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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2018, Paragraph 17. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 7

#### HYBRID AND OTHER MISMATCHES

##### *Imported mismatches: dual inclusion income*

17 After section 259KC insert—

##### **“259KD Deductions from dual inclusion income**

- (1) If—
  - (a) section 259KA(6)(a) applies as a result of any of sub-paragraphs (iii) to (vii), or
  - (b) section 259KA(6)(b) applies,a reduction under section 259KC is not to exceed the relevant net amount.
- (2) For the purposes of this section “the relevant net amount” means—
  - (a) if section 259KA(6)(a)(iii), (iv), (v) or (vi) applies, the amount which, if Chapter 5, 7, 8 or 9 applied to the tax treatment of any person in respect of the mismatch payment, could not be deducted from that person's income under that Chapter (ignoring the effect of any of the carry-forward provisions),
  - (b) if section 259KA(6)(a)(vii) applies, the amount by which the dual territory double deduction of the company mentioned in section 259KB(2) for a deduction period exceeds its dual inclusion income for that period, or
  - (c) if section 259KA(6)(b) applies, the amount by which the excessive PE deduction of the company mentioned in section 259KB(4) for the permitted taxable period mentioned there exceeds its dual inclusion income for that period.
- (3) In subsection (2)(a) “the carry-forward provisions” means—
  - (a) section 259EC(3) (hybrid payer deduction/non-inclusion mismatches),
  - (b) section 259IB(3) to (5) (hybrid entity double deduction mismatches: investor within charge to corporation tax), and
  - (c) section 259IC(5) to (7) (hybrid entity double deduction mismatches: hybrid entity within charge to corporation tax).
- (4) In subsection (2)(b) “dual inclusion income” of a company for a deduction period (that is to say, a period for which the dual territory double deduction is deducted as mentioned in section 259KB(2)(a)) means an amount that is both—
  - (a) ordinary income of the company for that period for the purposes of a tax charged as mentioned in section 259KB(2)(a), and

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- (b) ordinary income of the company for a permitted taxable period for the purposes of a tax charged as mentioned in section 259KB(2)(b).
- (5) A taxable period of the company is “permitted” for the purposes of subsection (4)(b) if—
  - (a) the period begins before the end of 12 months after the end of the deduction period, or
  - (b) where that 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.
- (6) In subsection (2)(c) “dual inclusion income” of a company for a period means an amount that is both—
  - (a) ordinary income of the company for that period for the purposes of a tax charged under the law of the PE jurisdiction, 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.
- (7) A taxable period of the company is “permitted” for the purposes of paragraph (b) of subsection (6) if—
  - (a) the period begins before the end of 12 months after the end of the 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.”

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