

Clause 38: Hybrid and other mismatches

Summary

1. This clause introduces amendments to the Hybrid and other Mismatches regime in Part 6A of TIOPA 2010 in relation to the treatment of permanent establishments and regulatory capital.

Details of the clause

2. Subsection 1 introduces amendments to Chapter 8 Part 6A TIOPA 2010
3. Subsection 2 amends section 259HA.
4. Subsection 2(a) amends section 259HA. This amendment brings certain multinational companies within the scope of Chapter 8.
5. The amendment inserts new sub-section 259HA(5)(b) and provides that Condition C within section 259HA(5) can be met when a company which is resident in the UK carries on business through a permanent establishment in another jurisdiction, but where that other jurisdiction does not recognise the existence of that permanent establishment. This amendment brings mismatches involving such “disregarded” permanent establishments within the scope of the hybrids regime.
6. Subsection 2(b) replaces a reference to “company” with a reference to “payee” in section 259HA(9)(a). This amendment is to be regarded as always having effect.
7. Subsection 3 amends section 259HC, which provides for the counteraction of mismatches which fall within Chapter 8.
8. The amendment counteracts mismatches which fall within new sub-section 259HA(5)(b) by treating an amount equal to the mismatch as income arising to the UK resident multinational company in the UK. This amendment provides that mismatches which arise in relation to “disregarded” permanent establishments are counteracted by bringing amounts back into charge for corporation tax purposes.
9. Subsection 4 amends the definition of “financial instrument” in section 259N.
10. Subsection 4(a) amends section 259N(3)(b) by removing the reference to regulatory capital, and replacing it with a power to make regulations. This amendment removes the current exemption for regulatory capital, but enables any exemption from the definition of “financial instrument” to be specified in regulations.
11. Subsection 4(b) removes section 259N(4), which provided for future financial sector regulations to be taken into account. That provision is effectively superseded by the new power inserted into section 259N(3)(b).
12. Subsections 5 and 6 set out the commencement provisions in relation to the amendments to

sub-section 259HA(5) and section 259HC, including apportionment rules which deal with payment periods which straddle the commencement date of 1 January 2020. Such periods are dealt with by splitting the “straddling period” into two separate periods, and apportioning amounts either on a time basis or, where appropriate, on a just and reasonable basis.

13. Subsection 7 provides that the amendment made to section 259HA(9)(a) is to be treated as applying from the original commencement date of the hybrids regime on 1 January 2017.
14. Subsection 8 provides that the existing exemption of certain regulatory capital from the definition of “financial instrument” will continue to apply until such time as new regulations under the amended section 259N(3)(b) come into force.

Background note

15. These minor amendments to the Hybrid and other mismatch regime have been introduced to ensure the UK hybrid rules are fully compliant with the requirements of Council Directive (EU) 2016/1164 as amended by Council Directive (EU) 2017/952.
16. The UK Hybrid and other mismatch rules were introduced by Finance Act 2016, and deal with mismatches involving entities, financial instruments and permanent establishments. Mismatches can involve either double deductions for the same expense, or deductions for an expense without any corresponding receipt being taxable.
17. If you have any questions about this change, or comments on the legislation, please contact Mark Bryan on 03000 585607 (email: mark.bryan@hmrc.gsi.gov.uk)

