

## Clause 2: Allocation of dual inclusion income within a group

### Summary

1. This clause introduces a new set of provisions into the rules on hybrid mismatches, which will enable companies within group relief groups to match dual inclusion income arising in one company with doubly deductible amounts in another.

### Details of the clause

2. This clause adds a new Chapter 12A to Part 6A to the Taxation (International and Other Provisions Act) 2010 (TIOPA 2010), comprising new sections 259ZM to 259ZMF.
3. Subsection (1) provides that Part 6A TIOPA 2010 is to be amended.
4. Subsection (2) is the clause containing the new legislation to be inserted, as follows:
5. New section 259ZM introduces the group matching rules.
6. New section 259ZMA sets out the conditions which must be satisfied for the rules to apply.
7. New Subsection (1) provides that it requires five conditions to be met.
8. New Subsection (2) contains Condition A, which provides that where a company has received dual inclusion income for the purposes of Part 6A in an amount which exceeds any of its reliefs which have been subject to counteractions restricting their use to the sheltering of dual inclusion income, it thereby has a “DII surplus” within the meaning of the new rules.
9. New Subsection (3) contains Condition B, which is that that another company has a tax deduction which has been subject to a counteraction under Part 6A such that it may only be utilised against dual inclusion income (a “counteraction amount”), and that the counteraction amount exceeds that company’s dual inclusion income in a given accounting period. In these circumstances, no relief would be granted for the excess counteraction amount until and unless dual inclusion income was available to set against it in another accounting period. The excess amount is defined as a “DII shortfall”.
10. New Subsection (4) directs the reader to the definitions of “dual inclusion income” and “counteraction amount”.
11. New Subsection (5) contains Condition C, which is that the relevant accounting periods of the two companies referred to above overlap to some extent.
12. New Subsection (6) contains Condition D, which is that both companies are within

the charge to corporation tax in that overlapping period.

13. New Subsection (7) contains Condition E, which is that both companies are members of the same group in that overlapping period.
14. New Subsection (8) applies subsection (9) if there is any period of time within the overlap of the accounting periods of the two companies when either company is not within the charge to corporation tax or they are not members of the same group.
15. New Subsection (9) then provides that the extent of the period in which the two accounting periods are treated as overlapping is limited to any period in which Conditions D and E are both satisfied. This means that companies will only be able to utilise the new facility to match dual inclusion income and double deduction expenditure while they are both within the charge to corporation tax and members of the same group relief group.
16. New section 259ZMB sets out the conditions to be met for the company with a DII shortfall to allocate the DII surplus of its fellow group company against that shortfall.
17. New Subsection (1) introduces the provisions and specifies that the requirements of the section must be met. It then sets out the requirements.
  - Requirement 1 is that the company with the DII surplus (“Company A”) consents.
  - Requirement 2 is that the allocation claim specifies the amount of the DII surplus to which it relates.
  - Requirement 3 is that the company with the DII shortfall (“Company B”) has an amount of non-dual inclusion income which is at least equal to the amount of the DII surplus which is the subject of the claim (“matchable income”).
  - Requirement 4 is that the allocation claim specifies the amount of matchable income to which the claim relates.
  - Requirement 5 is that the amount of matchable income to which the claim relates is equal to the amount of the DII surplus to which the claim relates, and does not exceed the unused amount of DII shortfall for the relevant accounting period of Company B. This requirement ensures that Company B may only allocate a DII surplus to itself to the extent it has an unused counteraction amount in the period in question. If Company B has made a profit comprised of non-dual inclusion income, it cannot make an allocation claim in relation to that element of profit – it may only do it to the extent it has reliefs which have been subject to counteractions.
18. New Subsection (2) sets the time limit by which an allocation claim must be made. At present this is not specified. We would particularly welcome input during the technical consultation on the mechanics of this new elective process, and what the appropriate time limit would be.
19. New Subsection (3) specifies the effect of an allocation claim. Company B can treat the matched amount of its non-dual inclusion income as dual inclusion income for all

purposes of Part 6A, while the corresponding amount of Company A's dual inclusion income is then treated as non-dual inclusion income for all purposes of Part 6A.

20. New section 259ZMC contains the rules for determining the quantum of Company A's DII surplus available to be the subject of an allocation claim with Company B. It does this by first making an apportionment of Company A's total DII surplus on a time basis where the accounting periods of Companies A and B are not precisely concurrent or where Conditions D and E of new section 259ZMA are not met throughout an accounting period, and then by deducting any amounts subject to prior allocation claims with other group members. Where a simple time apportionment delivers a result which is not just and reasonable, an alternative apportionment can be used.
21. New Subsection (1) introduces the section.
22. New Subsection (2) provides that the unused DII surplus of a company is the DII surplus attributable to that part of its accounting period which overlaps with its relevant fellow group member, less any previously allocated surplus.
23. New Subsection (3) provides for a time-based apportionment of the total DII surplus in a given accounting period to the overlapping period.
24. New Subsection (4) requires the identification of all prior allocation claims.
25. New Subsection (5) defines prior allocation claims.
26. New Subsection (6) stipulates the steps necessary to attribute amounts of DII surplus to prior allocation claims (applying subsection (7) at Step 3).
27. New Subsection (7) applies a pro rata rule to determine how much DII surplus in an overlapping period should be treated as having been subject to a prior allocation claim.
28. New Subsection (8) provides that if two allocation claims are made at the same time, the various companies concerned can prioritise them by joint election, but that if this is not done then an officer of HM Revenue & Customs (HMRC) can do this instead.
29. New Subsection (9) provides that 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.
30. New Subsection (10) provides that if the time apportionment rules in subsections (3) and (7) give rise to a result which is not just and reasonable, an alternative method of apportionment can be used.
31. New section 259ZMD contains corresponding rules for determining the quantum of Company B's DII shortfall which is available for matching. No time apportionment is needed here since section 259ZMC will already have ascertained how much dual inclusion income of Company B's fellow group members is available for matching, so the section's role is limited to preventing double counting.
32. New Subsection (1) introduces the section.
33. New Subsection (2) identifies any unused part of a company's DII shortfall, as the

total amount of the DII shortfall less any prior matches.

34. New Subsection (3) specifies that the unused DII shortfall will be the total DII shortfall less any amount subject to prior allocation claims.
35. New Subsection (4) defines prior allocation claims.
36. New Subsection (5) defines the previously matched amount of a DII shortfall.
37. New Subsection (6) provides that if two allocation claims are made at the same time, Company B can prioritise them, but that if this is not done then an officer of HMRC can do this instead.
38. New Subsection (7) provides that 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.
39. New section 259ZME defines “a group” for the purposes of the new rules, by incorporating relevant definitions from the group relief rules.
40. New Subsection (1) provides that companies will be members of the same group if one is the 75% subsidiary of another, or if both are 75% subsidiaries of a third company.
41. New Subsection (2) imports the definition of 75% subsidiary from the corporation tax group relief rules.
42. New Subsection (3) applies certain anti-avoidance provisions from Corporation Tax Act 2010, and provides that surrenderable amounts in that legislation should be understood as a DII surplus for the purposes of Chapter 12A.
43. New section 259ZMF defines dual inclusion income and counteraction amount.
44. New Subsection (1) provides that the definitions in the section apply for the purposes of the new Chapter 12A TIOPA 2010.
45. New Subsection (2) defines dual inclusion income as anything that would be dual inclusion income under any Chapter of Part 6A TIOPA 2010. This will include income deemed to be dual inclusion income by the amendments in Schedule [1] to the Bill.
46. New Subsection (3) contains a rule against double counting.
47. New Subsection (4) defines a counteraction amount by reference to each of the provisions of Part 6A pursuant to which a counteraction can be made the effect of which is to restrict use of a relief to being set against dual inclusion income.
48. Subsection (3) contains the commencement provisions for the new rules, which come into effect in relation to accounting periods of claimant companies ending after 1 January 2021.
49. Subsection (4) defines claimant company for the purposes of the commencement rule.
50. Subsection (5) provides for a time apportionment of amounts arising in accounting periods straddling 1 January 2021, unless that delivers a result which is not just and

reasonable.

51. Subsection (6) defines straddling period as an accounting period within which 1 January 2021 falls.

## Background note

52. This clause is being introduced to mitigate economic double taxation which can arise within groups containing more than one hybrid entity, most commonly where a group is US owned and UK resident group members have been “checked open”.
53. If you have any questions about this change, or comments on the legislation, please contact [hybrids.mailbox@hmrc.gov.uk](mailto:hybrids.mailbox@hmrc.gov.uk).