



Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

[^{F1}PART 6A

HYBRID AND OTHER MISMATCHES

CHAPTER 4

HYBRID TRANSFER DEDUCTION/NON-INCLUSION MISMATCHES

Application of Chapter

[^{F1}259DB] Meaning of “hybrid transfer arrangement”, “underlying instrument” etc

- (1) This section has effect for the purposes of this Chapter.
- (2) A “hybrid transfer arrangement” means—
 - (a) a repo,
 - (b) a stock lending arrangement, or
 - (c) any other arrangement,that is an arrangement within subsection (3).
- (3) An arrangement is within this subsection if it provides for, or relates to, the transfer of a financial instrument (“the underlying instrument”) and—
 - (a) the dual treatment condition is met in relation to the arrangement, or
 - (b) a substitute payment could be made under the arrangement.
- (4) The dual treatment condition is met in relation to the arrangement if—
 - (a) in relation to a person, for the purposes of a tax—
 - (i) the arrangement is regarded as equivalent, in substance, to a transaction for the lending of money at interest, and

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

- (ii) a payment or quasi-payment made under, or in connection with, the arrangement or the underlying instrument could be treated so as to reflect the fact the arrangement is so regarded, and
 - (b) in relation to another person, for the purposes of a tax (whether or not the same one), such a payment or quasi-payment would not be treated so as to reflect the arrangement being regarded as equivalent, in substance, to a transaction for the lending of money at interest.
- (5) A payment or quasi-payment is a “substitute payment” if—
- (a) it consists of or involves—
 - (i) an amount being paid, or
 - (ii) a benefit being given (including the release of the whole or part of any liability to pay an amount),
 - (b) that amount, or the value of that benefit, is representative of a return of any kind (“the underlying return”) that arises on, or in connection with, the underlying instrument, and
 - (c) the amount is paid, or the benefit is given, to someone other than the person to whom the underlying return arises.
- (6) For the purposes of subsection (3) where there is an arrangement, to which a person (“P”) and another person (“Q”) are party, under which—
- (a) a financial instrument (“the first instrument”) ceases to be owned by P (whether or not because it ceases to exist), and
 - (b) Q comes to own a financial instrument (“the second instrument”) under which Q has the same, or substantially the same, rights and liabilities as P had under the first instrument,
- the second instrument is to be treated as being transferred from P to Q.

[For the purposes of subsection (4) references to tax include any qualifying capital tax ^{F2}(7) within the meaning given by section 259DD(11).]

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. 259DB(7) inserted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 7 paras. 9, 19\(4\)](#)

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