Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

[F1PART 6A

HYBRID AND OTHER MISMATCHES

CHAPTER 3

HYBRID AND OTHER MISMATCHES FROM FINANCIAL INSTRUMENTS

Application of Chapter

[F1259CC Interpretation of section 259CB

(1) This section has effect for the purposes of section 259CB.

(2) A taxable period of a payee is "permitted" in relation to an amount of ordinary income that arises as a result of the payment or quasi-payment if—

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

[F2(b) the period begins at a later time and it is just and reasonable for the amount of ordinary income to arise for the period (rather than an earlier one).**]**

(3) Each of these is a "relevant debt relief provision"—

(a) section 322 of CTA 2009 (release of debts: cases where credits not required to be brought into account),

(b) section 357 of that Act (insolvent creditors),

(c) section 358 of that Act (exclusion of credits on release of connected companies' debts: general),

(d) section 359 of that Act (exclusion of credits on release of connected companies' debts during creditor's insolvency),

Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Section 259CC. (See end of Document for details)*

(e) section 361C of that Act (the equity-for-debt exception),

(f) section 361D of that Act (corporate rescue: debt released shortly after acquisition), and

(g) section 362A of that Act (corporate rescue: debt released shortly after connection arises).

F3 **[** To determine whether excess arises in "relevant debt relief circumstances" see sections (3A) 259NEB to 259NEF.**]**

F4 **[** An "interest distribution designation" means a designation made under regulation 5(2) (3B) of the Investment Trusts (Dividends) (Optional Treatment as Interest Distributions) Regulations 2009 (S.I. 2009/2034).**]**

(4) An amount of ordinary income of a payee, for a permitted taxable period, is "under taxed" if the highest rate at which tax is charged on the taxable profits of the payee in which the amount is included, taking into account on a just and reasonable basis the effect of any credit for underlying tax, is less than the payee's full marginal rate for that period.

(5) The payee's "full marginal rate" means the highest rate at which the tax that is chargeable on the taxable profits mentioned in subsection (4) could be charged on taxable profits, of the payee for the permitted taxable period, which include ordinary income that arises from, or in connection with, a financial instrument.

(6) A "credit for underlying tax" means a credit or relief given to reflect tax charged on profits that are wholly or partly used to fund (directly or indirectly) the payment or quasi-payment.

F5 **[** A qualifying capital amount arising to a payee is treated as an amount of ordinary (7) income of a payee and references to tax include any qualifying capital tax.

(8) For the purposes of case 2—

(a) a qualifying capital amount arising to a payee, for a permitted taxable period, is "under taxed" if the highest rate at which tax is charged on the amount, taking into account on a just and reasonable basis the effect of any credit for underlying tax, is less than the payee's full marginal rate for that period,

(b) in determining the payee's "full marginal rate", the reference to the taxable profits mentioned in subsection (4) includes any qualifying capital amount, and

(c) in determining a "credit for underlying tax", the reference to profits includes any qualifying capital amount.

(9) If the rate at which a qualifying capital tax is charged on a qualifying capital amount of a payee exceeds the rate at which tax would be charged on an amount of income of the payee, the excess is to be ignored.

(10) For the purposes of subsections (7) to (9) a "qualifying capital amount" means an amount of a capital nature on which a qualifying capital tax is charged.

(11) A qualifying capital tax is not regarded for this purpose as charged on an amount so far as—

(a) the amount is excluded, reduced or offset for the purposes of the tax by any exemption, exclusion, relief or credit that—

(i) applies specifically to all or part of the amount (as opposed to amounts of a capital nature generally), or

(ii) arises as a result of, or otherwise in connection with, a payment or quasi-payment that gives rise to the amount, or

(b) the tax is, or falls to be, refunded (and section 259BC(6) and (7) apply for the purposes of this paragraph with the necessary modifications).

(12) For the purposes of subsections (7) to (11) a "qualifying capital tax" means—

(a) capital gains tax or the charge to corporation tax in respect of chargeable gains, or

(b) any tax chargeable under the law of a territory outside the United Kingdom that corresponds to a United Kingdom tax mentioned in paragraph (a),

but does not include any tax chargeable at a nil rate.**]]**

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**

F2 S. 259CC(2)(b) substituted (retrospectively) by Finance (No. 2) Act 2017 (c. 32), **s. 24(3)**(13)

F3 S. 259CC(3A) inserted (retrospectively) by Finance Act 2021 (c. 26), **Sch. 7 paras. 4**, 36

F4 S. 259CC(3B) inserted (retrospectively) by Finance Act 2021 (c. 26), **Sch. 7 paras. 8**, 36

F5 S. 259CC(7)-(12) inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 7 paras. 8**, 19(4)

Changes to legislation:
There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Section 259CC.