1 Hybrid and other mismatches: deemed dual inclusion income

Schedule 1 makes provision for income to be treated as dual inclusion income for the purposes of Part 6A of TIOPA 2010 (hybrid and other mismatches).

SCHEDULE 1

Section 1

HYBRID AND OTHER MISMATCHES: DEEMED DUAL INCLUSION INCOME

1 Part 6A of TIOPA 2010 (hybrid and other mismatches) has effect, and is to be deemed always to have had effect, with the amendments made by this Schedule.

2 In Chapter 5 (hybrid payer deduction/non-inclusion mismatches), in section 259EC (counteraction where the hybrid payer is within the charge to corporation tax for the payment period), after subsection (5) insert—

"(6) For the purposes of this section, inclusion/no deduction income of the hybrid payer for an accounting period is treated as being dual inclusion income of the hybrid payer for that period, so far as it would not otherwise be dual inclusion income of the hybrid payer for that period.

(7) In subsection (6), "inclusion/no deduction income" of the hybrid payer for an accounting period means an amount that—

(a) is ordinary income of the hybrid payer for that period for corporation tax purposes,

(b) under the law of a territory outside the United Kingdom, may not be deducted from the income of an investor in the hybrid payer or any other person or body, for the purposes of calculating the investor's or the other person or body's taxable profits for a relevant taxable period, and

(c) under the law of an investor jurisdiction, could be deducted from the income of an investor in the hybrid payer for the purposes of calculating the investor's taxable profits for a relevant taxable period, on the assumption that—

(i) condition B in section 259BE(3) was not met by the hybrid payer as respects the investor jurisdiction, and

(ii) as a result of that, the hybrid payer was not a hybrid entity.

(8) A taxable period of an investor or another person or body is "relevant" for the purposes of paragraphs (b) and (c) of subsection (7) if—

(a) the period begins before the end of 12 months after the end of the accounting period mentioned in paragraph (a) of that subsection, or

(b) where the period begins after that, it is just and reasonable for the question of whether the amount concerned may or could be deducted in calculating taxable profits to be determined by reference to that taxable period rather than an earlier period."

3 (1) Chapter 6 (deduction/non-inclusion mismatches relating to transfers by permanent establishments) is amended as follows.

(2) In section 259FB (counteraction of the excessive PE deduction), after subsection (4) insert—

"(5) For the purposes of this section, excessive PE inclusion income of the company for an accounting period is treated as being dual inclusion income of the company for that period, so far as it would not otherwise be dual inclusion income of the company for that period.

(6) Section 259FC defines "excessive PE inclusion income" of the company for this purpose."

(3) After section 259FB insert—

"259FC Meaning of excessive PE inclusion income

"(1) In section 259FB(5), "excessive PE inclusion income" of the company for an accounting period means—

(a) where paragraph (a) of subsection (4) applies, the PE inclusion income of the company for the accounting period, or

(b) where paragraph (b) of subsection (4) applies, the PE inclusion income of the company for the accounting period, so far as it is reasonable to suppose that it exceeds the aggregate effect on taxable profits.

(2) For this purpose, "PE inclusion income" of a company for an accounting period means an amount in respect of which conditions A and B are met.

(3) Condition A is that the amount—

(a) is ordinary income of the company for that period for corporation tax purposes, and

(b) is in respect of a transfer of money or money's worth from the company in the parent jurisdiction to the company in the United Kingdom that—

(i) is actually made, or

(ii) is (in substance) treated as being made for corporation tax purposes.

(4) Condition B is that it is reasonable to suppose that—

(a) the circumstances giving rise to the amount will not result in—

(i) a reduction in the taxable profits of the company for a relevant taxable period, or

(ii) an increase in a loss made by the company for a relevant taxable period,

for the purposes of a tax charged under the law of the parent jurisdiction, or

(b) those circumstances will result in such a reduction or increase for one or more relevant taxable periods, but the amount exceeds the aggregate effect on taxable profits.

(5) "The aggregate effect on taxable profits" is the sum of—

(a) any reductions, resulting from the circumstances giving rise to the amount, in the taxable profits of the company, for a

relevant taxable period, for the purposes of a tax charged under the law of the parent jurisdiction, and

(b) any amounts by which a loss made by the company, for a relevant taxable period, for the purposes of a tax charged under the law of the parent jurisdiction, is increased as a result of the circumstances giving rise to the amount.

(6) For the purposes of subsections (4) and (5), any reduction in taxable profits or increase of losses is to be ignored in any case where tax is charged at a nil rate under the law of the parent jurisdiction.

(7) A taxable period of the company is "relevant" for the purposes of subsections (4) and (5) if—

(a) the period begins before the end of 12 months after the end of the accounting period mentioned in subsection (3)(a), or

(b) where the period begins after that, it is just and reasonable for the question of whether the circumstances giving rise to the amount will result in a reduction in taxable profits or an increase in a loss to be determined by reference to that taxable period rather than an earlier period."

4 (1) Chapter 9 (hybrid entity double deduction mismatches) is amended as follows.

(2) In section 259IC (counteraction where the hybrid entity is within the charge to corporation tax)—

(a) in subsection (4), for the words from "unless" to the end substitute "unless it is deducted from dual inclusion income for that period.";

(b) after subsection (11) insert—

"(12) For the purposes of this section, inclusion/no deduction income of the hybrid entity for an accounting period is treated as being dual inclusion income of the hybrid entity for that period, so far as it would not otherwise be dual inclusion income of the hybrid entity for that period.

(13) In subsection (12), "inclusion/no deduction income" of the hybrid entity for an accounting period means an amount that—

(a) is ordinary income of the hybrid entity for that period for corporation tax purposes,

(b) under the law of a territory outside the United Kingdom, may not be deducted from the income of an investor in the hybrid entity or any other person or body, for the purposes of calculating the investor's or the other person or body's taxable profits for a relevant taxable period, and

(c) under the law of the investor jurisdiction, could be deducted from the income of an investor in the hybrid entity for the purposes of calculating the investor's taxable profits for a relevant taxable period, on the assumption that—

(i) condition B in section 259BE(3) was not met by the hybrid entity as respects the investor jurisdiction, and

(ii) as a result of that, the hybrid entity was not a hybrid entity.

(14) A taxable period of an investor or another person or body is "relevant" for the purposes of paragraphs (b) and (c) of subsection (13) if—

(a) the period begins before the end of 12 months after the end of the accounting period mentioned in paragraph (a) of that subsection, or

(b) where the period begins after that, it is just and reasonable for the question of whether the amount concerned may or could be deducted in calculating taxable profits to be determined by reference to that taxable period rather than an earlier period."

(3) Omit section 259ID (section 259ID income for the purposes of section 259IC).

5 (1) Chapter 10 (dual territory double deduction cases) is amended as follows.

(2) In section 259JD (counteraction where mismatch arises because of a relevant multinational and is not counteracted in the parent jurisdiction), after subsection (9) insert—

"(10) For the purposes of this section, excessive PE inclusion income of the company for an accounting period is treated as being dual inclusion income of the company for that period, so far as it would not otherwise be dual inclusion income of the company for that period.

(11) Section 259JE defines "excessive PE inclusion income" of the company for this purpose."

(3) After section 259JD insert—

"259JE Meaning of excessive PE inclusion income

"(1) In section 259JD(10), "excessive PE inclusion income" of the company for an accounting period means—

(a) where paragraph (a) of subsection (4) applies, the PE inclusion income of the company for the accounting period, or

(b) where paragraph (b) of subsection (4) applies, the PE inclusion income of the company for the accounting period, so far as it is reasonable to suppose that it exceeds the aggregate effect on taxable profits.

(2) For this purpose, "PE inclusion income" of a company for an accounting period means an amount in respect of which conditions A and B are met.

(3) Condition A is that the amount—

(a) is ordinary income of the company for that period for corporation tax purposes, and

(b) is in respect of a transfer of money or money's worth from the company in the parent jurisdiction to the company in the United Kingdom that—

(i) is actually made, or

(ii) is (in substance) treated as being made for corporation tax purposes.

(4) Condition B is that it is reasonable to suppose that—

(a) the circumstances giving rise to the amount will not result in—

(i) a reduction in the taxable profits of the company for a relevant taxable period, or

(ii) an increase in a loss made by the company for a relevant taxable period,

for the purposes of a tax charged under the law of the parent jurisdiction, or

(b) those circumstances will result in such a reduction or increase for one or more relevant taxable periods, but the amount exceeds the aggregate effect on taxable profits.

(5) "The aggregate effect on taxable profits" is the sum of—

(a) any reductions, resulting from the circumstances giving rise to the amount, in the taxable profits of the company, for a relevant taxable period, for the purposes of a tax charged under the law of the parent jurisdiction, and

(b) any amounts by which a loss made by the company, for a relevant taxable period, for the purposes of a tax charged under the law of the parent jurisdiction, is increased as a result of the circumstances giving rise to the amount.

(6) For the purposes of subsections (4) and (5), any reduction in taxable profits or increase of losses is to be ignored in any case where tax is charged at a nil rate under the law of the parent jurisdiction.

(7) A taxable period of the company is "relevant" for the purposes of subsections (4) and (5) if—

(a) the period begins before the end of 12 months after the end of the accounting period mentioned in subsection (3)(a), or

(b) where the period begins after that, it is just and reasonable for the question of whether the circumstances giving rise to the amount will result in a reduction in taxable profits or an increase in a loss to be determined by reference to that taxable period rather than an earlier period."