2 Allocation of dual inclusion income within group

(1) Part 6A of TIOPA 2010 (hybrid and other mismatches) is amended as follows.

(2) After Chapter 12, insert—

CHAPTER 12A

ALLOCATION OF DUAL INCLUSION INCOME WITHIN GROUP

Introduction

259ZM Overview of Chapter

(1) This Chapter contains provision that allows surplus dual inclusion income to be allocated within a group of companies.

(2) Section 259ZMA contains the conditions that must be met for this Chapter to apply.

(3) Subsection (2) of that section defines "the DII surplus" and subsection (3) of that section defines "the DII shortfall".

(4) Sections 259ZMB to 259ZMD contain provision allowing the unused part of the DII surplus of one company to be treated as dual inclusion income of another company in the same group, where it can be matched against the unused part of the DII shortfall of the other company.

(5) Section 259ZME identifies when companies are in the same group.

Application of Chapter

259ZMA Circumstances in which Chapter applies

(1) This Chapter applies if conditions A to E are met.

(2) Condition A is that, for an accounting period ("the surplus period"), the dual inclusion income of a company ("company A") exceeds its counteraction amount.

In this Chapter, the amount of the excess is referred to as "the DII surplus".

(3) Condition B is that, for an accounting period ("the shortfall period"), the counteraction amount of another company ("company B") exceeds its dual inclusion income.

In this Chapter, the amount of the excess is referred to as "the DII shortfall".

(4) See section 259ZMF for the meanings of "dual inclusion income" and "counteraction amount".

(5) Condition C is that there is a period ("the overlapping period") that is common to both the surplus period and the shortfall period (and see subsections (8) and (9)).

(6) Condition D is that there is a time during the overlapping period when both company A and company B are within the charge to corporation tax.

(7) Condition E is that there is a time during the overlapping period when company A and company B are members of the same group of companies (see section 259ZME).

(8) Subsection (9) applies if, during any part of the overlapping period—
 (a) either company A or company B is not within the charge to corporation tax, or
 (b) company A and company B are not members of the same group of companies.

(9) That part is treated as not forming part of the overlapping period but instead as—
 (a) forming part of the surplus period that is not included in the overlapping period, and
 (b) forming part of the shortfall period that is not included in the overlapping period.

Allocation of DII surplus

259ZMB Claims for allocation of DII surplus

(1) Company B may make a claim (an "allocation claim") for all or part of the unused part of the DII surplus of company A for the overlapping period (see section 259ZMC) to be allocated to company B for the shortfall period, if the following requirements are met.

Requirement 1

Company A consents to the allocation claim.

Requirement 2

The allocation claim identifies the amount of the DII surplus to which it relates.

Requirement 3

Company B has an amount of ordinary income for the shortfall period ("matchable income") that—
 (a) is not dual inclusion income, and
 (b) is equal to or exceeds the amount of the DII surplus to which the allocation claim relates.

Requirement 4

The allocation claim identifies the amount of matchable income to which the claim relates.

Requirement 5

The amount of matchable income to which the claim relates—
 (a) is equal to the amount of the DII surplus to which the claim relates, and
 (b) does not exceed the unused part of the DII shortfall of company B for the shortfall period (see section 259ZMD).

(2) An allocation claim must be made before the end of the period of [x] beginning with [the end of the shortfall period].

(3) If company B makes an allocation claim—
 (a) the amount of matchable income to which the claim relates is treated as dual inclusion income of company B for the shortfall period, and

(b) the amount of company A's income for the surplus period that is treated as dual inclusion income for that period is reduced by that amount.

259ZMC The unused part of the DII surplus

(1) This section identifies the unused part of the DII surplus of company A for the overlapping period, for the purposes of an allocation claim made by company B ("the current allocation claim").

(2) The unused part of the DII surplus of company A for the overlapping period is the amount equal to—

(a) the DII surplus for the overlapping period (see subsection (3)), less

(b) the amount of prior allocations for that period (see subsections (4) to (7)).

(3) To determine the DII surplus for the overlapping period—

(a) take the proportion of the surplus period included in the overlapping period, and

(b) apply that proportion to the DII surplus for the surplus period.

The DII surplus for the overlapping period is the amount given as a result of paragraph (b).

(4) To determine the amount of prior allocations for the overlapping period—

(a) identify any prior allocation claims for the purposes of this section (see subsection (5)), and

(b) take the steps set out in subsection (6) in relation to each such claim.

The amount of prior allocations for the overlapping period is the total of the previously used amounts given at Step 3 in subsection (6) for all the prior allocation claims.

(5) An allocation claim is a prior allocation claim for the purposes of this section if—

(a) it is an allocation claim made by a company in respect of all or part of company A's DII surplus for the surplus period,

(b) it is made before the current allocation claim, and

(c) it has not been withdrawn.

(6) These are the steps referred to in subsection (4)(b) to be taken in relation to each prior allocation claim.

Step 1

Identify the overlapping period for the prior allocation claim.

Step 2

Identify any period that is common to the overlapping period for the current allocation claim and the overlapping period for the prior allocation claim.

If there is a common period, go to Step 3.

If there is no common period, there is no previously allocated amount in relation to the prior allocation claim (and ignore Step 3).

Step 3

Determine the previously allocated amount of the DII surplus in relation to the prior allocation claim (see subsection (7)).

(7) To determine the previously allocated amount of the DII surplus in relation to the prior allocation claim—

(a) take the proportion of the overlapping period for the prior allocation claim that is included in the common period identified at Step 2 in subsection (6) in relation to that claim, and

(b) apply that proportion to the amount of the DII surplus allocated on the prior allocation claim.

The previously allocated amount of the DII surplus in relation to the prior allocation claim is the amount given as a result of paragraph (b).

(8) If two or more allocation claims are made at the same time, for the purposes of this section treat the claims as made—

(a) in such order as the companies making them may jointly elect, or

(b) if no such election is made, in such order as an officer of Revenue and Customs may direct.

(9) For the purposes of Step 3 in subsection (6), the amount of the DII surplus allocated on a prior allocation claim is determined on the basis that an amount is allocated on the claim before it is allocated on a later claim.

(10) If the use of the proportion mentioned in subsection (3) or (7) would, in the circumstances of a particular case, produce a result that is unjust or unreasonable, the proportion is to be modified so far as necessary to produce a result that is just and reasonable.

259ZMD The unused part of the DII shortfall

(1) This section identifies the unused part of the DII shortfall of company B for the shortfall period, for the purposes of an allocation claim made by company B ("the current allocation claim").

(2) The unused part of the DII shortfall of company B for the shortfall period is the amount equal to—

(a) the DII shortfall for the shortfall period, less

(b) the amount of prior matches for the shortfall period (see subsections (3) to (5)).

(3) To determine the amount of prior matches for the shortfall period—

(a) identify any prior allocation claims for the purposes of this section (see subsection (4)), and

(b) determine the previously matched amount of the DII shortfall in relation to each prior allocation claim (see subsection (5)).

The amount of prior matches for the shortfall period is the total of the previously matched amounts of the DII shortfall in relation to all the prior allocation claims.

(4) An allocation claim is a prior allocation claim for the purposes of this section if—

(a) it is an allocation claim made by company B for the shortfall period,

(b) it is made before the current allocation claim, and

(c) it has not been withdrawn.

(5) The previously matched amount of the DII shortfall in relation to a prior allocation claim is the amount that is treated as dual inclusion income of company B for the shortfall period as a result of the claim (see section 259ZMB(3)(a)).

(6) If two or more allocation claims are made at the same time, for the purposes of this section treat the claims as made—

(a) in such order as company B may elect, or

(b) if no such election is made, in such order as an officer of Revenue and Customs may direct.

(7) For the purposes of subsection (3)(b), the amount of the DII shortfall matched in relation to a prior allocation claim is determined on the basis that an amount is matched on the claim before it is matched on a later claim.

Groups

259ZME Groups of companies

(1) For the purposes of this Chapter, company A and company B are members of the same group of companies if—

(a) one is a 75% subsidiary of the others, or

(b) both are 75% subsidiaries of a third company.

(2) In subsection (1), "75% subsidiary" has the same meaning as in Part 5 of CTA 2010 (group relief) (see section 151 of that Act).

(3) Sections 154, 155A, 155B and 156 of CTA 2010 (members of group of companies: arrangements for transfers of companies) apply for the purposes of this Chapter as they apply for the purposes of Part 5 of CTA2010, but as if references to a surrenderable amount were to a DII surplus.

"Dual inclusion income" and "counteraction amount"

259ZMF Meaning of "dual inclusion income" and "counteraction amount"

(1) This section applies for the purposes of this Chapter.

(2) The "dual inclusion income" of a company for an accounting period means the amount of any income that is dual inclusion income of the company for that period for the purposes of any provision of this Part.

(3) An amount of income that is dual inclusion income of a company for the purposes of more than one provision of this Part is not counted more than once for the purposes of subsection (2).

(4) The "counteraction amount" of a company for an accounting period means the total of all the following amounts that are applicable to the company for that period—

(a) the restricted deduction, within the meaning given by section 259EC(2);

(b) the payee's share of the relevant amount, within the meaning given by section 259ED(3) and (6);

(c) the excessive PE deduction, within the meaning given by section 259FA(8);

(d) the hybrid entity double deduction amount, within the meaning given by section 259IA(4);

(e) the restricted deduction, within the meaning given by section 259IC(3);

(f) the dual territory double deduction amount, within the meaning given by section 259JA(5), reduced by the amount of the impermissible overseas deduction (if any), within the meaning given by section 259JC(2);

(g) the dual territory double deduction, within the meaning given by section 259KB(2);

(h) the excessive PE deduction, within the meaning given by section 259KB(3) to (5)."

(3) This section has effect in relation to accounting periods of a claimant company that begin on or after 1 January 2021.

(4) A "claimant company" is a company that makes an allocation claim for the purposes of Chapter 12A of Part 6A of TIOPA 2010.

(5) For the purposes of subsection (3), where there is a straddling period—

(a) so much of the straddling period as falls before 1 January 2021, and so much of it as falls on or after that date, are to be treated as separate accounting periods, and

(b) if it is necessary to apportion an amount for the straddling period to the two separate periods, it is to be apportioned —

(i) on a time basis, according to the respective length of the separate periods, or

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

(6) A "straddling period" is an accounting period beginning before 1 January 2021 and ending on or after that date.