” of a chargeable company in relation to the CFC charge or a foreign CFC charge.

Step 1

Determine –

- (a) whether any of the relevant income is brought into account in calculating C’s chargeable profits for the purposes of the CFC charge or a foreign CFC charge, and
- (b) if so, the amount of the relevant income that is so brought into account for the purposes of each relevant charge.

If none of the relevant income is so brought into account, then none of it is “ordinary income” of a chargeable company and no further steps are to be taken.

See subsections (10) to (12) for further provision about how this step is to be taken.

For the purposes of this section –

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- (a) “relevant chargeable profits” are chargeable profits in relation to the calculation of which, for the purposes of the CFC charge or a foreign CFC charge, any of the relevant income is brought into account, and
 - (b) a charge in relation to which any of the relevant income is brought into account in calculating chargeable profits is a “relevant charge”.

Step 2

In relation to each relevant charge, determine the proportion of C’s relevant chargeable profits, for the purposes of that charge, that is apportioned to each chargeable company.

For the purposes of this section, each chargeable company to which 25% or more of C’s relevant chargeable profits for the purposes of a relevant charge are apportioned is a “relevant chargeable company”.

If there are no relevant chargeable companies in relation to any relevant charges, then none of the relevant income is “ordinary income” of a chargeable company and no further steps are to be taken.

Step 3

In relation to each relevant chargeable company, the appropriate proportion of the relevant income brought into account in calculating relevant chargeable profits, for the purposes of the relevant charge concerned, is “ordinary income” of that company for the taxable period for which that charge is charged on it by reference to those profits.

For the purposes of this step, the “appropriate proportion”, in relation to a relevant chargeable company, is the same as the proportion of the relevant chargeable profits that is apportioned to it for the purposes of the relevant charge.

- (4) An amount of relevant income that is ordinary income of a relevant chargeable company in accordance with subsection (3) is not ordinary income of C (so far as it otherwise would be).
- (5) Relevant chargeable profits apportioned to a relevant chargeable company for the purposes of a relevant charge are “taxable profits” of that company for the taxable period for which the charge is charged on it by reference to those profits.
- (6) The amount of the relevant income that is ordinary income of that relevant chargeable company under subsection (3), by virtue of being brought into account in calculating those relevant chargeable profits, is “included in” those taxable profits.
- (7) References to tax charged on taxable profits include a relevant charge charged by reference to relevant chargeable profits that are taxable profits under subsection (5).
- (8) For the purposes of subsection (2)(b), an amount of ordinary income is “under taxed” if the highest rate at which tax is charged, for C’s taxable period, on the taxable profits in which the amount is included is less than C’s full marginal rate for that period.

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- (9) In subsection (8), C's "full marginal rate" means the highest rate at which the tax that is chargeable on those taxable profits could be charged on taxable profits, of C for the taxable period, which include ordinary income that arises from, or in connection with, a financial instrument.
- (10) For the purposes of step 1 in subsection (3), section 259BC(3) applies for the purposes of determining the extent to which an amount of relevant income is brought into account in calculating chargeable profits as it applies for the purposes of determining the extent to which an amount of income is brought into account for the purposes of calculating taxable profits.
- (11) Subsection (12) applies for the purposes of step 1 in subsection (3) if—
- (a) the amount of income arising to C mentioned in subsection (1)—
 - (i) is not all relevant income, and
 - (ii) is only partly brought into account in calculating chargeable profits for the purposes of the CFC charge or a foreign CFC charge, and
 - (b) accordingly, it falls to be determined whether, and to what extent, the relevant income is brought into account in calculating those profits for the purposes of the charge concerned.
- (12) The relevant income is to be taken to be brought into account (if at all) only to the extent that the total amount of income mentioned in subsection (1) that is brought into account exceeds the amount of income mentioned in that subsection that is not relevant income.
- (13) In this section—
- "chargeable company"—
 - (a) in relation to the CFC charge, has the same meaning as in Part 9A (see section 371VA), and
 - (b) in relation to a foreign CFC charge, means an entity (by whatever name known) corresponding to a chargeable company within the meaning of that Part;
 - "chargeable profits"—
 - (a) in relation to the CFC charge, has the same meaning as in that Part (see that section), and
 - (b) in relation to a foreign CFC charge, means the concept (by whatever name known) corresponding to chargeable profits within the meaning of that Part;
 - "hybrid transfer arrangement" has the meaning given by section 259DB.

Hybrid entity etc

259BE Meaning of "hybrid entity", "investor" and "investor jurisdiction"

- (1) For the purposes of this Part, an entity is "hybrid" if it meets conditions A and B.

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- (2) Condition A is that the entity is regarded as being a person for tax purposes under the law of any territory.
 - (3) Condition B is that the entity's income or profits are treated (or would be if there were any) for the purposes of a tax imposed under the law of any territory (the "investor jurisdiction"), as the income or profits of a person or persons other than the person mentioned in condition A.
 - (4) For the purposes of this Part, a person who is treated as having the income or profits of the entity is an "investor" in it.

Permitted reasons for deduction/non-inclusion mismatches

259BF Permitted reasons for deduction/non-inclusion mismatches

- (1) The following sections contain provision disregarding an amount that would otherwise give rise to a deduction/non-inclusion mismatch if it would have arisen in any event for a permitted reason—
 - (a) section 259CB (hybrid or otherwise impermissible deduction/non-inclusion mismatches from financial instruments and their extent),
 - (b) section 259DC (hybrid transfer deduction/non-inclusion mismatches and their extent),
 - (c) section 259EB (hybrid payer deduction/non-inclusion mismatches and their extent), and
 - (d) section 259EB (hybrid payee deduction/non-inclusion mismatches and their extent).
- (2) Each of these is "permitted reason for a deduction/non-inclusion mismatch"—
 - (a) a person not being liable, under the law of any territory, to tax on any income or profits received by the person or received for the person's benefit,
 - (b) a person being subject to tax that is not charged on income or profits arising from a source outside the territory under the law of which the tax is imposed,
 - (c) a person not being liable for any tax on the ground of sovereign immunity, or
 - (d) a person being an offshore fund or authorised investment fund—
 - (i) which meets the genuine diversity of ownership condition (whether or not a clearance has been given to that effect), or
 - (ii) at least 75% of the investors in which are, throughout the payment period, persons who cannot be liable for any tax on the ground of sovereign immunity.
- (3) In this section—

"authorised investment fund" means—

 - (a) an open-ended investment company within the meaning of section 613 of CTA 2010, or

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- (b) an authorised unit trust within the meaning of section 616 of that Act;

“genuine diversity of ownership condition” means –

- (a) in the case of an offshore fund, the genuine diversity of ownership condition in regulation 75 of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001), and
- (b) in the case of an authorised investment fund, the genuine diversity of ownership condition in regulation 9A of the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964);

“offshore fund” has the same meaning as in section 354 (see section 355).

CHAPTER 3

HYBRID AND OTHER MISMATCHES FROM FINANCIAL INSTRUMENTS

Introduction

259C Overview of Chapter

- (1) This Chapter contains provision that counteracts hybrid or otherwise impermissible deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments under, or in connection with, financial instruments.
- (2) The Chapter counteracts mismatches where the payer or a payee is within the charge to corporation tax and does so by altering the corporation tax treatment of the payer or a payee.
- (3) Section 259CA contains the conditions that must be met for this Chapter to apply.
- (4) Section 259CB defines “hybrid or otherwise impermissible deduction/non-inclusion mismatch” and provides how the amount of the mismatch is to be calculated.
- (5) Section 259CC contains provision that counteracts the mismatch where the payer is within the charge to corporation tax for the payment period.
- (6) Section 259CD contains provision that counteracts the mismatch where a payee is within the charge to corporation tax and neither section 259CC nor any equivalent provision under the law of a territory outside the United Kingdom counteracts the mismatch.
- (7) See also –
- (a) section 259BB for the meaning of “payment”, “quasi-payment”, “payment period”, “relevant deduction”, “payer” and “payee”, and
- (b) section 259K for the meaning of “financial instrument”.

Application of Chapter

259CA Circumstances in which the Chapter applies

- (1) This Chapter applies if conditions A to D are met.
- (2) Condition A is that a payment or quasi-payment is made under, or in connection with, a financial instrument.
- (3) Condition B is that—
 - (a) the payer is within the charge to corporation tax for the payment period, or
 - (b) a payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period.
- (4) Condition C is that it is reasonable to suppose that, regarding the provisions mentioned in subsection (5), there would be a hybrid or otherwise impermissible deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259CB).
- (5) The provisions are—
 - (a) this Chapter and Chapters 5, 8, and
 - (b) any equivalent provision under the law of a territory outside the United Kingdom.
- (6) Condition D is that—
 - (a) in the case of a quasi-payment, the payer is also a payee (see section 259BB(7)),
 - (b) the payer and a payee are related (see section 259KB) at any time in the period
 - (i) beginning with the day on which any arrangement is made by the payer or a payee in connection with the financial instrument, and
 - (ii) ending with the last day of the payment period, or
 - (c) the financial instrument, or any arrangement connected with it, is a structured arrangement.
- (7) The financial instrument, or an arrangement connected with it, is a “structured arrangement” if it is reasonable to suppose that—
 - (a) the financial instrument, or arrangement, is designed to secure a hybrid or otherwise impermissible deduction/non-inclusion mismatch, or
 - (b) the terms of the financial instrument or arrangement share the economic benefit of the mismatch between the parties to the instrument or arrangement or otherwise reflect the fact that the mismatch is expected to arise.
- (8) The financial instrument or arrangement may be designed to secure a hybrid or otherwise impermissible deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.
- (9) Sections 259CC (cases where the payer is within the charge to corporation tax for the payment period) and 259CD (cases where a payee is within the charge to corporation tax) contain provision for

the counteraction of the hybrid or otherwise impermissible deduction/non-inclusion mismatch.

259CB Hybrid or otherwise impermissible deduction/non-inclusion mismatches and their extent

- (1) There is a “hybrid or otherwise impermissible deduction/non-inclusion mismatch”, in relation to a payment or quasi-payment, if either or both of case 1 or 2 applies.
- (2) Case 1 applies where—
 - (a) the relevant deduction exceeds the sum of the amounts of ordinary income that, by reason of the payment or quasi-payment, arise to each payee for a permitted taxable period, and
 - (b) all or part of that excess arises by reason of the terms, or any other feature, of the financial instrument.
- (3) Case 2 applies where—
 - (a) one or more amounts of ordinary income (“under-taxed amounts”) arise, by reason of the payment or quasi-payment, to a payee for a permitted taxable period, and
 - (b) the taxable profits in which each of those amounts is included are under taxed by reason of the terms, or any other feature, of the financial instrument.
- (4) But, for the purposes of this section, disregard any part of an excess mentioned in subsection (2) that would, regardless of the terms and any other features of the financial instrument, have arisen for a permitted reason for a deduction/non-inclusion mismatch (see section 259BF).
- (5) A taxable period of a payee is “permitted” in relation to an amount of ordinary income that arises as a result of the payment or quasi-payment if—
 - (a) the period begins before the end of 12 months after the end of the payment period, or
 - (b) where the period begins after that—
 - (i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and
 - (ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.
- (6) Taxable profits, in which an amount of ordinary income for a permitted taxable period is included, are “under taxed” if the highest rate at which tax is charged on those profits, for that permitted taxable period, is less than the payee’s full marginal rate for that period.
- (7) The payee’s “full marginal rate” means the highest rate at which the tax that is chargeable on those profits could be charged on taxable profits, of the payee for the permitted taxable period, which include ordinary income that arises from, or in connection with, a financial instrument.

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- (8) Where case 1 applies, the amount of the hybrid or otherwise impermissible deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (2)(b).
- (9) Where case 2 applies, the amount of the hybrid or otherwise impermissible deduction/non-inclusion mismatch is equal to the sum of the amounts given in respect of each under-taxed amount by –

$$\frac{(\text{UTA} \times (\text{FMR} - \text{R}))}{\text{FMR}}$$

where –

“UTA” is the under-taxed amount;

“FMR” is the payee’s full marginal rate (expressed as a percentage) for the permitted taxable period for which the under-taxed amount arises;

“R” is the highest rate (expressed as a percentage) at which tax is charged on the taxable profits in which the under-taxed amount is included.

- (10) Where cases 1 and 2 both apply, the amount of the hybrid or otherwise impermissible deduction/non-inclusion mismatch is the sum of the amounts given by subsections (8) and (9).

Counteraction

259CC Counteraction where the payer is within the charge to corporation tax for the payment period

- (1) This section applies where the payer is within the charge to corporation tax for the payment period.
- (2) For corporation tax purposes, the relevant deduction that may be deducted from the payer’s ordinary income for the payment period is reduced by an amount equal to the hybrid or otherwise impermissible deduction/non-inclusion mismatch mentioned in section 259CA(4).

259CD Counteraction where a payee is within the charge to corporation tax

- (1) This section applies in relation to a payee where –
- (a) the payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, and
- (b) it is reasonable to suppose that –
- (i) neither section 259CC nor any equivalent provision under the law of a territory outside the United Kingdom applies, or
- (ii) a provision of the law of a territory outside the United Kingdom that is equivalent to section 259CC applies, but does not fully counteract the hybrid or otherwise impermissible deduction/non-inclusion mismatch mentioned in section 259CA(4).

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- (2) A provision of the law of a territory outside the United Kingdom that is equivalent to section 259CC does not fully counteract that mismatch if (and only if)–
- (a) it does not reduce the relevant deduction by the full amount of the mismatch, and
 - (b) the payer is still able to deduct some of the relevant deduction from ordinary income in calculating taxable profits.
- (3) In this section “the relevant amount” is–
- (a) in a case where subsection (1)(b)(i) applies, an amount equal to the hybrid or otherwise impermissible deduction/non-inclusion mismatch mentioned in section 259CA(4) and
 - (b) in a case where subsection (1)(b)(ii) applies, the lesser of–
 - (i) the amount by which that mismatch exceeds the amount by which it is reasonable to suppose the relevant deduction is reduced by a provision under the law of a territory outside the United Kingdom that is equivalent to section 259CC, and
 - (ii) the amount of the relevant deduction that may still be deducted as mentioned in subsection (2)(b).
- (4) If the payee is the only payee, the relevant amount is to be treated as income arising to the payee for the counteraction period.
- (5) If there is more than one payee, an amount equal to the payee’s share of the relevant amount is to be treated as income arising to the payee for the counteraction period.
- (6) The payee’s share of the relevant amount is to be determined by apportioning that amount between all the payees on a just and reasonable basis, having regard (in particular)–
- (a) to any arrangements as to profit sharing that may exist between some or all of the payees,
 - (b) to whom any under-taxed amounts (within the meaning given by section 259CB(3)) arise, and
 - (c) to whom any amounts of ordinary income that it would be reasonable to expect to arise as a result of the payment or quasi-payment, but that do not arise, would have arisen.
- (7) An amount of income that is treated as arising under subsection (4) or (5) is chargeable under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(2) of that Act).
- (8) The “counteraction period” means–
- (a) if an accounting period of the payee coincides with the payment period, that accounting period, or
 - (b) otherwise, the first accounting period of the payee that is wholly or partly within the payment period.

CHAPTER 4

HYBRID TRANSFER DEDUCTION/NON-INCLUSION MISMATCHES

Introduction

259D Overview of Chapter

- (1) This Chapter contains provision that counteracts deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments as a consequence of hybrid transfer arrangements.
- (2) The Chapter counteracts mismatches where the payer or a payee is within the charge to corporation tax and does so by altering the corporation tax treatment of the payer or a payee.
- (3) Section 259DA contains the conditions that must be met for this Chapter to apply.
- (4) Section 259DB defines “hybrid transfer arrangement”.
- (5) Section 259DC defines “hybrid transfer deduction/non-inclusion mismatch” and provides how the amount of the mismatch is to be calculated.
- (6) Section 259DD contains provision that counteracts the mismatch where the payer is within the charge to corporation tax for the payment period.
- (7) Section 259DE contains provision that counteracts the mismatch where a payee is within the charge to corporation tax and neither section 259DD nor any equivalent provision under the law of a territory outside the United Kingdom counteracts the mismatch.
- (8) See also section 259BB for the meaning of “payment”, “quasi-payment”, “payment period”, “relevant deduction”, “payer” and “payee”.

Application of Chapter

259D Circumstances in which the Chapter applies

- (1) This Chapter applies if conditions A to E are met.
- (2) Condition A is that there is a hybrid transfer arrangement in relation to an underlying instrument (see section 259DB).
- (3) Condition B is that a payment or quasi-payment is made under or in connection with—
 - (a) the hybrid transfer arrangement, or
 - (b) the underlying instrument.
- (4) Condition C is that—
 - (a) the payer is within the charge to corporation tax for the payment period, or

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- (b) a payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period.
- (5) Condition D is that it is reasonable to suppose that, disregarding this Part and any equivalent provision under the law of a territory outside the United Kingdom, there would be a hybrid transfer deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259DC).
- (6) Condition E is that –
- (a) in the case of a quasi-payment, the payer is also a payee (see section 259BB(7)),
 - (b) the payer and a payee are related (see section 259KB) at any time in the period –
 - (i) beginning with the day on which the hybrid transfer arrangement is made, and
 - (ii) ending with the last day of the payment period, or
 - (c) the hybrid transfer arrangement is a structured arrangement.
- (7) The hybrid transfer arrangement is a “structured arrangement” if it is reasonable to suppose that –
- (a) the hybrid transfer arrangement is designed to secure a hybrid transfer deduction/non-inclusion mismatch, or
 - (b) the terms of the hybrid transfer arrangement share the economic benefit of the mismatch between the parties to the arrangement or otherwise reflect the fact that the mismatch is expected to occur.
- (8) The hybrid transfer arrangement may be designed to secure a hybrid transfer deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.
- (9) Sections 259DB (cases where the payer is within the charge to corporation tax for the payment period) and 259DE (cases where a payee is within the charge to corporation tax) make provision for the counteraction of the hybrid transfer deduction/non-inclusion mismatch.

259DB Meaning of “hybrid transfer arrangement”, “underlying instrument”

- (1) This section has effect for the purposes of this Chapter.
- (2) A “hybrid transfer arrangement” means –
- (a) a repo,
 - (b) a stock lending arrangement, or
 - (c) any other arrangement,
- that is an arrangement within subsection (3).
- (3) An arrangement is within this subsection if it provides for, or relates to, the transfer of a financial instrument (“the underlying instrument”) and –
- (a) the dual treatment condition is met in relation to the arrangement, or
 - (b) a substitute payment could be made under the arrangement.

(4) The dual treatment condition is met in relation to the arrangement if –

- (a) in relation to a person, for the purposes of a tax –
 - (i) the arrangement is regarded as equivalent, in substance, to a transaction for the lending of money at interest, and
 - (ii) a payment or quasi-payment made under, or in connection with, the arrangement or the underlying instrument could be treated so as to reflect the fact that the arrangement is so regarded, and
- (b) in relation to another person, for the purposes of a tax (whether or not the same one), such a payment or quasi-payment would not be treated so as to reflect the arrangement being regarded as equivalent, in substance, to a transaction for the lending of money at interest.

(5) A payment or quasi-payment is a “substitute payment” if –

- (a) it consists of or involves –
 - (i) an amount being paid, or
 - (ii) a benefit being given (including the release of the whole or part of any liability to pay an amount),
- (b) that amount, or the value of that benefit, is representative of a return of any kind (“the underlying return”) that arises on, or in connection with, the underlying instrument, and
- (c) the amount is paid, or the benefit is given, to someone other than the person to whom the underlying return arises.

(6) For the purposes of subsection (3) where there is an arrangement, to which a person (“P”) and another person (“Q”) are party, under which –

- (a) a financial instrument (“the first instrument”) ceases to be owned by P (whether or not because it ceases to exist), and
- (b) Q comes to own a financial instrument (“the second instrument”) under which Q has the same, or substantially the same, rights and liabilities as P had under the first instrument,

the second instrument is to be treated as being transferred from P to Q.

259E C Hybrid transfer deduction/non-inclusion mismatches and their extent

(1) There is a “hybrid transfer deduction/non-inclusion mismatch”, in relation to a payment or quasi-payment, if either or both of case 1 or 2 applies.

(2) Case 1 applies where –

- (a) the relevant deduction exceeds the sum of the amounts of ordinary income that, by reason of the payment or quasi-payment, arise to each payee for a permitted taxable period, and
- (b) all or part of that excess arises for a reason mentioned in subsection (4).

(3) Case 2 applies where –

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- (a) one or more amounts of ordinary income (“under-taxed amounts”) arise, by reason of the payment or quasi-payment, to a payee for a permitted taxable period, and
- (b) the taxable profits in which each of those amounts is included are under taxed for a reason mentioned in subsection (4).
- (4) The reasons are—
- (a) the dual treatment condition being met in relation to a hybrid transfer arrangement under, or in connection with, which the payment or quasi-payment is made (see section 259DB(4));
- (b) the payment or quasi-payment being a substitute payment that—
- (i) is treated, for the purposes of tax charged on a person, so as to reflect the fact that it is representative of the underlying return, and
- (ii) is not so treated for the purposes of tax charged on another person.
- (5) But for the purposes of this section, disregard—
- (a) any part of an excess mentioned in subsection (2) that—
- (i) arises as a result of a substitute payment in relation to which the financial trader exclusion applies, or
- (ii) would, regardless of the reasons mentioned in subsection (4), have arisen for a permitted reason for a deduction/non-inclusion mismatch (see section 259BF), and
- (b) any under-taxed amount that is under taxed as a result of a substitute payment in relation to which the financial trader exclusion applies.
- (6) The financial trader exclusion applies, in relation to a substitute payment where—
- (a) the difference in treatment mentioned in paragraph (b) of subsection (4) is solely the result of the person mentioned in sub-paragraph (ii) of that paragraph bringing the underlying return and the substitute payment into account in calculating the profits of a trade under—
- (i) Part 3 of CTA 2009 (trading income), or
- (ii) any equivalent provision of the law of a territory outside the United Kingdom, and
- (b) the exclusion is not disapplied by subsection (7).
- (7) The financial trader exclusion does not apply where—
- (a) if the underlying return were to arise, and be paid directly, to the payee or payees in relation to the substitute payment, Chapter 3 (hybrid and other mismatches from financial instruments) or an equivalent provision under the law of a territory outside the United Kingdom would apply, or
- (b) the hybrid transfer arrangement under, or connection with, which the substitute payment is made is a structured arrangement (within the meaning given by section 259DA(7)).

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- (8) A taxable period of a payee is “permitted” in relation to an amount of ordinary income that arises as a result of the payment or quasi-payment if—
- (a) the period begins before the end of 12 months after the end of the payment period, or
 - (b) where the period begins after that—
 - (i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and
 - (ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.
- (9) Taxable profits, in which an amount of ordinary income for a permitted taxable period is included, are “under taxed” if the highest rate at which tax is charged on those profits, for that permitted taxable period, is less than the payee’s full marginal rate for that period.
- (10) The payee’s “full marginal rate” means the highest rate at which the tax that is chargeable on those profits could be charged on taxable profits, of the payee for the permitted taxable period, which include ordinary income that arises from, or in connection with, a financial instrument.
- (11) Where case 1 applies, the amount of the hybrid transfer deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (2)(b).
- (12) Where case 2 applies, the amount of the hybrid transfer deduction/non-inclusion mismatch is equal to the sum of the amounts given in respect of each under-taxed amount by—
- $$\frac{U \times (FMR - R)}{FMR}$$
- where—
- “U” is the under-taxed amount;
 - “FMR” is the payee’s full marginal rate (expressed as a percentage) for the permitted taxable period for which the under-taxed amount arises;
 - “R” is the highest rate (expressed as a percentage) at which tax is charged on the taxable profits in which the under-taxed amount is included.
- (13) Where cases 1 and 2 both apply, the amount of the hybrid transfer deduction/non-inclusion mismatch is the sum of the amounts given by subsections (11) and (12).

Counteraction

259DD Counteraction where the payer is within the charge to corporation tax for the payment period

- (1) This section applies where the payer is within the charge to corporation tax for the payment period.

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- (2) For corporation tax purposes, the relevant deduction that may be deducted from the payer's ordinary income for the payment period is reduced by an amount equal to the hybrid transfer deduction/non-inclusion mismatch mentioned in section 259DA(5).

259DE Counteraction where a payee is within the charge to corporation tax

- (1) This section applies in relation to a payee where—
- (a) the payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, and
 - (b) it is reasonable to suppose that—
 - (i) neither section 259DD nor any equivalent provision under the law of a territory outside the United Kingdom applies, or
 - (ii) a provision of the law of a territory outside the United Kingdom that is equivalent to section 259DD applies, but does not fully counteract the hybrid transfer deduction/non-inclusion mismatch mentioned in section 259DA(5).
- (2) A provision of the law of a territory outside the United Kingdom that is equivalent to section 259DD does not fully counteract that mismatch if (and only if)—
- (a) it does not reduce the relevant deduction by the full amount of the mismatch, and
 - (b) the payer is still able to deduct some of the relevant deduction from ordinary income in calculating taxable profits.
- (3) In this section “the relevant amount” is—
- (a) in a case where subsection (1)(b)(i) applies, an amount equal to the hybrid transfer deduction/non-inclusion mismatch mentioned in section 259DA(5), and
 - (b) in a case where subsection (1)(b)(ii) applies, the lesser of—
 - (i) the amount by which that mismatch exceeds the amount by which it is reasonable to suppose the relevant deduction is reduced by a provision under the law of a territory outside the United Kingdom that is equivalent to section 259DD, and
 - (ii) the amount of the relevant deduction that may still be deducted as mentioned in subsection (2)(b).
- (4) If the payee is the only payee, the relevant amount is to be treated as income arising to the payee for the counteraction period.
- (5) If there is more than one payee, an amount equal to the payee's share of the relevant amount is to be treated as income arising to the payee for the counteraction period.
- (6) The payee's share of the relevant amount is to be determined by apportioning that amount between all the payees on a just and reasonable basis, having regard (in particular)—
- (a) to any arrangements as to profit sharing that may exist between some or all of the payees,

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- (b) to whom any under-taxed amounts (within the meaning given by section 259DC(3)) arise, and
 - (c) to whom any amounts of ordinary income that it would be reasonable to expect to arise as a result of the payment or quasi-payment, but that do not arise, would have arisen.
- (7) An amount of income that is treated as arising under subsection (4) or (5) is chargeable under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(2) of that Act).
- (8) The “counteraction period” means –
- (a) if an accounting period of the payee coincides with the payment period, that accounting period, or
 - (b) otherwise, the first accounting period of the payee that is wholly or partly within the payment period.

CHAPTER 5

HYBRID PAYER DEDUCTION/NON-INCLUSION MISMATCHES

Introduction

259E Overview of Chapter

- (1) This Chapter contains provision that counteracts deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments in relation to which the payer is a hybrid entity.
- (2) The Chapter counteracts mismatches where the payer or a payee is within the charge to corporation tax and does so by altering the corporation tax treatment of the payer or a payee.
- (3) Section 259EA contains the conditions that must be met for this Chapter to apply.
- (4) Section 259EB defines “hybrid payer deduction/non-inclusion mismatch” and provides how the amount of the mismatch is to be calculated.
- (5) Section 259EC contains provision that counteracts the mismatch where the payer is within the charge to corporation tax for the payment period.
- (6) Section 259ED contains provision that counteracts the mismatch where a payee is within the charge to corporation tax and the mismatch is not counteracted by provision under the law of a territory outside the United Kingdom that is equivalent to section 259EC.
- (7) See also –
 - (a) section 259BB for the meaning of “payment”, “quasi-payment”, “payment period”, “relevant deduction”, “payer” and “payee”, and
 - (b) section 259BE for the meaning of “hybrid entity”.

Application of Chapter

259EA Circumstances in which the Chapter applies

- (1) This Chapter applies if conditions A to E are met.
- (2) Condition A is that a payment or quasi-payment is made under, or in connection with, an arrangement.
- (3) Condition B is that the payer is a hybrid entity (“the hybrid payer”).
- (4) Condition C is that –
 - (a) the hybrid payer is within the charge to corporation tax for the payment period, or
 - (b) a payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period.
- (5) Condition D is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (6), there would be a hybrid payer deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259EB).
- (6) The provisions are –
 - (a) this Chapter and Chapters 7 to 8, and
 - (b) any equivalent provision under the law of a territory outside the United Kingdom.
- (7) Condition E is that –
 - (a) in the case of a quasi-payment, the hybrid payer is also a payee (see section 259BB(7)),
 - (b) the hybrid payer and a payee are in the same control group (see section 259KA) at any time in the period –
 - (i) beginning with the day on which the arrangement mentioned in subsection (2) is made, and
 - (ii) ending with the last day of the payment period, or
 - (c) that arrangement is a structured arrangement.
- (8) The arrangement is “structured” if it is reasonable to suppose that –
 - (a) the arrangement is designed to secure a hybrid payer deduction/non-inclusion mismatch, or
 - (b) the terms of the arrangement share the economic benefit of the mismatch between the parties to the arrangement or otherwise reflect the fact that the mismatch is expected to arise.
- (9) The arrangement may be designed to secure a hybrid payer deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.
- (10) Sections 259EC (cases where the hybrid payer is within the charge to corporation tax for the payment period) and 259ED (cases where a payee is within the charge to corporation tax) contain provision for the counteraction of the hybrid payer deduction/non-inclusion mismatch.

259EB Hybrid payer deduction/non-inclusion mismatches and their extent

- (1) There is a “hybrid payer deduction/non-inclusion mismatch”, in relation to a payment or quasi-payment, if—
 - (a) the relevant deduction exceeds the sum of the amounts of ordinary income that, by reason of the payment or quasi-payment, arise to each payee for a permitted taxable period, and
 - (b) all or part of that excess arises by reason of the hybrid payer being a hybrid entity.
- (2) The amount of the hybrid payer deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (1)(a).
- (3) But, for the purposes of this section, disregard any part of an excess mentioned in subsection (2) that would, regardless of the hybrid payer being a hybrid entity, have arisen for a permitted reason for a deduction/non-inclusion mismatch (see section 259BF).
- (4) A taxable period of a payee is “permitted” in relation to an amount of ordinary income that arises as a result of the payment or quasi-payment if—
 - (a) the period begins before the end of 12 months after the end of the payment period, or
 - (b) where the period begins after that—
 - (i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and
 - (ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

Counteraction

259EC Counteraction where the hybrid payer is within the charge to corporation tax for the payment period

- (1) This section applies where the hybrid payer is within the charge to corporation tax for the payment period.
- (2) For corporation tax purposes, the relevant deduction so far as it does not exceed the hybrid payer deduction/non-inclusion mismatch mentioned in section 259EA(5) (“the restricted deduction”) may not be deducted from the hybrid payer’s ordinary income for the payment period unless it is deducted from dual inclusion income for that period.
- (3) So much of the restricted deduction (if any) as, by virtue of subsection (2), cannot be deducted from the payer’s ordinary income for the payment period—
 - (a) is carried forward to subsequent accounting periods of the payer, and
 - (b) for corporation tax purposes, may be deducted from dual inclusion income of the payer for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.

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- (4) In this section “dual inclusion income” of the payer means an amount that arises in connection with the arrangement mentioned in section 259EA(2) and is both—
- (a) ordinary income of the payer for corporation tax purposes, and
 - (b) ordinary income of the payer for the purposes of any tax under the law of a territory outside the United Kingdom.

259ED Counteraction where a payee is within the charge to corporation tax

- (1) This section applies in relation to a payee where—
- (a) the payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, and
 - (b) it is reasonable to suppose that—
 - (i) no provision under the law of a territory outside the United Kingdom that is equivalent to section 259EC applies, or
 - (ii) such a provision does apply but does not fully counteract the hybrid payer deduction/non-inclusion mismatch mentioned in section 259EA(5).
- (2) A provision of the law of a territory outside the United Kingdom that is equivalent to section 259EC does not fully counteract that mismatch if (and only if)—
- (a) the amount of the relevant deduction that the provision prevents from being deducted from ordinary income of the hybrid payer for the payment period, other than dual inclusion income, is less than the amount of the mismatch, and
 - (b) the hybrid payer is still able to deduct some of the relevant deduction from ordinary income, for the payment period, that is not dual inclusion income.
- (3) In this section “the relevant amount” is—
- (a) in case where subsection (1)(b)(i) applies, an amount equal to the hybrid payer deduction/non-inclusion mismatch mentioned in section 259EA(5), and
 - (b) in case where subsection (1)(b)(ii) applies, the lesser of—
 - (i) the amount by which that mismatch exceeds the amount of the relevant deduction that it is reasonable to suppose is prevented, by a provision of the law of a territory outside the United Kingdom that is equivalent to section 259EC, from being deducted from ordinary income of the hybrid payer, for the payment period, other than dual inclusion income, and
 - (ii) the amount of the relevant deduction that may still be deducted as mentioned in subsection (2)(b).
- (4) If the payee is the only payee, an amount equal to—
- (a) the relevant amount, less
 - (b) any dual inclusion income of the hybrid payer for the payment period,

is to be treated as income arising to the payee for the counteraction period.

- (5) If there is more than one payee, an amount equal to –
- (a) the payee's share of the relevant amount, less
 - (b) the relevant proportion of any dual inclusion income of the hybrid payer for the payment period,

is to be treated as income arising to the payee for the counteraction period.

- (6) The payee's share of the relevant amount is to be determined by apportioning the mismatch between all the payees on a just and reasonable basis, having regard (in particular) –

- (a) to any arrangements as to profit sharing that may exist between some or all of the payees, and
- (b) to whom any amounts of ordinary income that it would be reasonable to expect to arise as a result of the payment or quasi-payment, but that do not arise, would have arisen.

- (7) The "relevant" proportion of any dual inclusion income of the payer for the payment period is equal to the proportion of the relevant amount apportioned to the payee in accordance with subsection (6).

- (8) An amount of income that is treated as arising under subsection (4) or (5) is chargeable under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(2) of that Act).

- (9) In this section –

"counteraction period" means –

- (a) if an accounting period of the payee coincides with the payment period, that accounting period, or
- (b) otherwise, the first accounting period of the payee that is wholly or partly within the payment period;

"dual inclusion income" means an amount that arises in connection with the arrangement mentioned in section 259FA(2) and is both –

- (a) ordinary income of the payer for the purposes of a tax under the law of one territory, and
- (b) ordinary income of the payer for the purposes of a tax under the law of another territory.

CHAPTER 6

HYBRID PAYEE DEDUCTION/NON-INCLUSION MISMATCHES

Introduction

259F Overview of Chapter

- (1) This Chapter contains provision that counteracts deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments in relation to which there is a payee that is a hybrid entity.

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- (2) The Chapter counteracts mismatches by altering the corporation tax treatment of the payer for the payment period or treating income chargeable to corporation tax as arising to a payee that is a hybrid entity and a limited liability partnership.
 - (3) Section 259FA contains the conditions that must be met for this Chapter to apply.
 - (4) Section 259FB defines “hybrid payee deduction/non-inclusion mismatch” and provides how the amount of the mismatch is to be calculated.
 - (5) Section 259FC contains provision that counteracts the mismatch where the payer is within the charge to corporation tax for the payment period.
 - (6) Section 259FD contains provision that counteracts the mismatch where a payee is a hybrid entity and limited liability partnership and the mismatch is not counteracted by section 259FC or any equivalent provision under the law of a territory outside the United Kingdom.
 - (7) See also—
 - (a) section 259BB for the meaning of “payment”, “quasi-payment”, “payment period”, “relevant deduction”, “payer” and “payee”, and
 - (b) section 259BE for the meaning of “hybrid entity”.

Application of Chapter

259FA Circumstances in which the Chapter applies

- (1) This Chapter applies if conditions A to E are met.
- (2) Condition A is that a payment or quasi-payment is made under, or in connection with, an arrangement.
- (3) Condition B is that a payee is a hybrid entity (“a hybrid payee”).
- (4) Condition C is that—
 - (a) the payer is within the charge to corporation tax for the payment period, or
 - (b) a hybrid payee is a limited liability partnership.
- (5) Condition D is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (6), there would be a hybrid payee deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259FB).
- (6) The provisions are—
 - (a) this Chapter and Chapters 7 and 8, and
 - (b) any equivalent provision under the law of a territory outside the United Kingdom.
- (7) Condition E is that—
 - (a) in the case of a quasi-payment, the payer is also a hybrid payer (see section 259BB(7)),

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- (b) the payer and the hybrid payee or an investor in the hybrid payee are in the same control group (see section 259KA) at any time in the period –
 - (i) beginning with the day on which the arrangement mentioned in subsection (2) is made, and
 - (ii) ending with the last day of the payment period, or
 - (c) that arrangement is a structured arrangement.
- (8) The arrangement is “structured” if it is reasonable to suppose that –
 - (a) the arrangement is designed to secure a hybrid payee deduction/non-inclusion mismatch, or
 - (b) the terms of the arrangement share the economic benefit of the mismatch between the parties to the arrangement, or otherwise reflect the fact that the mismatch is expected to arise.
 - (9) The arrangement may be designed to secure a hybrid payee deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.
 - (10) Sections 259FC (cases where the payer is within the charge to corporation tax for the payment period) and 259FD (cases where a hybrid payee is a limited liability partnership) contain provision for the counteraction of the hybrid payer deduction/non-inclusion mismatch.

259FB Hybrid payee deduction/non-inclusion mismatches and their extent

- (1) There is a “hybrid payee deduction/non-inclusion mismatch”, in relation to a payment or quasi-payment, if –
 - (a) the relevant deduction exceeds the sum of the amounts of ordinary income that, by reason of the payment or quasi-payment, arise to each payee for a permitted taxable period, and
 - (b) all or part of that excess arises by reason of one or more payees being hybrid entities.
- (2) The extent of the hybrid payee deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (1)(b).
- (3) But, for the purposes of this section, disregard any part of an excess mentioned in subsection (2) that would, regardless of the payee or payees being hybrid entities, have arisen for a permitted reason for a deduction/non-inclusion mismatch (see section 259BF).
- (4) A taxable period of a payee is “permitted” in relation to an amount of ordinary income that arises as a result of the payment or quasi-payment if –
 - (a) the period begins before the end of 12 months after the end of the payment period, or
 - (b) where the period begins after that –
 - (i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and

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- (ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

Counteraction

259FC Counteraction where the payer is within the charge to corporation tax for the payment period

- (1) This section applies where the payer is within the charge to corporation tax for the payment period.
- (2) For corporation tax purposes, the relevant deduction that may be deducted from the payer's ordinary income for the payment period is reduced by an amount equal to the hybrid payee deduction/non-inclusion mismatch mentioned in section 259FA(5).

259FD Counteraction where a hybrid payee is an LLP

- (1) This section applies in relation to a hybrid payee where—
 - (a) the hybrid payee is a limited liability partnership, and
 - (b) it is reasonable to suppose that—
 - (i) neither section 259FC nor any equivalent provision under the law of a territory outside the United Kingdom applies, or
 - (ii) a provision of the law of a territory outside the United Kingdom that is equivalent to section 259FC applies, but does not fully counteract the hybrid payee deduction/non-inclusion mismatch mentioned in section 259FA(5).
- (2) A provision of the law of a territory outside the United Kingdom that is equivalent to section 259FC does not fully counteract that mismatch if (and only if)—
 - (a) it does not reduce the relevant deduction by the full amount of the mismatch, and
 - (b) the payer is still able to deduct some of the relevant deduction from ordinary income in calculating taxable profits.
- (3) In this section “the relevant amount” is—
 - (a) in a case where subsection (1)(b)(i) applies, an amount equal to the hybrid payee deduction/non-inclusion mismatch mentioned in section 259FA(5), and
 - (b) in a case where subsection (1)(b)(ii) applies, the lesser of—
 - (i) the amount by which that mismatch exceeds the amount by which it is reasonable to suppose the relevant deduction is reduced by a provision under the law of a territory outside the United Kingdom that is equivalent to section 259FC, and
 - (ii) the amount of the relevant deduction that may still be deducted as mentioned in subsection (2)(b).
- (4) If the hybrid payee is the only hybrid payee, an amount equal to the relevant amount is to be treated as income arising to the hybrid payee on the last day of the payment period.

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- (5) If there is more than one hybrid payee, an amount equal to the hybrid payee's share of the relevant amount is to be treated as income arising to the hybrid payee on the last day of the payment period.
 - (6) The hybrid payee's share of the relevant amount is to be determined by apportioning that amount between all the hybrid payees on a just and reasonable basis, having regard (in particular) to—
 - (a) any arrangements as to profit sharing that may exist between some or all of the hybrid payees, and
 - (b) the extent to which it is reasonable to suppose that the hybrid payee deduction/non-inclusion mismatch mentioned in section 259FA(5) arises by reason of each hybrid payee being a hybrid entity.
 - (7) An amount of income that is treated as arising under subsection (4) or (5) is chargeable to corporation tax on the hybrid payee (as opposed to being chargeable to tax on any of its members) under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(2) of that Act).
 - (8) Section 863 of ITTOIA 2005 (treatment of certain limited liability partnerships for income tax purposes) and section 1273 of CTA 2009 (treatment of certain limited liability partnerships for corporation tax purposes) are disapplied in relation to the hybrid payee to the extent necessary for the purposes of subsection (7).
 - (9) This section is to be disregarded for the purposes of determining whether the hybrid payee is within the charge to corporation tax for the purposes of any other provision of this Part.

CHAPTER 7

HYBRID ENTITY DOUBLE DEDUCTION MISMATCHES

Introduction

259G Overview of Chapter

- (1) This Chapter contains provision that counteracts double deduction mismatches that it is reasonable to suppose would otherwise arise by reason of a person being a hybrid entity.
- (2) The Chapter counteracts mismatches where the hybrid entity, or an investor in the hybrid entity, is within the charge to corporation tax and does so by altering the corporation tax treatment of the entity or investor.
- (3) Section 259GA contains the conditions that must be met for this Chapter to apply.
- (4) Subsection (4) of that section defines "hybrid entity double deduction amount".
- (5) Section 259GB contains provision that counteracts the mismatch where an investor in the hybrid entity is within the charge to corporation tax.

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- (6) Section 259GC contains provision that, in certain circumstances, counteracts the mismatch where the hybrid entity is within the charge to corporation tax and the mismatch is not counteracted by provision under the law of a territory outside the United Kingdom that is equivalent to section 259GB.
 - (7) See also section 259BE for the meaning of “hybrid entity” and “investor”.

Application of Chapter

259GA Circumstances in which the Chapter applies

- (1) This Chapter applies if conditions A to C are met.
- (2) Condition A is that there is an amount or part of an amount that, disregarding the provisions mentioned in subsection (3), it is reasonable to suppose –
 - (a) could be deducted from the ordinary income of a hybrid entity for the purposes of calculating the taxable profits of that entity for a taxable period (“the hybrid entity deduction period”), and
 - (b) could also be deducted, under the law of the investor jurisdiction, from the ordinary income of an investor in the hybrid entity for the purposes of calculating the taxable profits of that investor for a taxable period (“the investor deduction period”).
- (3) The provisions are –
 - (a) this Chapter and Chapter 8, and
 - (b) any equivalent provision under the law of a territory outside the United Kingdom.
- (4) In this Chapter the amount or part of an amount mentioned in subsection (2) is referred to as “the hybrid entity double deduction amount”.
- (5) Condition B is that –
 - (a) the investor is within the charge to corporation tax for the investor deduction period, or
 - (b) the hybrid entity is within the charge to corporation tax for the hybrid entity deduction period.
- (6) Condition C is that –
 - (a) the hybrid entity and any investor in it are related (see section 259KB) at any time –
 - (i) in the hybrid entity deduction period, or
 - (ii) in the investor deduction period, or
 - (b) an arrangement, to which the hybrid entity or any investor in it is party, is a structured arrangement.
- (7) An arrangement is “structured” if it is reasonable to suppose that –
 - (a) the arrangement is designed to secure the hybrid entity double deduction amount, or
 - (b) the terms of the arrangement share the economic benefit of that amount being deductible by both the hybrid entity and

the investor between the parties to the arrangement or otherwise reflect the fact that the amount is expected to arise.

- (8) The arrangement may be designed to secure the hybrid entity double deduction amount despite also being designed to secure any commercial or other objective.
- (9) Sections 259GB (cases where the investor is within the charge to corporation tax for the investor deduction period) and 259GC (cases where the hybrid entity is within the charge to corporation tax for the hybrid entity deduction period) contain provision for the counteraction of the hybrid entity double deduction amount.

Counteraction

259GB Counteraction where the investor is within the charge to corporation tax

- (1) This section applies in relation to the investor in the hybrid entity where the investor is within the charge to corporation tax for the investor deduction period.
- (2) For corporation tax purposes, the hybrid entity double deduction amount may not be deducted from the investor's ordinary income for the investor deduction period unless it is deducted from dual inclusion income of the investor for that period.
- (3) So much of the hybrid entity double deduction amount (if any) as, by virtue of subsection (2), cannot be deducted from the investor's ordinary income for the investor deduction period –
 - (a) is carried forward to subsequent accounting periods of the investor, and
 - (b) for corporation tax purposes, may be deducted from dual inclusion income of the investor for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.
- (4) If the Commissioners are satisfied that the investor will have no dual inclusion income –
 - (a) for an accounting period after the investor deduction period ("the relevant period"), nor
 - (b) for any accounting period after the relevant period,any of the hybrid entity double deduction amount that has not been deducted from dual inclusion income for an accounting period before the relevant period in accordance with subsection (2) or (3) ("the stranded deduction") may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the investor's taxable total profits of the relevant period.
- (5) So much of the stranded deduction (if any) as cannot be deducted, in accordance with subsection (4), at step 2 in section 4(2) of CTA 2010 in calculating the investor's taxable total profits of the relevant period –
 - (a) is carried forward to subsequent accounting periods of the investor, and

-
- (b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.
- (6) Subsection (7) applies if it is reasonable to suppose that all or part of the hybrid entity double deduction amount is deducted (“the illegitimate overseas deduction”), under the law of a territory outside the United Kingdom, from ordinary income of any person, for a taxable period, that is not dual inclusion income.
- (7) For the purposes of determining how much of the hybrid entity double deduction amount may be deducted (if any) for the accounting period of the investor in which the taxable period mentioned in subsection (6) ends, and any subsequent accounting periods of the investor, an amount of it equal to the illegitimate overseas deduction is to be taken to have already been deducted for a previous accounting period of the investor.
- (8) In this section “dual inclusion income” of the investor means an amount that is both—
- (a) ordinary income of the investor for corporation tax purposes, and
 - (b) ordinary income of the hybrid entity for the purposes of any tax under the law of a territory outside the United Kingdom.

259GC Counteraction where the hybrid entity is within the charge to corporation tax

- (1) This section applies where—
- (a) the hybrid entity is within the charge to corporation tax for the hybrid entity deduction period,
 - (b) it is reasonable to suppose that—
 - (i) no provision under the law of the investor jurisdiction that is equivalent to section 259GB applies, or
 - (ii) such a provision does apply, but the hybrid entity double deduction amount exceeds the amount that, under that provision, cannot be deducted from ordinary income, for the investor deduction period, other than dual inclusion income, and
 - (c) the secondary counteraction condition is met.
- (2) The secondary counteraction condition is met if—
- (a) the hybrid entity and any investor in it are in the same control group (see section 259KA) at any time in—
 - (i) the hybrid entity deduction period, or
 - (ii) the investor deduction period, or
 - (b) there is an arrangement, to which the hybrid entity or any investor in it is party, that is a structured arrangement (within the meaning given by section 259GA(7)).
- (3) In this section “the restricted deduction” means—
- (a) in a case where subsection (1)(b)(i) applies, the hybrid entity double deduction amount, and
 - (b) in a case where subsection (1)(b)(ii) applies, the hybrid entity double deduction amount so far as it exceeds the amount that, under a provision of the law of a territory outside the

United Kingdom that is equivalent to section 259GB, cannot be deducted from ordinary income, for the investor deduction period, other than dual inclusion income.

- (4) For corporation tax purposes, the restricted deduction may not be deducted from the hybrid entity's ordinary income for the hybrid entity deduction period unless it is deducted from dual inclusion income for that period.
- (5) So much of the restricted deduction (if any) as, by virtue of subsection (4), cannot be deducted from the hybrid entity's ordinary income for the hybrid entity deduction period –
 - (a) is carried forward to subsequent accounting periods of the hybrid entity, and
 - (b) for corporation tax purposes, may be deducted from dual inclusion income of the hybrid entity for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.
- (6) If the Commissioners are satisfied that the hybrid entity will have no dual inclusion income –
 - (a) for an accounting period after the hybrid entity deduction period ("the relevant period"), and
 - (b) for any accounting period after the relevant period,any of the restricted deduction that has not been deducted from dual inclusion income for an accounting period before the relevant period in accordance with subsection (4) or (5) ("the stranded deduction") may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the hybrid entity's taxable total profits of the relevant period.
- (7) So much of the stranded deduction (if any) as cannot be deducted, in accordance with subsection (6), at step 2 in section 4(2) of CTA 2010 in calculating the hybrid entity's taxable total profits of the relevant period –
 - (a) is carried forward to subsequent accounting periods of the hybrid entity, and
 - (b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.
- (8) Subsection (9) applies if it is reasonable to suppose that all or part of the hybrid entity double deduction amount is deducted ("the illegitimate overseas deduction"), under the law of a territory outside the United Kingdom, from ordinary income of any person, for a taxable period, that is not dual inclusion income.
- (9) For the purposes of determining how much of the hybrid entity double deduction amount may be deducted (if any) for the accounting period of the hybrid entity in which the taxable period mentioned in subsection (8) ends, and any subsequent accounting periods of the hybrid entity, an amount of it equal to the illegitimate overseas deduction is to be taken to have already been deducted for a previous accounting period of the hybrid entity.
- (10) In this section "dual inclusion income" of the hybrid entity means an amount that is both –

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- (a) ordinary income of the hybrid entity for corporation tax purposes, and
 - (b) ordinary income of an investor for the purposes of any tax under the law of a territory outside the United Kingdom.

CHAPTER 8

DUAL RESIDENT COMPANY DOUBLE DEDUCTION CASES

Introduction

259H Overview of Chapter

- (1) This Chapter contains provision that counteracts double deduction mismatches that it is reasonable to suppose would otherwise arise as a result of a company being a dual resident company.
- (2) The counteraction operates by altering the corporation tax treatment of the company.
- (3) Section 259HA contains the conditions that must be met for this Chapter to apply.
- (4) Subsection (3) of that section defines “dual resident company”.
- (5) Subsection (4) of that section defines “dual residence double deduction amount”.
- (6) Section 259HB contains the provision that counteracts the mismatch.

Application of Chapter

259HA Circumstances in which the Chapter applies

- (1) This Chapter applies if conditions A and B are met.
- (2) Condition A is that a company is a dual resident company.
- (3) For the purposes of this Chapter a company is a “dual resident company” if—
 - (a) it is UK resident, and
 - (b) it is also within the charge to a tax (“the non-UK tax”) under the law of a territory outside the United Kingdom because—
 - (i) it derives its status as a company from that law,
 - (ii) its place of management is in that territory, or
 - (iii) it is for some other reason treated under that law as resident in that territory for the purposes of that tax.
- (4) Condition B is that there is an amount (“the dual residence double deduction amount”) that, disregarding this Chapter and any equivalent provision under the law of a territory outside the United Kingdom, it is reasonable to suppose could, by reason of the company being a dual resident company—
 - (a) be deducted from the company’s ordinary income for an accounting period (“the deduction period”) for corporation tax purposes, and

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- (b) also be deducted from the company's ordinary income for the purposes of the non-UK tax.
- (5) Section 259HB counteracts the dual residence double deduction amount.

Counteraction

259HB Counteraction of dual residence double deduction amounts

- (1) For corporation tax purposes, the dual residence double deduction amount may not be deducted from the company's ordinary income for the deduction period unless it is deducted from dual inclusion income of the company for that period.
- (2) So much of the dual residence double deduction amount (if any) as, by virtue of subsection (1), cannot be deducted in calculating the company's ordinary income for the deduction period –
- (a) is carried forward to subsequent accounting periods of the company, and
 - (b) for corporation tax purposes, may be deducted from dual inclusion income of the company for any such period (and not from any other income, so far as it cannot be deducted under this paragraph for an earlier period.
- (3) If the Commissioners are satisfied that the company has ceased to be a dual resident company, any of the dual residence double deduction amount that has not been deducted from dual inclusion income in accordance with subsection (1) or (2) ("the stranded deduction") may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the company's taxable total profits of the accounting period in which it ceased to be a dual resident company.
- (4) So much of the stranded deduction (if any) as cannot be deducted, in accordance with subsection (3), at step 2 in section 4(2) of CTA 2010 in calculating the company's taxable total profits of the accounting period in which the company ceased to be a dual resident company –
- (a) is carried forward to subsequent accounting periods of the company, and
 - (b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.
- (5) Subsection (6) applies if it is reasonable to suppose that all or part of the dual residence double deduction amount is deducted ("the illegitimate overseas deduction"), under the law of a territory outside the United Kingdom, from ordinary income of any person, for a taxable period, that is not dual inclusion income.
- (6) For the purposes of determining how much of the dual residence double deduction amount may be deducted (if any) for the accounting period of the company in which the taxable period mentioned in subsection (5) ends, and any subsequent accounting periods of the company, an amount of it equal to the illegitimate overseas deduction is to be taken to have already been deducted for a previous accounting period of the company.

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- (7) In this section “dual inclusion income” of the company means an amount that is both—
- (a) ordinary income of the company for corporation tax purposes, and
 - (b) ordinary income of the company for the purposes of the non-UK tax (within the meaning given by section 259HA(3)(b)).

CHAPTER 9

IMPORTED MISMATCHES

Introduction

259I Overview of Chapter

- (1) This Chapter contains provision denying deductions in connection with payments and quasi-payments that are made under, or in connection with, imported mismatch arrangements where the payer is within the charge to corporation tax for the payment period.
- (2) Section 259IA contains the conditions that must be met for this Chapter to apply and defines “imported mismatch payment” and “imported mismatch arrangement”.
- (3) Section 259IB contains provision for denying some or all of a relevant deduction in relation to an imported mismatch payment.
- (4) See also section 259BB for the meaning of “payment”, “quasi-payment”, “relevant deduction”, “payment period” and “payer”.

Application of Chapter

259IA Circumstances in which the Chapter applies

- (1) This chapter applies if conditions A to F are met.
- (2) Condition A is that a payment or quasi-payment (“the imported mismatch payment”) is made under, or in connection with, an arrangement (“the imported mismatch arrangement”).
- (3) Condition B is that, in relation to the imported mismatch payment, the payer (“P”) is within the charge to corporation tax for the payment period.
- (4) Condition C is that the imported mismatch arrangement is one of a series of arrangements.
- (5) A “series of arrangements” means a number of arrangements that are each entered into (whether or not one after the other) in pursuance of, or in relation to, another arrangement (“the over-arching arrangement”).
- (6) Condition D is that, under another arrangement in the series, there is a payment or quasi-payment (“the mismatch payment”) in relation to which it is reasonable to suppose that there is or will be—
 - (a) a hybrid or otherwise impermissible deduction/non-inclusion mismatch (see section 259CB),

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- (b) a hybrid transfer deduction/non-inclusion mismatch (see section 259DC),
 - (c) a hybrid payer deduction/non-inclusion mismatch (see section 259EB),
 - (d) a hybrid payee deduction/non-inclusion mismatch (see section 259FB),
 - (e) a hybrid entity double deduction amount (see section 259GA(4)), or
 - (f) a dual resident company double deduction (see subsection (7)),

and in this Chapter “the relevant mismatch” means the mismatch, amount or deduction concerned.

- (7) In subsection (6)(f) “a dual resident company double deduction” means an amount that can be deducted by a company both –
 - (a) from ordinary income for the purposes of a tax charged under the law of one territory, and
 - (b) from ordinary income for the purposes of a tax charged under the law of another territoryby virtue of the company being dual resident.
- (8) For the purposes of subsection (7) the company is “dual resident” if –
 - (a) it is within the charge to the tax mentioned in paragraph (a) of subsection (7) because –
 - (i) it derives its status as a company from the law of the territory mentioned in that paragraph,
 - (ii) its place of management is in that territory, or
 - (iii) it is for some other reason treated under that law as resident in that territory for the purposes of that tax,
 - (b) it is within the charge to the tax mentioned in paragraph (b) of that subsection because –
 - (i) it derives its status as a company from the law of the territory mentioned in that paragraph,
 - (ii) its place of management is in that territory, or
 - (iii) it is for some other reason treated under that law as resident in that territory for the purposes of that tax.
- (9) Condition E is that it is reasonable to suppose that –
 - (a) no provision of Chapters 3 to 7 nor any equivalent provision under the law of a territory outside the United Kingdom applies, or will apply, in relation to the tax treatment of any person in respect of the mismatch payment, but
 - (b) a provision mentioned in paragraph (a) would apply in relation to the tax treatment of P in respect of the mismatch payment, if P were –
 - (i) the payer in relation to the mismatch payment,
 - (ii) a payee in relation to the mismatch payment, or
 - (iii) if the relevant mismatch is a hybrid entity double deduction amount, an investor in the hybrid entity concerned.

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- (10) Condition F is that –
- (a) P is in the same control group as the payer, or a payee, in relation to the mismatch payment, at any time in the period –
 - (i) beginning with the day the over-arching arrangement is made, and
 - (ii) ending with the last day of the payment period in relation to the imported mismatch payment, or
 - (b) the imported mismatch arrangement, or the over-arching arrangement, is a structured arrangement.
- (11) The imported mismatch arrangement, or the over-arching arrangement, is a “structured arrangement” if it is reasonable to suppose that –
- (a) the arrangement concerned is designed to secure the relevant mismatch, or
 - (b) the terms of the arrangement concerned are the economic benefit of the relevant mismatch between the parties to that arrangement or otherwise reflect the fact that the relevant mismatch is expected to arise.
- (12) An arrangement may be designed to secure the relevant mismatch despite also being designed to secure any commercial or other objective.
- (13) Section 259IB contains provision for denying all or part of the relevant deduction in relation to the imported mismatch payment by reference to the relevant mismatch.

Counteraction

259IB Denial of the relevant deduction in relation to the imported mismatch payment

- (1) If, in addition to the imported mismatch payment, there are, or will be, one or more relevant payments in relation to the relevant mismatch, subsection (3) applies.
- (2) Otherwise, for corporation tax purposes, in relation to the imported mismatch payment, the relevant deduction that may be deducted from P’s ordinary income for the payment period is to be reduced by the amount of the relevant mismatch.
- (3) Where this subsection applies, for corporation tax purposes, in relation to the imported mismatch payment, the relevant deduction that may be deducted from P’s ordinary income for the payment period is to be reduced by P’s share of the relevant mismatch.
- (4) P’s share of the relevant mismatch is to be determined by apportioning the relevant mismatch between P and every payer in relation to a relevant payment on a just and reasonable basis, having regard (in particular) to the extent to which the imported mismatch payment and each relevant payment funds (directly or indirectly) the mismatch payment.
- (5) For the purposes of subsection (4), the imported mismatch payment is to be taken to fund the mismatch payment to the extent that the

mismatch payment is not instead funded (directly or indirectly) by one or more relevant payments.

- (6) For the purposes of this section, a payment or quasi-payment, other than the imported mismatch payment and the mismatch payment, is a “relevant payment” in relation to the relevant mismatch if –
 - (a) it is made under an arrangement in the series of arrangements mentioned in section 259IA(4), and
 - (b) it funds (directly or indirectly) the mismatch payment.
- (7) In proceedings before a court or tribunal in connection with this section –
 - (a) in relation to subsection (1), it is for P to show that, in addition to the imported mismatch payment, there are one or more relevant payments in relation to the relevant mismatch, and
 - (b) in relation to subsection (5), it is for P to show that the mismatch payment is funded (directly or indirectly) by one or more relevant payments instead of by the imported mismatch payment.

CHAPTER 10

ADJUSTMENT OF REASONABLE SUPPOSITIONS

259J Adjustments where suppositions cease to be reasonable

- (1) Where –
 - (a) a reasonable supposition is made for the purposes of any provision of this Part, and
 - (b) the supposition turns out to be mistaken or otherwise ceases to be reasonable,such consequential adjustments as are just and reasonable may be made.
- (2) The adjustments may be made by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.
- (3) But the power to make adjustments by virtue of this section is subject to any time limit imposed by or under any enactment other than this Part.

CHAPTER 11

INTERPRETATION

Financial instruments

259K Meaning of “financial instrument”

- (1) A “financial instrument” means –
 - (a) an arrangement profits or deficits arising from which would, on the assumption that the person to whom they arise is within the charge to corporation tax, fall to be brought into

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- account for corporation tax purposes in accordance with Part 5 or 6 of CTA 2009 (loan relationships and relationships treated as loan relationships),
- (b) a contract profits or losses arising from which would, on the assumption that the person to whom they arise is within the charge to corporation tax, fall to be brought into account for corporation tax purposes in accordance with Part 7 of CTA 2009 (derivative contracts),
 - (c) a type 1, type 2 or type 3 finance arrangement for the purposes of Chapter 2 of Part 16 of CTA 2010 (factoring of income etc: finance arrangements),
 - (d) a share forming part of a company's issued share capital or any arrangement that provides a person with economic rights corresponding to those provided by holding such a share, or
 - (e) anything else that is a financial instrument.
- (2) In subsection (1)(e) "financial instrument" has the meaning that it has for the purposes of UK generally accepted accounting practice.
- (3) But "financial instrument" does not include—
- (a) a hybrid transfer arrangement (within the meaning given by section 259DB), or
 - (b) anything that is a regulatory capital security for the purposes of the Taxation of Regulatory Capital Securities Regulations 2013 (S.I. 2013/3209) (as amended from time to time).
- (4) Subsection (3)(b) is subject to any provision to the contrary that may be made by regulations under section 221 of FA 2012 (tax consequences of financial sector regulation).

Control groups and related persons

259KA Control groups

- (1) A person ("A") is in the same control group as another person ("B")—
- (a) throughout any period for which they are consolidated for accounting purposes,
 - (b) on any day on which the participation condition is met in relation to them, or
 - (c) on any day on which the 50% investment condition is met in relation to them.
- (2) A and B are consolidated for accounting purposes for a period if—
- (a) their financial results for the period are required to be comprised in group accounts,
 - (b) their financial results for the period would be required to be comprised in group accounts but for the application of an exemption, or
 - (c) their financial results for the period are in fact comprised in group accounts.
- (3) In subsection (2), "group accounts" means accounts prepared under—
- (a) section 399 of the Companies Act 2006, or

-
- (b) any corresponding provision of the law of a territory outside the United Kingdom.
- (4) The participation condition is met in relation to A and B (“the relevant parties”) on a day if, within the period of 6 months beginning with the day –
- (a) one of the relevant parties directly or indirectly participates in the management, control or capital of the other, or
 - (b) the same person or persons directly or indirectly participate in the management, control or capital of each of the relevant parties.
- (5) For the interpretation of subsection (4), see sections 157(1), 158(4), 159(1) and 160(1) (which have the effect that references in subsection (4) to direct or indirect participation are to be read in accordance with provisions of Chapter 2 of Part 4).
- (6) The 50% investment condition is met in relation to A and B if –
- (a) A has a 50% investment in B, or
 - (b) a third person has a 50% investment in each of A and B.
- (7) Section 259KC applies for the purposes of determining whether a person has a “50% investment” in another person.

259KB Related persons

- (1) Two persons are “related” on any day that –
- (a) they are in the same control group (see section 259KA), or
 - (b) the 25% investment condition is met in relation to them.
- (2) The 25% investment condition is met in relation to a person (“A”) and another person (“B”) if –
- (a) A has a 25% investment in B, or
 - (b) a third person has a 25% investment in each of A and B.
- (3) Section 259KC applies for the purposes of determining whether a person has a “25% investment” in another person.

259KC Meaning of “50% investment” and “25% investment”

- (1) Where this section applies for the purposes of determining whether a person has a “50% investment” in another person for the purposes of section 259KA(6), references in this section to X% are to be read as references to 50%.
- (2) Where this section applies for the purposes of determining whether a person has a “25% investment” in another person for the purposes of section 259KB(2), references in this section to X% are to be read as references to 25%.
- (3) A person (“P”) has an X% investment in a company (“C”) if it is reasonable to suppose that –
- (a) P possesses or is entitled to acquire X% or more of the share capital or issued share capital of C,
 - (b) P possesses or is entitled to acquire X% or more of the voting power in C, or

-
- (c) if the whole of C's share capital were disposed of, P would receive (directly or indirectly and whether at the time of disposal or later) X% or more of the proceeds of the disposal.
- (4) A person ("P") has an X% investment in another person ("Q") if it is reasonable to suppose that—
- (a) if the whole of Q's income were distributed, P would receive (directly or indirectly and whether at the time of the distribution or later) X% or more of the distributed amount, or
- (b) in the event of a winding-up of Q or in any other circumstances, P would receive (directly or indirectly and whether or not at the time of the winding-up or other circumstances or later) X% or more of Q's assets which would then be available for distribution.
- (5) In this section, references to a person receiving any proceeds, amount or assets include references to the proceeds, amount or assets being applied (directly or indirectly) for that person's benefit.
- (6) For the purposes of subsections (2) and (4), in determining what percentage investment a person ("P") has in another person ("U"), where P acts together with a third person ("T") in relation to U, P is to be taken to have all of T's rights and interests in relation to U.
- (7) P is to be taken to "act together" with T in relation to U if (and only if)—
- (a) P and T are connected (within the meaning given by section 163),
- (b) P is able to secure that T acts in accordance with the wishes of P, or T is able to secure that P acts in accordance with the wishes of T for the purpose of influencing the conduct of U's affairs,
- (c) P and T are party to any arrangement that—
- (i) it is reasonable to suppose is designed to affect the value of any of T's rights or interests in relation to U, or
- (ii) relates to the exercise of any of T's rights in relation to U, or
- (d) the same person manages—
- (i) some or all of P's rights or interests in relation to U, and
- (ii) some or all of T's rights or interests in relation to U.
- (8) But P does not "act together" with T in relation to U under paragraph (d) of subsection (7) where—
- (a) the person who manages the rights or interests of P mentioned in sub-paragraph (i) of that paragraph, does so as the operator of a collective investment scheme,
- (b) that person manages the rights or interests of T mentioned in sub-paragraph (ii) of that paragraph as the operator of a different collective investment scheme, and
- (c) the Commissioners are satisfied that the management of the schemes is not coordinated for the purpose of influencing the conduct of U's affairs.

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- (9) In subsection (8) “collective investment scheme” and “operator” have the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see sections 235 and 237 of that Act).

Partnerships

259KD Treatment of a person who is a member of a partnership

- (1) This section applies where a person is a member of a partnership.
- (2) Any reference in this Part to income, profits or an amount of the person includes a reference to the person’s share of (as the case may be) income, profits or an amount of the partnership.
- (3) For this purpose “the person’s share” of income, profits or an amount is determined by apportioning the income, profits or amount between the partners on a just and reasonable basis.
- (4) In this section –
- (a) “partnership” includes an entity established under the law of a territory outside the United Kingdom of a similar character to a partnership, and
 - (b) “member” of a partnership is to be read accordingly.

Definitions

259KE Definitions

In this Part –

“arrangement” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

“CFC” and “CFC charge” have the meaning given by section 259B(4);

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“control group” has the meaning given by section 259KA;

“financial instrument” has the meaning given by section 259K;

“foreign CFC” and “foreign CFC charge” have the meaning given by section 259B(4);

“hybrid entity” has the meaning given by section 259BE;

“investor”, in relation to a hybrid entity, has the meaning given by section 259BE(4);

“investor jurisdiction” has the meaning given by section 259BE(3);

“ordinary income” is to be read in accordance with sections 259BC and 259BD;

“payee” –

(a) in relation to a payment, has the meaning given by section 259BB(6)(a), and

(b) in relation to a quasi-payment, has the meaning given by section 259BB(6)(b);

“payer” –

- (a) in relation to a payment, has the meaning given by section 259BB(1)(a), and
 - (b) in relation to a quasi-payment, has the meaning given by section 259BB(2);
- “payment” has the meaning given by section 259BB(1);
- “payment period” –
- (a) in relation to a payment, has the meaning given by section 259BB(1)(b), and
 - (b) in relation to a quasi-payment, has the meaning given by section 259BB(2);
- “permitted reason for a deduction/non-inclusion mismatch” has the meaning given by section 259BF;
- “quasi-payment” has the meaning given by section 259BB(2) and (3);
- “related” has the meaning given by section 259KB;
- “relevant deduction” –
- (a) in relation to a payment, has the meaning given by section 259BB(1)(b), and
 - (b) in relation to a quasi-payment, has the meaning given by section 259BB(2)(a);
- “tax” has the meaning given by section 259B;
- “taxable period” means –
- (a) in relation to corporation tax, an accounting period,
 - (b) in relation to income tax, a tax year,
 - (c) in relation to the CFC charge, a relevant corporation tax accounting period (within the meaning given by section 371C(3)),
 - (d) in relation to a foreign CFC charge, a period (by whatever name known) that corresponds to a relevant corporation tax accounting period, and
 - (e) in relation to any other tax, a period for which the tax is charged;
- “taxable profits” is to be read in accordance with sections 259BC(2) and 259BD(5).”

PART 2

CONSEQUENTIAL AMENDMENTS

FA 1998

- 2 Schedule 18 to FA 1998 (company tax returns) is amended as follows.
- 3 In paragraph 25(3) –
 - (a) insert “or” at the end of paragraph (b), and
 - (b) omit paragraph (d) and the “or” preceding it.
- 4 In paragraph 42(4) –
 - (a) insert “or” at the end of paragraph (a), and
 - (b) omit paragraph (c) and the “or” preceding it.

CTA 2009

- 5 In section A1 of CTA 2009 (overview of the Corporation Tax Acts), in subsection (2) –
- (a) omit paragraph (h), and
 - (b) after that paragraph insert –
 - “(ha) Part 6A of that Act (hybrid and other mismatches);”.

CTA 2010

- 6 CTA 2010 is amended as follows.
- 7 In section 938N (group mismatch schemes: priority) –
- (a) omit paragraph (d), and
 - (b) after that paragraph insert –
 - “(da) Part 6A of that Act (hybrid and other mismatches);”.
- 8 In section 938V (tax mismatch schemes: priority) –
- (a) omit paragraph (c), and
 - (b) after that paragraph insert –
 - “(ca) Part 6A of TIOPA 2010 (hybrid and other mismatches);”.

TIOPA 2010

- 9 TIOPA 2010 is amended as follows.
- 10 In section 1 (overview of Act), in subsection (1) –
- (a) omit paragraph (c), and
 - (b) after that paragraph insert –
 - “(ca) Part 6A (hybrid and other mismatches);”.
- 11 In section 157 (direct participation), in subsection (1) –
- (a) omit the “and” at the end of paragraph (b), and
 - (b) after paragraph (c) insert “; and
 - (d) in Part 6A, section 259KA(4).”
- 12 In section 158 (indirect participation: defined by sections 159 to 162), in subsection (4) –
- (a) omit the “and” at the end of paragraph (b), and
 - (b) after paragraph (c) insert “; and
 - (d) in Part 6A, section 259KA(4).”
- 13 In section 159 (indirect participation: potential direct participant), in subsection (1) –
- (a) omit the “and” at the end of paragraph (b), and
 - (b) after paragraph (c) insert “; and
 - (d) in Part 6A, section 259KA(4).”
- 14 In section 160 (indirect participation: one of several major participants), in subsection (1) –
- (a) omit the “and” at the end of paragraph (b), and

-
- (b) after paragraph (c) insert “, and
 - (d) in Part 6A, section 259KA(4).”

15 Omit Part 6 (tax arbitrage).

PART 3

COMMENCEMENT

16 Chapters 3 to 6 of Part 6A of TIOPA 2010 (counteraction of deduction/non-inclusion mismatches arising from payments and quasi-payments) have effect in relation to –

- (a) payments made on or after the commencement date, and
- (b) quasi-payments in relation to which the payment period begins on or after the commencement date.

17 Chapters 7 and 8 of Part 6A of TIOPA 2010 (counteraction of double deduction mismatches) have effect for accounting periods beginning on or after the commencement date.

18 Chapter 9 of Part 6A of TIOPA 2010 (imported mismatch payments) has effect in relation to imported mismatch payments that are –

- (a) payments made on or after the commencement date, or
- (b) quasi-payments in relation to which the payment period begins on or after the commencement date.

19 The following provisions of this schedule have effect in relation to accounting periods beginning on or after the commencement date –

- (a) paragraphs 2 to 4, and
- (b) paragraphs 5(a), 7(a), 8(a), 10(a) and 15.

20 For the purposes of paragraph 16 and 18, where a payment period begins before the commencement date and ends on or after that date (“the straddling period”) –

- (a) so much of the straddling period as falls before the commencement date, and so much of that period as falls on or after that date, are to be treated as separate taxable periods, and
- (b) where it is necessary to apportion an amount for the straddling period to the two separate taxable periods, it is to be apportioned –
 - (i) on a time basis according to the respective length of the separate taxable periods, or
 - (ii) if that method would produce a result that is unjust or unreasonable, on a just and reasonable basis.

21 For the purposes of paragraphs 17 and 19(b), where a company has an accounting period beginning before the commencement date and ending on or after that date (“the straddling period”) –

- (a) so much of the straddling period as falls before the commencement date, and so much of the straddling period as falls on or after that date, are to be treated as separate accounting periods, and
- (b) where it is necessary to apportion an amount for the straddling period to the two separate accounting periods, it is to be apportioned –
 - (i) in accordance with section 1172 of CTA 2010 (time basis), or

(ii) if that method would produce a result that is unjust or unreasonable, on a just and reasonable basis.

22 In this Part of this Schedule “the commencement date” means 1 January 2017.

Withdrawn - do not use