Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

[F1 PART 6A

HYBRID AND OTHER MISMATCHES

[F1 CHAPTER 6

DEDUCTION/NON-INCLUSION MISMATCHES RELATING TO TRANSFERS BY PERMANENT ESTABLISHMENTS

Textual Amendments

F1 Pt. 6A inserted (with effect in accordance with Sch. 10 paras. 18-21 of the amending Act) by Finance Act 2016 (c. 24), **Sch. 10 para. 1**

Introduction

259F Overview of Chapter

(1) This Chapter contains provision that counteracts certain excessive deductions that arise in relation to transfers of money or money's worth made, or taken to be made, by a multinational company's permanent establishment in the United Kingdom to the company in the parent jurisdiction.

(2) The Chapter counteracts such deductions by altering the corporation tax treatment of the company.

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

(4) Subsection (3) of that section defines "multinational company" and "the parent jurisdiction".

(5) Subsection (8) of that section defines "the excessive PE deduction".

(6) Section 259FB contains provision for the counteraction of the excessive PE deduction.

(7) See also section 259BF for the meaning of "permanent establishment".

Application of Chapter

259FA Circumstances in which the Chapter applies

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

(2) Condition A is that a company is a multinational company.

(3) For the purposes of this Chapter, a company is a multinational company if—
- (a) it is resident in a territory outside the United Kingdom ("the parent jurisdiction") for the purposes of a tax charged under the law of that territory, and
- (b) it is within the charge to corporation tax because it carries on a business in the United Kingdom through a permanent establishment in the United Kingdom.

(4) Condition B is that, disregarding the provisions mentioned in subsection (5), there is an amount ("the PE deduction") that—
- (a) may (in substance) be deducted from the company's income for the purposes of calculating the company's taxable profits for an accounting period ("the relevant PE period") for corporation tax purposes, F2...
- (b) is in respect of a transfer of money or money's worth from the company in the United Kingdom to the company in the parent jurisdiction that—
  - (i) is actually made, or
  - (ii) is (in substance) treated as being made for corporation tax purposes **[**F3, and
- (c) is not in respect of the financing cost of loan capital which the permanent establishment is assumed to have by virtue of section 21(2) of CTA 2009 for the purpose of applying subsection (1) of that section (the separate enterprise principle).**]**

F4(4A) **[** For the purposes of this section "the PE deduction" does not include—
- (a) a debit in respect of amortisation that is brought into account under section 729 or 731 of CTA 2009 (writing down the capitalised cost of an intangible fixed asset), or
- (b) an amount that is deductible in respect of amortisation under a provision of the law of a territory outside the United Kingdom that is equivalent to either of those sections.**]**

(5) The provisions are—
- (a) this Chapter and Chapters 7 to 10, and
- (b) any equivalent provision under the law of a territory outside the United Kingdom.

(6) Condition C is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (5)—

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

(i) an increase in the taxable profits of the company for any permitted taxable period, or

(ii) a reduction of a loss made by the company for any permitted taxable period,

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

(b) those circumstances will result in such an increase or reduction for one or more permitted taxable periods, but the PE deduction exceeds the aggregate effect on taxable profits.

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

(a) any increases, resulting from the circumstances giving rise to the PE deduction, in the taxable profits of the company, for a permitted 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 permitted taxable period, for the purposes of a tax charged under the law of the parent jurisdiction, is reduced as a result of the circumstances giving rise to the PE deduction.

F5(7A) **[** For the purposes of subsections (6) and (7) any increase in taxable profits or reduction of losses is to be ignored in any case where tax is charged at a nil rate under the law of the parent jurisdiction.**]**

(8) In this Chapter "the excessive PE deduction" means—

(a) where paragraph (a) of subsection (6) applies, the PE deduction, or

(b) where paragraph (b) of subsection (6) applies, the PE deduction so far as it is reasonable to suppose that it exceeds the aggregate effect on taxable profits.

(9) For the purposes of subsections (6) and (7) a taxable period of the company, for the purposes of a tax charged under the law of the parent jurisdiction, is "permitted" if—

(a) the period begins before the end of 12 months after the end of the relevant PE period, or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period for the purposes of subsections (6) and (7), and

(ii) it is just and reasonable for the circumstances giving rise to the PE deduction to affect the profits or loss made for that period rather than an earlier period.

(10) Section 259FB contains provision for counteracting the excessive PE deduction.

Textual Amendments

F2 Word in s. 259FA(4)(a) omitted (retrospectively) by virtue of Finance Act 2021 (c. 26), **Sch. 7 paras. 17(2)**, 36

F3 S. 259FA(4)(c) and word inserted (retrospectively) by Finance Act 2021 (c. 26), **Sch. 7 paras. 17(2)**, 36

F4 S. 259FA(4A) inserted (retrospectively) by Finance (No. 2) Act 2017 (c. 32), **s. 24(6)**(13)

F5 S. 259FA(7A) inserted (with effect in accordance with Sch. 7 para. 19(1) of the amending Act) by Finance Act 2018 (c. 3), **Sch. 7 para. 4**

Counteraction

259FB Counteraction of the excessive PE deduction

(1) For corporation tax purposes, the excessive PE deduction may not be deducted from the company's income for the relevant PE period unless it is deducted from dual inclusion income for that period.

(2) So much of the excessive PE deduction (if any) as, by virtue of subsection (1), cannot be deducted from the company's income for the relevant PE 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) In this section "dual inclusion income" of the company for an accounting period means an amount that is both—

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

(b) ordinary income of the company for a permitted taxable period for the purposes of a tax charged under the law of the parent jurisdiction.

(4) A taxable period of the company is "permitted" for the purposes of paragraph (b) of subsection (3) 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—

(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.**]**