Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

[F1 PART 6A

HYBRID AND OTHER MISMATCHES

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**

CHAPTER 1

INTRODUCTION

259A Overview of Part

(1) This Part has effect for the purposes of counteracting certain cases that it is reasonable to suppose would otherwise give rise to—

(a) a deduction/non-inclusion mismatch, or

(b) a double deduction mismatch.

(2) A deduction/non-inclusion mismatch arises where an amount is deductible from a person's income—

(a) without a corresponding amount of ordinary income arising to another person, or

(b) where an amount of ordinary income does arise to a person but is under taxed.

(3) A double deduction mismatch arises where—

(a) an amount is deductible from more than one person's income, or

(b) an amount is deductible from a person's income for the purposes of more than one tax.

(4) The cases with which this Part is concerned involve—

(a) payments or quasi-payments under or in connection with financial instruments or repos, stock lending arrangements or other transfers of financial instruments,

(b) hybrid entities,

(c) companies with permanent establishments, or

(d) dual resident companies.

(5) This Part counteracts mismatches that would otherwise arise by making certain adjustments to a person's treatment for corporation tax purposes.

(6) Chapter 2 contains some key definitions for the purposes of this Part, see in particular—

(a) section 259B which provides that "tax" means income tax, corporation tax on income, the diverted profits tax, the CFC charge, foreign tax or a foreign CFC charge,

(b) section 259BB which defines "payment", "quasi-payment", "payment period", "relevant deduction", "payer", "payee", and "payee jurisdiction",

(c) section 259BC which defines "ordinary income" and "taxable profits", in relation to taxes other than the CFC charge and foreign CFC charges,

(d) section 259BD which contains corresponding provision for the CFC charge and foreign CFC charges,

(e) section 259BE which defines "hybrid entity" and other related terms, and

(f) section 259BF which defines "permanent establishment".

(7) Chapter 3 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments under, or in connection with, financial instruments.

(8) Chapter 4 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments and involving certain repos, stock lending arrangements or other arrangements for, or relating to, transfers of financial instruments.

(9) Chapter 5 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments in relation to which the payer is a hybrid entity.

(10) Chapter 6 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising in relation to internal transfers of money or money's worth made, or treated as made, by a multinational company's permanent establishment in the United Kingdom to the territory in which the company is resident for tax purposes.

(11) Chapter 7 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments in relation to which a payee is a hybrid entity.

(12) Chapter 8 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments in relation to which a payee is a multinational company.

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(13) Chapter 9 contains provision for the counteraction of certain double deduction mismatches arising from a company being a hybrid entity.

(14) Chapter 10 contains provision for the counteraction of certain double deduction mismatches involving dual resident companies or relevant multinational companies.

(15) Chapter 11 contains provision about imported mismatches.

(16) Chapter 12 contains provision—
- (a) for adjustments to be made where a reasonable supposition made for the purposes of this Part turns out to be mistaken or otherwise ceases to be reasonable, and
- (b) for deductions from taxable total profits to be made where a relevant deduction has been denied under certain provisions of this Part and amounts of ordinary income arise later than is permitted.

F2(16A) [Chapter 12A contains provision allowing surplus dual inclusion income to be allocated within a group of companies.]

(17) Chapter 13 contains anti-avoidance provision.

F3(17A) [Chapter 13A makes provision about the application of Chapters 3, 4, 5, 7, 9 and 11 in cases involving transparent funds (within the meaning of that Chapter).]

(18) Chapter 14 contains definitions and other provision about the interpretation of this Part.

(19) Each of Chapters 3 to 10 contains provision specifying that some or all of this Part (and any corresponding provision under the law of a territory outside the United Kingdom) is to be disregarded when determining whether a mismatch arises for the purposes of that Chapter and, if so, in what amount, see—
- (a) section 259CA(4) and (5),
- (b) section 259DA(5),
- (c) section 259EA(5) and (6),
- (d) section 259FA(4), (5) and (6),
- (e) section 259GA(5) and (6),
- (f) section 259HA(6) and (7),
- (g) section 259IA(2) and (3), and
- (h) section 259JA(5).

(20) The effect of the provisions mentioned in subsection (19) is that Chapters 3 to 10 (or any corresponding provision under the law of a territory outside the United Kingdom) have effect in the following sequence—
- (a) Chapter 4,
- (b) Chapter 3,
- (c) Chapter 5,
- (d) Chapter 6,
- (e) Chapter 7,
- (f) Chapter 8,
- (g) Chapter 9, and
- (h) Chapter 10.

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Textual Amendments

F2 S. 259A(16A) inserted (with effect in accordance with Sch. 7 para. 40 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 15(2)**

F3 S. 259A(17A) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 35(2)**

CHAPTER 2

KEY DEFINITIONS

Meaning of "tax"

259B "Tax" means certain taxes on income and includes foreign tax etc

(1) In this Part "tax" means—

(a) income tax,

(b) the charge to corporation tax on income,

(c) diverted profits tax,

(d) the CFC charge,

(e) foreign tax, or

(f) a foreign CFC charge.

(2) In subsection (1) "foreign tax" means a tax chargeable under the law of a territory outside the United Kingdom so far as it—

(a) is charged on income and corresponds to United Kingdom income tax, or

(b) is charged on income and corresponds to the United Kingdom charge to corporation tax on income.

(3) A tax [F4is outside the scope of subsection (2) if] it—

(a) is chargeable under the law of a province, state or other part of a country, or

(b) is levied by or on behalf of a municipality or other local body.

[F5(3ZA) A tax is not within paragraph (a) or (b) of subsection (2) so far as it is charged on income that—

(a) has arisen to an entity that—

(i) is not subject to the tax (as regards that income), and

(ii) is, under the law of the territory referred to in that subsection, regarded as being a person for the purposes of the tax, but

(b) is to be brought into account for the purposes of that tax by a different entity.]

[F6(3A) The payment of any withholding tax in respect of any amount is to be ignored for the purposes of this Part.]

(4) In this Part—

"CFC" and "the CFC charge" have the same meaning as in Part 9A (see section 371VA);

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"foreign CFC charge" means a charge (by whatever name known) under the law of a territory outside the United Kingdom which is similar to the CFC charge (and reference to a "foreign CFC" is to be read accordingly).

[F7] (5) **[** In any case where—

(a) a person is resident in a territory outside the United Kingdom generally for the purposes of the law of the territory or for particular purposes under that law, and

(b) the law of the territory has no provision for a person to be resident for tax purposes under its law,

any reference in Chapter 8 or 11 to a person's residence for tax purposes in the territory is to be read as a reference to the person's residence as mentioned in paragraph (a).**]**

Textual Amendments

F4 Words in s. 259B(3) substituted (with effect in accordance with s. 24(10) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **s. 24(2)**

F5 S. 259B(3ZA) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 1**

F6 S. 259B(3A) inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 7 paras. 2(a)**, 19(4)

F7 S. 259B(5) inserted (with effect in accordance with Sch. 7 para. 19(1) of the amending Act) by Finance Act 2018 (c. 3), **Sch. 7 para. 2(b)**

Equivalent provision to this Part under foreign law

259BA References to equivalent provision to this Part under the law of a territory outside the United Kingdom

(1) A reference in this Part to provision under the law of a territory outside the United Kingdom that is equivalent to—

(a) this Part, or

(b) a provision of this Part,

is to be read in accordance with subsection (2).

(2) The reference is to provision under the law of a territory outside the United Kingdom that it is reasonable to suppose—

(a) is based on the Final Report on Neutralising the Effects of Hybrid Mismatch Arrangements published by the Organisation for Economic Cooperation and Development ("OECD") on 5 October 2015 or any replacement or supplementary publication, and

(b) has effect for the same, or similar, purposes to this Part or (as the case may be) the provision of this Part.

(3) In paragraph (a) of subsection (2) "replacement or supplementary publication" means any document that is approved and published by the OECD in place of, or to update or supplement, the report mentioned in that paragraph (or any replacement of, or supplement to, it).

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Payments and quasi-payments etc

259BB Meaning of "payment", "quasi-payment", "payer", "payee" etc

(1) In this Part "payment" means any transfer—

(a) of money or money's worth directly or indirectly from one person ("the payer") to one or more other persons, and

(b) in relation to which (disregarding this Part and any equivalent provision under the law of a territory outside the United Kingdom) an amount (a "relevant deduction") may be deducted from the payer's income for a taxable period (the "payment period") for the purposes of calculating the payer's taxable profits.

(2) For the purposes of this Part, there is a "quasi-payment", in relation to a taxable period (the "payment period") of a person ("the payer"), if (disregarding this Part and any equivalent provision under the law of a territory outside the United Kingdom)—

(a) an amount (a "relevant deduction") may be deducted from the payer's income for that period for the purposes of calculating the payer's taxable profits, and

(b) making the assumptions in subsection (4), it would be reasonable to expect an amount of ordinary income to arise to one or more other persons as a result of the circumstances giving rise to the relevant deduction.

(3) But a quasi-payment does not arise under subsection (2) if—

(a) the relevant deduction is an amount that is deemed, under the law of the payer jurisdiction, to arise for tax purposes, and

(b) the circumstances giving rise to the relevant deduction do not include any economic rights, in substance, existing between the payer and a person mentioned in subsection (2)(b).

(4) The assumptions are that (so far as would not otherwise be the case)—

(a) any question as to whether an entity is a distinct and separate person from the payer is determined in accordance with the law of the payer jurisdiction,

(b) any persons to whom amounts arise, or potentially arise, as a result of the circumstances giving rise to the relevant deduction adopt the same approach to accounting for those circumstances as the payer, and

(c) any persons to whom amounts arise, or potentially arise, as a result of those circumstances—

(i) are, under the law of the payer jurisdiction, resident in that jurisdiction for tax purposes, and

(ii) carry on a business, in connection with which those circumstances arise, in the payer jurisdiction.

(5) In this Part—

(a) references to a quasi-payment include all the circumstances giving rise to the relevant deduction mentioned in subsection (2)(a), and

(b) references to a quasi-payment being made are to those circumstances arising.

(6) In this Part "payee" means—

(a) in the case of a payment, any person—

(i) to whom the transfer is made as mentioned in subsection (1)(a), or

(ii) to whom an amount of ordinary income arises as a result of the payment, and

(b) in the case of a quasi-payment, any person—
(i) to whom it would be reasonable to expect an amount of ordinary income to arise as mentioned in subsection (2)(b), or
(ii) to whom an amount of ordinary income arises as a result of the quasi-payment.

(7) For the purposes of this Part, in the case of a quasi-payment, the payer is "also a payee" if—
(a) an entity is not a distinct and separate person from the payer for the purposes of a tax charged under the law of the United Kingdom,
(b) that entity is a distinct and separate person from the payer for the purposes of a tax charged under the law of the payer jurisdiction, and
(c) it would be reasonable to expect an amount of ordinary income to arise to that entity as mentioned in subsection (2)(b).

(8) In this section "payer jurisdiction" means the jurisdiction under the law of which the relevant deduction may (disregarding this Part and any equivalent provision under the law of a territory outside the United Kingdom) be deducted.

(9) In this Part "payee jurisdiction", in relation to a payee, means a territory in which—
(a) the payee is resident for tax purposes under the law of that territory, or
(b) the payee has a permanent establishment.

Ordinary income

259BC The basic rules

(1) This section has effect for the purposes of this Part.

(2) "Ordinary income" means income that is brought into account, before any deductions, for the purposes of calculating the income or profits on which a relevant tax is charged ("taxable profits").

(3) But an amount of income is not brought into account for those purposes to the extent that **[**[F8]—
(a) it is charged to the relevant tax at a nil rate, or
(b) it is excluded, reduced or offset by any exemption, exclusion, relief, or credit—
(i) that applies specifically to all or part of the amount of income (as opposed to ordinary income generally), or
(ii) that arises as a result of, or otherwise in connection with, a payment or quasi-payment that gives rise to the amount of income.**]**

(4) If all the relevant tax charged on taxable profits is, or falls to be, refunded, none of the income brought into account in calculating those taxable profits is "ordinary income".

(5) If a proportion of the relevant tax charged on taxable profits is, or falls to be, refunded, the amount of any income brought into account in calculating those taxable profits that is "ordinary income" is proportionally reduced.

(6) For the purposes of subsections (4) and (5) an amount of relevant tax is refunded if and to the extent that—

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(a) any repayment of relevant tax, or any payment in respect of a credit for relevant tax, is made to any person, and

(b) that repayment or payment is directly or indirectly in respect of the whole or part of the amount of relevant tax,

but an amount refunded is to be ignored if and to the extent that it results from qualifying loss relief.

(7) In subsection (6) "qualifying loss relief" means—

(a) any means by which a loss might be used for corporation tax or income tax purposes to reduce the amount in respect of which a person is liable to tax, or

(b) any corresponding means by which a loss corresponding to a relevant tax loss might be used for the purposes of a relevant tax other than corporation tax or income tax to reduce the amount in respect of which a person is liable to tax,

(and in paragraph (b) "relevant tax loss" means a loss that might be used as mentioned in paragraph (a)).

(8) References to an amount of ordinary income being "included in" taxable profits are to that amount being brought into account for the purposes of calculating those profits.

[F9(8A) Income is to be treated as "ordinary income" if it would fall to be brought into account for the purpose of calculating taxable profits of a person but for the fact that the person is a qualifying institutional investor (and, if the person is based in a territory under the law of which there is no relevant tax on income of the kind in question, if the territory had such a tax).

For the meaning of "qualifying institutional investor" see section 259NDA.]

(9) In this section "relevant tax" means a tax other than the CFC charge or a foreign CFC charge.

(10) Section 259BD contains provision for ordinary income to arise to chargeable companies by virtue of the CFC charge or a foreign CFC charge.

Textual Amendments

F8 Words in s. 259BC(3) substituted (with effect in accordance with Sch. 7 para. 19(1) of the amending Act) by Finance Act 2018 (c. 3), **Sch. 7 para. 3**

F9 S. 259BC(8A) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 26**

259BD Chargeable companies in respect of CFCs and foreign CFCs

(1) This section has effect for the purposes of this Part.

(2) Subsections (3) to (7) apply where an amount of income arises to an entity ("C") that is a CFC, a foreign CFC or both and all or part of that amount (the "relevant income")—

(a) is not ordinary income of C under section 259BC, or

(b) arises as a result of a payment or quasi-payment under, or in connection with, a financial instrument or hybrid transfer arrangement and—

(i) is (disregarding subsection (4)) ordinary income of C under section 259BC for a taxable period, but

(ii) under taxed.

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(3) The following steps determine whether, and to what extent, the relevant income is "ordinary income" of a chargeable company in relation to the CFC charge or a foreign CFC charge.

Step 1 Determine—

(a) whether any of the relevant income is brought into account in calculating C's chargeable profits for the purposes of the CFC charge or a foreign CFC charge, and

(b) if so, the amount of the relevant income that is so brought into account for the purposes of each relevant charge.

If none of the relevant income is so brought into account, then none of it is "ordinary income" of a chargeable company and no further steps are to be taken.

See subsections (10) to (12) for further provision about how this step is to be taken.

For the purposes of this section—

"relevant chargeable profits" are chargeable profits in relation to the calculation of which, for the purposes of the CFC charge or a foreign CFC charge, any of the relevant income is brought into account;

"relevant charge" means a charge in relation to which any of the relevant income is brought into account in calculating chargeable profits.

Step 2 In relation to each relevant charge, determine the proportion of C's relevant chargeable profits, for the purposes of that charge, that is apportioned to each chargeable company.

For the purposes of this section, each chargeable company to which 25% or more of C's relevant chargeable profits for the purposes of a relevant charge are apportioned is a "relevant chargeable company".

If there are no relevant chargeable companies in relation to any relevant charges, then none of the relevant income is "ordinary income" of a chargeable company and no further steps are to be taken.

Step 3 In relation to each relevant chargeable company, determine what is the appropriate proportion of the relevant income brought into account in calculating relevant chargeable profits, for the purposes of the relevant charge concerned.

That proportion of that income is "ordinary income" of that company for the taxable period for which that charge is charged on it by reference to those profits.

For the purposes of this step, the "appropriate proportion", in relation to a relevant chargeable company, is the same as the proportion of the relevant chargeable profits that is apportioned to it for the purposes of the relevant charge.

(4) An amount of relevant income that is ordinary income of a relevant chargeable company in accordance with subsection (3) is not ordinary income of C (so far as it otherwise would be).

(5) Relevant chargeable profits apportioned to a relevant chargeable company for the purposes of a relevant charge are "taxable profits" of that company for the taxable period for which the charge is charged on it by reference to those profits.

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(6) The amount of the relevant income that is ordinary income of that relevant chargeable company under subsection (3), by virtue of being brought into account in calculating those relevant chargeable profits, is "included in" those taxable profits.

(7) References to tax charged on taxable profits include a relevant charge charged by reference to relevant chargeable profits that are taxable profits under subsection (5).

(8) For the purposes of subsection (2)(b), an amount of ordinary income is "under taxed" if the highest rate at which tax is charged, for C's taxable period, on the taxable profits in which the amount is included, taking into account on a just and reasonable basis any credit for underlying tax, is less than C's full marginal rate for that period.

(9) In subsection (8)—

(a) C's "full marginal rate" means the highest rate at which the tax that is chargeable on those taxable profits could be charged on taxable profits, of C for the taxable period, which include ordinary income that arises from, or in connection with, a financial instrument, and

(b) "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 mentioned in subsection (2)(b).

(10) For the purposes of step 1 in subsection (3), section 259BC(3) applies for the purposes of determining the extent to which an amount of relevant income is brought into account in calculating chargeable profits as it applies for the purposes of determining the extent to which an amount of income is brought into account for the purposes of calculating taxable profits.

(11) Subsection (12) applies for the purposes of step 1 in subsection (3), if—

(a) the amount of income arising to C mentioned in subsection (2)—

(i) is not all relevant income, and

(ii) is only partly brought into account in calculating chargeable profits for the purposes of the CFC charge or a foreign CFC charge, and

(b) accordingly, it falls to be determined whether, and to what extent, the relevant income is brought into account in calculating those profits for the purposes of the charge concerned.

(12) The relevant income is to be taken to be brought into account (if at all) only to the extent that the total amount of income mentioned in subsection (2) that is brought into account exceeds the amount of income mentioned in that subsection that is not relevant income.

F10(12A) **[** For the purposes of subsection (2)—

(a) a qualifying CFC amount arising to C is treated as an amount of relevant income,

(b) a qualifying CFC amount arising to C, 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 C's full marginal rate for that period,

(c) in determining C's "full marginal rate", the reference to the taxable profits mentioned in subsection (9) includes any qualifying CFC amount, and

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

(12B) For the purposes of subsection (12A) a "qualifying CFC amount" means an amount arising to C which is brought into account in calculating chargeable profits for the purposes of a foreign CFC charge.

(12C) But an amount is not regarded for this purpose as brought into account so far as—

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

(i) applies specifically to all or part of the amount (as opposed to amounts brought into account for those purposes 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 sum charged for the purposes of the foreign CFC charge is, or falls to be, refunded (and section 259BC(6) and (7) apply for the purposes of this paragraph with the necessary modifications).**]**

(13) In this section—

"chargeable company"—

(a) in relation to the CFC charge, has the same meaning as in Part 9A (see section 371VA), and

(b) in relation to a foreign CFC charge, means an entity (by whatever name known) corresponding to a chargeable company within the meaning of that Part;

"chargeable profits"—

(a) in relation to the CFC charge, has the same meaning as in that Part (see that section), and

(b) in relation to a foreign CFC charge, means the concept (by whatever name known) corresponding to chargeable profits within the meaning of that Part **[**[F11](including any qualifying CFC amount within the meaning given by subsection (12B))**]**;

"hybrid transfer arrangement" has the meaning given by section 259DB.

Textual Amendments

F10 Ss. 259BD(12A)-(12C) inserted (15.9.2016 retrospectively) by Finance Act 2018 (c. 3), **Sch. 7 paras. 7(2)**, 19(4)

F11 Words in s. 259BD(13) inserted (15.9.2016 retrospectively) by Finance Act 2018 (c. 3), **Sch. 7 paras. 7(3)**, 19(4)

Hybrid entity etc

259BE Meaning of "hybrid entity", "investor" and "investor jurisdiction"

(1) For the purposes of this Part, an entity is "hybrid" if it meets conditions A and B.

(2) Condition A is that the entity is regarded as being a person for tax purposes under the law of any territory.

(3) Condition B is that—

(a) some or all of the entity's income or profits are treated (or would be if there were any) for the purposes of a tax charged under the law of any territory, as

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the income or profits of a person or persons other than the person mentioned in subsection (2), or

(b) under the law of a territory other than the one mentioned in subsection (2), the entity is not regarded as a distinct and separate person to an entity or entities that are distinct and separate persons under the law of the territory mentioned in that subsection.

(4) For the purposes of this Part—

(a) where subsection (3)(a) applies, a person who is treated as having the income or profits of the hybrid entity is an "investor" in it,

(b) where subsection (3)(b) applies, an entity that—

(i) is regarded as a distinct and separate person to the hybrid entity under the law of the territory mentioned in subsection (2), but

(ii) is not regarded as a distinct and separate person to the hybrid entity under the law of another territory,

is an "investor" in the hybrid entity, and

(c) any territory under the law of which an investor is within the charge to a tax is an "investor jurisdiction" in relation to that investor.

Permanent establishments

259BF Meaning of "permanent establishment"

(1) In this Part "permanent establishment" means anything that is—

(a) a permanent establishment of a company within the meaning of the Corporation Tax Acts (see section 1119 of CTA 2010), or

(b) within any similar concept under the law of a territory outside the United Kingdom.

(2) A concept is not outside the scope of subsection (1)(b) by reason only that it is not based on Article 5 of a Model Tax Convention on Income and Capital published by the Organisation for Economic Cooperation and Development.

CHAPTER 3

HYBRID AND OTHER MISMATCHES FROM FINANCIAL INSTRUMENTS

Introduction

259C Overview of Chapter

(1) This Chapter contains provision that counteracts hybrid or otherwise impermissible deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments under, or in connection with, financial instruments.

(2) The Chapter counteracts mismatches where the payer or a payee is within the charge to corporation tax and does so by altering the corporation tax treatment of the payer or a payee.

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

(4) Section 259CB defines "hybrid or otherwise impermissible deduction/non-inclusion mismatch" and provides how the amount of the mismatch is to be calculated.

(5) Section 259CC contains definitions of certain terms used in section 259CB.

(6) Section 259CD contains provision that counteracts the mismatch where the payer is within the charge to corporation tax for the payment period.

(7) Section 259CE contains provision that counteracts the mismatch where a payee is within the charge to corporation tax and neither section 259CD nor any equivalent provision under the law of a territory outside the United Kingdom fully counteracts the mismatch.

(8) See also—

(a) section 259BB for the meaning of "payment", "quasi-payment", "payment period", "relevant deduction", "payer" and "payee", and

(b) section 259N for the meaning of "financial instrument".

Application of Chapter

259CA Circumstances in which the Chapter applies

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

(2) Condition A is that a payment or quasi-payment is made under, or in connection with, a financial instrument.

(3) Condition B is that—

(a) the payer is within the charge to corporation tax for the payment period, or

(b) a payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period.

(4) Condition C is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (5), there would be a hybrid or otherwise impermissible deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259CB).

(5) The provisions are—

(a) this Chapter and Chapters 5 to 10, and

(b) any equivalent provision under the law of a territory outside the United Kingdom.

(6) Condition D is that—

(a) it is a quasi-payment that is made as mentioned in subsection (2) and the payer is also a payee (see section 259BB(7)),

(b) the payer and a payee are related (see section 259NC) at any time in the period—

(i) beginning with the day on which any arrangement is made by the payer or a payee in connection with the financial instrument, and

(ii) ending with the last day of the payment period, or

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(c) the financial instrument, or any arrangement connected with it, is a structured arrangement.

(7) The financial instrument, or an arrangement connected with it, is a "structured arrangement" if it is reasonable to suppose that—

(a) the financial instrument, or arrangement, is designed to secure a hybrid or otherwise impermissible deduction/non-inclusion mismatch, or

(b) the terms of the financial instrument or arrangement share the economic benefit of the mismatch between the parties to the instrument or arrangement or otherwise reflect the fact that the mismatch is expected to arise.

(8) The financial instrument or arrangement may be designed to secure a hybrid or otherwise impermissible deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.

(9) Sections 259CD (cases where the payer is within the charge to corporation tax for the payment period) and 259CE (cases where a payee is within the charge to corporation tax) contain provision for the counteraction of the hybrid or otherwise impermissible deduction/non-inclusion mismatch.

259CB Hybrid or otherwise impermissible deduction/non-inclusion mismatches and their extent

(1) There is a "hybrid or otherwise impermissible deduction/non-inclusion mismatch", in relation to a payment or quasi-payment, if either or both of case 1 or 2 applies.

(2) Case 1 applies where—

(a) the relevant deduction exceeds the sum of the amounts of ordinary income that, by reason of the payment or quasi-payment, arise to each payee for a permitted taxable period, and

(b) all or part of that excess arises by reason of the terms, or any other feature, of the financial instrument.

[F12(3) So far as the excess arises—

(a) by reason of a relevant debt relief provision, or

(b) in relevant debt relief circumstances,

it is to be taken not to arise by reason of the terms, or any other feature, of the financial instrument (whether or not it would have arisen by reason of the terms, or any other feature, of the financial instrument regardless).]

[F13(3A) So far as the excess arises by reason of an interest distribution designation, it is to be taken not to arise by reason of the terms, or any other feature, of the financial instrument (whether or not it would have arisen by reason of the terms, or any other feature, of the financial instrument regardless of that designation).]

(4) Subject to [F14subsections (3), (3A) and] (9), for the purposes of subsection (2)(b)—

(a) it does not matter whether the excess or part arises for another reason as well as the terms, or any other feature, of the financial instrument (even if it would have arisen for that other reason regardless of the terms, or any other feature, of the financial instrument), and

(b) an excess or part of an excess is to be taken to arise by reason of the terms, or any other feature, of the financial instrument (so far as would not otherwise be the case) if, on making such of the relevant assumptions in relation to each

payee as apply in relation to that payee (see subsections (5) and (6)), it could arise by reason of the terms, or any other feature, of the financial instrument.

(5) These are the "relevant assumptions"—

(a) where a payee is not within the charge to a tax under the law of a payee jurisdiction because the payee benefits from an exclusion, immunity, exemption or relief (however described) under that law, assume that the exclusion, immunity, exemption or relief does not apply;

(b) where an amount of income is not included in the ordinary income of a payee for the purposes of a tax charged under the law of a payee jurisdiction because the payment or quasi-payment is not made in connection with a business carried on by the payee in that jurisdiction, assume that the payment or quasi-payment is made in connection with such a business;

(c) where a payee is not within the charge to a tax under the law of any territory because there is no territory where the payee is—

(i) resident for the purposes of a tax charged under the law of that territory, or

(ii) within the charge to a tax under the law of that territory as a result of having a permanent establishment in that territory,

assume that the payee is a company that is resident for tax purposes, and carries on a business in connection with which the payment or quasi-payment is made, in the United Kingdom.

(6) Where the relevant assumption in subsection (5)(c) applies in relation to a payee the following provisions are to be disregarded in relation to that payee for the purposes of subsection (4)(b)—

(a) section 441 of CTA 2009 (loan relationships for unallowable purposes);

(b) section 690 of that Act (derivative contracts for unallowable purposes);

(c) Part 4 (transfer pricing);

(d) this Part;

[F15(e) Part 10 (corporate interest restriction).]

(7) Case 2 applies where there are one or more amounts of ordinary income ("under-taxed amounts") that—

(a) arise, by reason of the payment or quasi-payment, to a payee for a permitted taxable period, and

(b) are under taxed by reason of the terms, or any other feature, of the financial instrument.

(8) Subject to subsection (9), for the purposes of subsection (7)(b) it does not matter whether an amount of ordinary income is under taxed for another reason as well as the terms, or any other feature, of the financial instrument (even if it would have been under taxed for that other reason regardless of the terms, or any other feature, of the financial instrument).

(9) For the purposes of this section disregard—

(a) any excess or part of an excess mentioned in subsection (2), and

(b) any under-taxed amount,

that arises as a result of a payee being a relevant investment fund (see section 259NA).

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(10) Where case 1 applies, the amount of the hybrid or otherwise impermissible deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (2)(b).

(11) Where case 2 applies, the amount of the hybrid or otherwise impermissible deduction/non-inclusion mismatch is equal to the sum of the amounts given in respect of each under-taxed amount by—

$$(\mathrm{UTA} \times (\mathrm{FMR} - \mathrm{R})) \mathrm{FMR}$$

where—

"UTA" is the under-taxed amount;

"FMR" is the payee's full marginal rate (expressed as a percentage) for the permitted taxable period for which the under-taxed amount arises;

"R" is the highest rate (expressed as a percentage) at which tax is charged on the taxable profits in which the under-taxed amount is included, taking into account on a just and reasonable basis the effect of any credit for underlying tax.

(12) Where cases 1 and 2 both apply, the amount of the hybrid or otherwise impermissible deduction/non-inclusion mismatch is the sum of the amounts given by subsections (10) and (11).

(13) See section 259CC for the meaning of "permitted taxable period", "relevant debt relief provision" and "under taxed".

Textual Amendments

F12 S. 259CB(3) substituted (retrospectively) by Finance Act 2021 (c. 26), **Sch. 7 paras. 3**, 36

F13 S. 259CB(3A) inserted (retrospectively) by Finance Act 2021 (c. 26), **Sch. 7 paras. 7(a)**, 36

F14 Words in s. 259CB(4) substituted (retrospectively) by Finance Act 2021 (c. 26), **Sch. 7 paras. 7(b)**, 36

F15 S. 259CB(6)(e) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 18**

259CC 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

[F16(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),
(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).

F17(3A) [To determine whether excess arises in "relevant debt relief circumstances" see sections 259NEB to 259NEF.]

F18(3B) [An "interest distribution designation" means a designation made under regulation 5(2) 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.

F19(7) [A qualifying capital amount arising to a payee is treated as an amount of ordinary 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—

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Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 6A. (See end of Document for details)

(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

F16 S. 259CC(2)(b) substituted (retrospectively) by Finance (No. 2) Act 2017 (c. 32), **s. 24(3)**(13)

F17 S. 259CC(3A) inserted (retrospectively) by Finance Act 2021 (c. 26), **Sch. 7 paras. 4**, 36

F18 S. 259CC(3B) inserted (retrospectively) by Finance Act 2021 (c. 26), **Sch. 7 paras. 8**, 36

F19 S. 259CC(7)-(12) inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 7 paras. 8**, 19(4)

Counteraction

259CD Counteraction where the payer is within the charge to corporation tax for the payment period

(1) This section applies where the payer is within the charge to corporation tax for the payment period.

(2) For corporation tax purposes, the relevant deduction that may be deducted from the payer's income for the payment period is reduced by an amount equal to the hybrid or otherwise impermissible deduction/non-inclusion mismatch mentioned in section 259CA(4).

259CE Counteraction where a payee is within the charge to corporation tax

(1) This section applies in relation to a payee where—

(a) the payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, and

(b) it is reasonable to suppose that—

(i) neither section 259CD nor any equivalent provision under the law of a territory outside the United Kingdom applies, or

(ii) a provision of the law of a territory outside the United Kingdom that is equivalent to section 259CD applies, but does not fully counteract the hybrid or otherwise impermissible deduction/non-inclusion mismatch mentioned in section 259CA(4).

(2) A provision of the law of a territory outside the United Kingdom that is equivalent to section 259CD does not fully counteract that mismatch if (and only if)—

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(a) it does not reduce the relevant deduction by the full amount of the mismatch, and

(b) the payer is still able to deduct some of the relevant deduction from income in calculating taxable profits.

(3) In this section "the relevant amount" is—

(a) in a case where subsection (1)(b)(i) applies, an amount equal to the hybrid or otherwise impermissible deduction/non-inclusion mismatch mentioned in section 259CA(4), or

(b) in a case where subsection (1)(b)(ii) applies, the lesser of—

(i) the amount by which that mismatch exceeds the amount by which it is reasonable to suppose the relevant deduction is reduced by a provision under the law of a territory outside the United Kingdom that is equivalent to section 259CD, and

(ii) the amount of the relevant deduction that may still be deducted as mentioned in subsection (2)(b).

(4) If the payee is the only payee, the relevant amount is to be treated as income arising to the payee for the counteraction period.

(5) If there is more than one payee, an amount equal to the payee's share of the relevant amount is to be treated as income arising to the payee for the counteraction period.

(6) The payee's share of the relevant amount is to be determined by apportioning that amount between all the payees on a just and reasonable basis, having regard (in particular)—

(a) to any arrangements as to profit sharing that may exist between some or all of the payees,

(b) to whom any under-taxed amounts (within the meaning given by section 259CB(7)) arise, and

(c) to whom any amounts of ordinary income that it would be reasonable to expect to arise as a result of the payment or quasi-payment, but that do not arise, would have arisen.

(7) An amount of income that is treated as arising under subsection (4) or (5) is chargeable under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(2) of that Act).

(8) The "counteraction period" means—

(a) if an accounting period of the payee coincides with the payment period, that accounting period, or

(b) otherwise, the first accounting period of the payee that is wholly or partly within the payment period.

CHAPTER 4

HYBRID TRANSFER DEDUCTION/NON-INCLUSION MISMATCHES

Introduction

259D Overview of Chapter

(1) This Chapter contains provision that counteracts deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments as a consequence of hybrid transfer arrangements.

(2) The Chapter counteracts mismatches where the payer or a payee is within the charge to corporation tax and does so by altering the corporation tax treatment of the payer or a payee.

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

(4) Section 259DB defines "hybrid transfer arrangement".

(5) Section 259DC defines "hybrid transfer deduction/non-inclusion mismatch" and provides how the amount of the mismatch is to be calculated.

(6) Section 259DD contains definitions of certain terms used in section 259DC.

(7) Section 259DE contains provision in connection with excluding mismatches from counteraction by the Chapter where they arise as a consequence of the tax treatment of a financial trader.

(8) Section 259DF contains provision that counteracts the mismatch where the payer is within the charge to corporation tax for the payment period.

(9) Section 259DG contains provision that counteracts the mismatch where a payee is within the charge to corporation tax and neither section 259DF nor any equivalent provision under the law of a territory outside the United Kingdom fully counteracts the mismatch.

(10) See also section 259BB for the meaning of "payment", "quasi-payment", "payment period", "relevant deduction", "payer" and "payee".

Application of Chapter

259DA Circumstances in which the Chapter applies

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

(2) Condition A is that there is a hybrid transfer arrangement in relation to an underlying instrument (see section 259DB).

(3) Condition B is that a payment or quasi-payment is made under or in connection with—
  (a) the hybrid transfer arrangement, or
  (b) the underlying instrument.

(4) Condition C is that—
  (a) the payer is within the charge to corporation tax for the payment period, or

(b) a payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period.

(5) Condition D is that it is reasonable to suppose that, disregarding this Part and any equivalent provision under the law of a territory outside the United Kingdom, there would be a hybrid transfer deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259DC).

(6) Condition E is that—

(a) it is a quasi-payment that is made as mentioned in subsection (3) and the payer is also a payee (see section 259BB(7)),

(b) the payer and a payee are related (see section 259NC) at any time in the period—

(i) beginning with the day on which the hybrid transfer arrangement is made, and

(ii) ending with the last day of the payment period, or

(c) the hybrid transfer arrangement is a structured arrangement.

(7) The hybrid transfer arrangement is a "structured arrangement" if it is reasonable to suppose that—

(a) the hybrid transfer arrangement is designed to secure a hybrid transfer deduction/non-inclusion mismatch, or

(b) the terms of the hybrid transfer arrangement share the economic benefit of the mismatch between the parties to the arrangement or otherwise reflect the fact that the mismatch is expected to arise.

(8) The hybrid transfer arrangement may be designed to secure a hybrid transfer deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.

(9) Sections 259DF (cases where the payer is within the charge to corporation tax for the payment period) and 259DG (cases where a payee is within the charge to corporation tax) make provision for the counteraction of the hybrid transfer deduction/non-inclusion mismatch.

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

(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.

[F20](7) **[** For the purposes of subsection (4) references to tax include any qualifying capital tax within the meaning given by section 259DD(11).**]**

Textual Amendments

F20 S. 259DB(7) inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 7 paras. 9**, 19(4)

259DC Hybrid transfer deduction/non-inclusion mismatches and their extent

(1) There is a "hybrid transfer deduction/non-inclusion mismatch", in relation to a payment or quasi-payment, if either or both of case 1 or 2 applies.

(2) Case 1 applies where—

(a) the relevant deduction exceeds the sum of the amounts of ordinary income that, by reason of the payment or quasi-payment, arise to each payee for a permitted taxable period, and

(b) all or part of that excess arises for a reason mentioned in subsection (8).

(3) Subject to subsection (9), for the purposes of subsection (2)(b)—

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(a) it does not matter whether the excess or part arises for another reason as well (even if it would have arisen for that other reason regardless of any reasons mentioned in subsection (8)), and

(b) an excess or part of an excess is to be taken to arise for a reason mentioned in subsection (8) (so far as would not otherwise be the case) if, on making such of the relevant assumptions in relation to each payee as apply in relation to that payee (see subsections (4) and (5))), it could arise for a reason mentioned in subsection (8).

(4) These are the "relevant assumptions"—

(a) where a payee is not within the charge to a tax under the law of a payee jurisdiction because the payee benefits from an exclusion, immunity, exemption or relief (however described) under that law, assume that the exclusion, immunity, exemption or relief does not apply;

(b) where an amount of income is not included in the ordinary income of a payee for the purposes of a tax charged under the law of a payee jurisdiction because the payment or quasi-payment is not made in connection with a business carried on by the payee in that jurisdiction, assume that the payment or quasi-payment is made in connection with such a business;

(c) where a payee is not within the charge to a tax under the law of any territory because there is no territory where the payee is—

(i) resident for the purposes of a tax charged under the law of that territory, or

(ii) within the charge to a tax under the law of that territory as a result of having a permanent establishment in that territory,

assume that the payee is a company that is resident for tax purposes, and carries on a business in connection with which the payment or quasi-payment is made, in the United Kingdom.

(5) Where the relevant assumption in subsection (4)(c) applies in relation to a payee the following provisions are to be disregarded in relation to that payee for the purposes of subsection (3)(b)—

(a) section 441 of CTA 2009 (loan relationships for unallowable purposes);

(b) Part 4 (transfer pricing);

(c) this Part;

[[F21](d) Part 10 (corporate interest restriction).**]**

(6) Case 2 applies where there are one or more amounts of ordinary income ("under-taxed amounts") that—

(a) arise, by reason of the payment or quasi-payment, to a payee for a permitted taxable period, and

(b) are under taxed for a reason mentioned in subsection (8).

(7) Subject to subsection (9), for the purposes of subsection (6)(b) it does not matter whether an amount of ordinary income is under taxed for another reason as well (even if it would have been under taxed for that other reason regardless of any reason mentioned in subsection (8)).

(8) The reasons are—

(a) the dual treatment condition being met in relation to a hybrid transfer arrangement under, or in connection with, which the payment or quasi-payment is made (see section 259DB(4));

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(b) the payment or quasi-payment being a substitute payment.

(9) For the purposes of this section, disregard—

(a) any excess or part of an excess mentioned in subsection (2), and

(b) any under-taxed amount,

in relation to which the financial trader exclusion applies (see section 259DE) or that arises as a result of a payee being a relevant investment fund (see section 259NA).

(10) Where case 1 applies, the amount of the hybrid transfer deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (2)(b).

(11) Where case 2 applies, the amount of the hybrid transfer deduction/non-inclusion mismatch is equal to the sum of the amounts given in respect of each under-taxed amount by—

$$(UTA \times (FMR - R)) FMR$$

where—

"UTA" is the under-taxed amount;

"FMR" is the payee's full marginal rate (expressed as a percentage) for the permitted taxable period for which the under-taxed amount arises;

"R" is the highest rate (expressed as a percentage) at which tax is charged on the taxable profits in which the under-taxed amount is included, taking into account on a just and reasonable basis the effect of any credit for underlying tax.

(12) Where cases 1 and 2 both apply, the amount of the hybrid transfer deduction/non-inclusion mismatch is the sum of the amounts given by subsections (10) and (11).

(13) See section 259DD for the meaning of "permitted taxable period" and "under taxed".

Textual Amendments

F21 S. 259DC(5)(d) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 19**

259DD Interpretation of section 259DC

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

(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

[F22(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) 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.

(4) The payee's "full marginal rate" means the highest rate at which the tax that is chargeable on the taxable profits mentioned in subsection (3) 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.

(5) 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.

F23(6) **[** A qualifying capital amount arising to a payee is treated as an amount of ordinary income of a payee and references to tax include any qualifying capital tax.

(7) 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.

(8) 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.

(9) For the purposes of subsections (6) to (8) a "qualifying capital amount" means an amount of a capital nature on which a qualifying capital tax is charged.

(10) 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).

(11) For the purposes of subsections (6) to (10) 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

F22 S. 259DD(2)(b) substituted (retrospectively) by Finance (No. 2) Act 2017 (c. 32), **s. 24(4)**(13)

F23 S. 259DD(6)-(11) inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 7 paras. 10**, 19(4)

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Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 6A. (See end of Document for details)*

259DE The financial trader exclusion

(1) This section has effect for the purposes of section 259DC(9).

(2) The financial trader exclusion applies, in relation to an excess or part of an excess mentioned in section 259DC(2) or an under-taxed amount, where conditions A to C are met.

(3) Condition A is that the excess or part arises, or the under-taxed amount is under taxed, because the payment or quasi-payment—

- (a) is a substitute payment,
- (b) is treated, for the purposes of tax charged on a person, so as to reflect the fact that it is representative of the underlying return, and
- (c) is brought into account by another person ("the financial trader") in calculating the profits of a trade under—
  - (i) Part 3 of CTA 2009 (trading income), or
  - (ii) an equivalent provision of the law of a territory outside the United Kingdom.

(4) Condition B is that the financial trader also brings any associated payments into account as mentioned in subsection (3)(c).

(5) In subsection (4) "associated payment" means a payment or quasi-payment—

- (a) in relation to which the financial trader is the payer or a payee, and
- (b) that is made under, or in connection with, the underlying instrument or an arrangement that relates to the underlying instrument.

(6) Condition C is that—

- (a) if the underlying return were to arise, and be paid directly, to the payee or payees in relation to the substitute payment, neither Chapter 3 (hybrid and other mismatches from financial instruments) nor any equivalent provision under the law of a territory outside the United Kingdom would apply, and
- (b) the hybrid transfer arrangement under, or in connection with, which the substitute payment is made is not a structured arrangement (within the meaning given by section 259DA(7) and (8)).

Counteraction

259DF Counteraction where the payer is within the charge to corporation tax for the payment period

(1) This section applies where the payer is within the charge to corporation tax for the payment period.

(2) For corporation tax purposes, the relevant deduction that may be deducted from the payer's income for the payment period is reduced by an amount equal to the hybrid transfer deduction/non-inclusion mismatch mentioned in section 259DA(5).

259DG Counteraction where a payee is within the charge to corporation tax

(1) This section applies in relation to a payee where—

- (a) the payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, and

(b) it is reasonable to suppose that—
  (i) neither section 259DF nor any equivalent provision under the law of a territory outside the United Kingdom applies, or
  (ii) a provision of the law of a territory outside the United Kingdom that is equivalent to section 259DF applies, but does not fully counteract the hybrid transfer deduction/non-inclusion mismatch mentioned in section 259DA(5).

(2) A provision of the law of a territory outside the United Kingdom that is equivalent to section 259DF does not fully counteract that mismatch if (and only if)—
  (a) it does not reduce the relevant deduction by the full amount of the mismatch, and
  (b) the payer is still able to deduct some of the relevant deduction from income in calculating taxable profits.

(3) In this section "the relevant amount" is—
  (a) in a case where subsection (1)(b)(i) applies, an amount equal to the hybrid transfer deduction/non-inclusion mismatch mentioned in section 259DA(5), or
  (b) in a case where subsection (1)(b)(ii) applies, the lesser of—
    (i) the amount by which that mismatch exceeds the amount by which it is reasonable to suppose the relevant deduction is reduced by a provision under the law of a territory outside the United Kingdom that is equivalent to section 259DF, and
    (ii) the amount of the relevant deduction that may still be deducted as mentioned in subsection (2)(b).

(4) If the payee is the only payee, the relevant amount is to be treated as income arising to the payee for the counteraction period.

(5) If there is more than one payee, an amount equal to the payee's share of the relevant amount is to be treated as income arising to the payee for the counteraction period.

(6) The payee's share of the relevant amount is to be determined by apportioning that amount between all the payees on a just and reasonable basis, having regard (in particular)—
  (a) to any arrangements as to profit sharing that may exist between some or all of the payees,
  (b) to whom any under-taxed amounts (within the meaning given by section 259DC(6)) arise, and
  (c) to whom any amounts of ordinary income that it would be reasonable to expect to arise as a result of the payment or quasi-payment, but that do not arise, would have arisen.

(7) An amount of income that is treated as arising under subsection (4) or (5) is chargeable under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(2) of that Act).

(8) The "counteraction period" means—
  (a) if an accounting period of the payee coincides with the payment period, that accounting period, or
  (b) otherwise, the first accounting period of the payee that is wholly or partly within the payment period.

Status: *Point in time view as at 10/06/2021.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 6A. (See end of Document for details)*

CHAPTER 5

HYBRID PAYER DEDUCTION/NON-INCLUSION MISMATCHES

Introduction

259E Overview of Chapter

(1) This Chapter contains provision that counteracts deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments because the payer is a hybrid entity.

(2) The Chapter counteracts mismatches where the payer or a payee is within the charge to corporation tax and does so by altering the corporation tax treatment of the payer or a payee.

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

(4) Section 259EB defines "hybrid payer deduction/non-inclusion mismatch" and provides how the amount of the mismatch is to be calculated.

(5) Section 259EC contains provision that counteracts the mismatch where the payer is within the charge to corporation tax for the payment period.

(6) Section 259ED contains provision that counteracts the mismatch where a payee is within the charge to corporation tax and the mismatch is not fully counteracted by provision under the law of a territory outside the United Kingdom that is equivalent to section 259EC.

(7) See also—
- (a) section 259BB for the meaning of "payment", "quasi-payment", "payment period", "relevant deduction", "payer" and "payee", and
- (b) section 259BE for the meaning of "hybrid entity", "investor" and "investor jurisdiction".

Application of Chapter

259EA Circumstances in which the Chapter applies

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

(2) Condition A is that a payment or quasi-payment is made under, or in connection with, an arrangement.

(3) Condition B is that the payer is a hybrid entity ("the hybrid payer").

(4) Condition C is that—
- (a) the hybrid payer is within the charge to corporation tax for the payment period, or
- (b) a payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period.

Status: Point in time view as at 10/06/2021.
Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 6A. (See end of Document for details)

(5) Condition D is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (6), there would be a hybrid payer deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259EB).

(6) The provisions are—

(a) this Chapter and Chapters 6 to 10, and

(b) any equivalent provision under the law of a territory outside the United Kingdom.

(7) Condition E is that—

(a) it is a quasi-payment that is made as mentioned in subsection (2) and the hybrid payer is also a payee (see section 259BB(7)),

(b) the hybrid payer and a payee are in the same control group (see section 259NB) at any time in the period—

(i) beginning with the day on which the arrangement mentioned in subsection (2) is made, and

(ii) ending with the last day of the payment period, or

(c) that arrangement is a structured arrangement.

(8) The arrangement is "structured" if it is reasonable to suppose that—

(a) the arrangement is designed to secure a hybrid payer deduction/non-inclusion mismatch, or

(b) the terms of the arrangement share the economic benefit of the mismatch between the parties to the arrangement or otherwise reflect the fact that the mismatch is expected to arise.

(9) The arrangement may be designed to secure a hybrid payer deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.

(10) Sections 259EC (cases where the hybrid payer is within the charge to corporation tax for the payment period) and 259ED (cases where a payee is within the charge to corporation tax) contain provision for the counteraction of the hybrid payer deduction/non-inclusion mismatch.

259EB Hybrid payer deduction/non-inclusion mismatches and their extent

(1) There is a "hybrid payer deduction/non-inclusion mismatch", in relation to a payment or quasi-payment, if—

(a) the relevant deduction exceeds the sum of the amounts of ordinary income that, by reason of the payment or quasi-payment, arise to each payee for a permitted taxable period, and

(b) all or part of that excess arises by reason of the hybrid payer being a hybrid entity.

F24(1A) **[** But there is no hybrid payer deduction/non-inclusion mismatch so far as the relevant deduction is—

(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.**]**

Status: *Point in time view as at 10/06/2021.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 6A. (See end of Document for details)*

(2) The amount of the hybrid payer deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (1)(b).

(3) [F25Subject to subsections (4A) to (4C)] for the purposes of subsection (1)(b)—

(a) it does not matter whether the excess or part arises for another reason as well (even if it would have arisen for that other reason regardless of whether the hybrid payer is a hybrid entity), and

(b) an excess or part of an excess is to be taken to arise by reason of the hybrid payer being a hybrid entity (so far as would not otherwise be the case) if, on making such of the relevant assumptions in relation to each payee as apply in relation to that payee (see subsection (4)), it could arise by reason of the hybrid payer being a hybrid entity.

(4) These are the "relevant assumptions"—

(a) where a payee is not within the charge to a tax under the law of a payee jurisdiction because the payee benefits from an exclusion, immunity, exemption or relief (however described) under that law, assume that the exclusion, immunity, exemption or relief does not apply;

(b) where an amount of income is not included in the ordinary income of a payee for the purposes of a tax charged under the law of a payee jurisdiction because the payment or quasi-payment is not made in connection with a business carried on by the payee in that jurisdiction, assume that the payment or quasi-payment is made in connection with such a business.

[F26(4A) No excess is to be taken to arise by reason of a hybrid payer being a hybrid entity for the purposes of subsection (1)(b) so far as it is attributable to a qualifying institutional investor based in a territory under the law of which—

(a) the income or profits of the hybrid entity are treated as income and profits of the investor, or

(b) the hybrid entity is not regarded as a distinct and separate person to the investor.

(4B) Excess is attributable to such a qualifying institutional investor to the extent that ordinary income (arising by reason of the payment or quasi-payment) would fall to be brought into account by the investor if—

(a) where subsection (4A)(a) applies, under the law of the territory the income or profits of the hybrid entity were not treated as income and profits of the investor, and

(b) where subsection (4A)(b) applies, under the law of the territory the hybrid entity were regarded as a distinct and separate person to the investor.

(4C) To determine if a "qualifying institutional investor" is "based" in a particular territory for the purposes of subsections (4A) and (4B) see section 259NDA.]

(5) 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

(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.

Textual Amendments

F24 S. 259EB(1A) inserted (retrospectively) by Finance (No. 2) Act 2017 (c. 32), **s. 24(5)**(13)

F25 Words in s. 259EB(3) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 27(2)**

F26 S. 259EB(4A)-(4C) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 27(3)**

Counteraction

259EC Counteraction where the hybrid payer is within the charge to corporation tax for the payment period

(1) This section applies where the hybrid payer is within the charge to corporation tax for the payment period.

(2) For corporation tax purposes, the relevant deduction so far as it does not exceed the hybrid payer deduction/non-inclusion mismatch mentioned in section 259EA(5) ("the restricted deduction") may not be deducted from the hybrid payer's income for the payment period unless it is deducted from dual inclusion income for that period.

(3) So much of the restricted deduction (if any) as, by virtue of subsection (2), cannot be deducted from the payer's income for the payment period—

(a) is carried forward to subsequent accounting periods of the payer, and

(b) for corporation tax purposes, may be deducted from dual inclusion income for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.

(4) In this section "dual inclusion income" of the payer for an accounting period means an amount that [F27]... is both—

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

(b) ordinary income of an investor in the payer for a permitted taxable period for the purposes of any tax charged under the law of an investor jurisdiction.

(5) A taxable period of an investor is "permitted" for the purposes of paragraph (b) of subsection (4) 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.

[F28](6) [For the purposes of subsection (4)(b) the reference to ordinary income of an investor in the payer for a permitted taxable period for the purposes of any tax charged under the law of an investor jurisdiction is taken to include a reference to an amount that meets the following requirements.

(7) The requirements are that—

(a) the amount may not be deducted under the law of any territory from the income of any person for the purposes of calculating taxable profits for a relevant taxable period;

(b) in the case of a person resident for tax purposes in a zero-tax territory, the amount could not be deducted from the income of the person for the purposes of calculating taxable profits for a relevant taxable period if the person were resident in the United Kingdom for tax purposes; and

(c) under the law of the investor jurisdiction, the amount could be deducted from the income of the investor in the hybrid payer for the purposes of calculating the investor's taxable profits for a relevant taxable period if the following assumptions were made.

(8) The assumptions are that, for the purposes of identifying the recipient of the amount for tax purposes in the investor jurisdiction—

(a) condition B in section 259BE(3) was not met by the hybrid payer as respects the investor jurisdiction, and

(b) as a result of that, the hybrid payer was not a hybrid entity as respects the investor jurisdiction.

(9) In subsection (7), "zero-tax territory", in relation to a person, means a territory in which the person—

(a) is not within the charge to tax, or

(b) is within the charge to tax at a nil rate.

(10) Section 259B(5) (determination of residence where no concept of residence for tax purposes exists) applies to the reference in subsection (7)(b) to a person's residence for tax purposes in a zero-tax territory as it applies to references to a person's residence for tax purposes in Chapter 8 or 11.

(11) A taxable period of an investor or another person is "relevant" for the purposes of subsection (7) if—

(a) the period begins before the end of 12 months after the end of the accounting period mentioned in subsection (4)(a), or

(b) where the period begins after that, it is just and reasonable for the question of whether the amount concerned may or could be deducted in calculating taxable profits to be determined by reference to that taxable period rather than an earlier period.**]**

Textual Amendments

F27 Words in s. 259EC(4) omitted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by virtue of Finance Act 2021 (c. 26), **Sch. 7 para. 10(2)**

F28 S. 259EC(6)-(11) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 10(3)**

259ED Counteraction where a payee is within the charge to corporation tax

(1) This section applies in relation to a payee where—

(a) the payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, and

Status: Point in time view as at 10/06/2021.
Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 6A. (See end of Document for details)

(b) it is reasonable to suppose that—
(i) no provision under the law of a territory outside the United Kingdom that is equivalent to section 259EC applies, or
(ii) such a provision does apply, but does not fully counteract the hybrid payer deduction/non-inclusion mismatch mentioned in section 259EA(5).

(2) A provision of the law of a territory outside the United Kingdom that is equivalent to section 259EC does not fully counteract that mismatch if (and only if)—
(a) the amount of the relevant deduction that the provision prevents from being deducted from income of the hybrid payer, for the payment period, other than dual inclusion income, is less than the amount of the mismatch, and
(b) the hybrid payer is still able to deduct some of the relevant deduction from income, for the payment period, that is not dual inclusion income.

(3) In this section "the relevant amount" is—
(a) in a case where subsection (1)(b)(i) applies, an amount equal to the hybrid payer deduction/non-inclusion mismatch mentioned in section 259EA(5), or
(b) in a case where subsection (1)(b)(ii) applies, the lesser of—
(i) the amount by which that mismatch exceeds the amount of the relevant deduction that it is reasonable to suppose is prevented, by a provision of the law of a territory outside the United Kingdom that is equivalent to section 259EC, from being deducted from income of the hybrid payer, for the payment period, other than dual inclusion income, and
(ii) the amount of the relevant deduction that may still be deducted as mentioned in subsection (2)(b).

(4) If the payee is the only payee, an amount equal to—
(a) the relevant amount, less
(b) any dual inclusion income,

is to be treated as income arising to the payee for the counteraction period.

(5) If there is more than one payee, an amount equal to—
(a) the payee's share of the relevant amount, less
(b) the relevant proportion of any dual inclusion income,

is to be treated as income arising to the payee for the counteraction period.

(6) The payee's share of the relevant amount is to be determined by apportioning that amount between all the payees on a just and reasonable basis, having regard (in particular)—
(a) to any arrangements as to profit sharing that may exist between some or all of the payees, and
(b) to whom any amounts of ordinary income that it would be reasonable to expect to arise as a result of the payment or quasi-payment, but that do not arise, would have arisen.

(7) The "relevant" proportion of any dual inclusion income for the payment period is the same as the proportion of the relevant amount apportioned to the payee in accordance with subsection (6).

Status: *Point in time view as at 10/06/2021.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 6A. (See end of Document for details)*

(8) An amount of income that is treated as arising under subsection (4) or (5) is chargeable under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(2) of that Act).

(9) In this section—

"counteraction period" means—

(a) if an accounting period of the payee coincides with the payment period, that accounting period, or

(b) otherwise, the first accounting period of the payee that is wholly or partly within the payment period;

"dual inclusion income" means an amount that **F29**... is both—

(a) ordinary income of the payer for the payment period, and

(b) ordinary income of an investor in the payer for a permitted taxable period for the purposes of a tax charged under the law of an investor jurisdiction.

(10) A taxable period of an investor is "permitted" for the purposes of subsection (9) if—

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

Textual Amendments

F29 Words in s. 259ED(9) omitted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by virtue of Finance Act 2021 (c. 26), **Sch. 7 para. 10(4)**

CHAPTER 6

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

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, [F30]...
- (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 [[F31], 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).]

[F32](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.

F33(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

F30 Word in s. 259FA(4)(a) omitted (retrospectively) by virtue of Finance Act 2021 (c. 26), **Sch. 7 paras. 17(2)**, 36

F31 S. 259FA(4)(c) and word inserted (retrospectively) by Finance Act 2021 (c. 26), **Sch. 7 paras. 17(2)**, 36

F32 S. 259FA(4A) inserted (retrospectively) by Finance (No. 2) Act 2017 (c. 32), **s. 24(6)**(13)

Status: Point in time view as at 10/06/2021.
Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 6A. (See end of Document for details)

F33 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.

[F34](5) [For the purposes of subsection (3)(b) the reference to ordinary income of the company for a permitted taxable period for the purposes of a tax charged under the law of the parent jurisdiction is taken to include a reference to excessive PE inclusion income of the company.

(6) Section 259FC defines "excessive PE inclusion income" of the company for this purpose.**]**

Textual Amendments

F34 S. 259FB(5)(6) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 11(2)**

[F35] [259FC Meaning of excessive PE inclusion income

(1) In section 259FB(5), "excessive PE inclusion income" of the company means—

Status: *Point in time view as at 10/06/2021.*
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(a) where paragraph (a) of subsection (4) applies, the PE inclusion income of the company, or

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

(2) For this purpose, "PE inclusion income" of the company means an amount in respect of which conditions A and B are met.

(3) Condition A is that the amount is in respect of a transfer of money or money's worth from the company in the parent jurisdiction to the company in the United Kingdom that—

(a) is actually made, or

(b) is (in substance) treated as being made for corporation tax purposes.

(4) Condition B is that it is reasonable to suppose that—

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

(i) a reduction in the taxable profits of the company for a relevant taxable period, or

(ii) an increase in a loss made by the company for a relevant taxable period,

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

(b) those circumstances will result in such a reduction or increase for one or more relevant taxable periods, but the amount exceeds the aggregate effect on taxable profits.

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

(a) any reductions, resulting from the circumstances giving rise to the amount, in the taxable profits of the company, for a relevant 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 relevant taxable period, for the purposes of a tax charged under the law of the parent jurisdiction, is increased as a result of the circumstances giving rise to the amount.

(6) For the purposes of subsections (4) and (5), any reduction in taxable profits or increase of losses is to be ignored in any case where tax is charged at a nil rate under the law of the parent jurisdiction.

(7) A taxable period of the company is "relevant" for the purposes of subsections (4) and (5) if—

(a) the period begins before the end of 12 months after the end of the accounting period mentioned in section 259FB(3)(a), or

(b) where the period begins after that, it is just and reasonable for the question of whether the circumstances giving rise to the amount will result in a reduction in taxable profits or an increase in a loss to be determined by reference to that taxable period rather than an earlier period.**]**

Textual Amendments

F35 S. 259FC inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 11(3)**

Status: *Point in time view as at 10/06/2021.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 6A. (See end of Document for details)*

CHAPTER 7

HYBRID PAYEE DEDUCTION/NON-INCLUSION MISMATCHES

Introduction

259G Overview of Chapter

(1) This Chapter contains provision that counteracts deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments because a payee is a hybrid entity.

(2) The Chapter counteracts mismatches by—
- (a) altering the corporation tax treatment of the payer for the payment period,
- (b) treating income chargeable to corporation tax as arising to an investor who is within the charge to corporation tax, or
- (c) treating income chargeable to corporation tax as arising to a payee that is a hybrid entity and a limited liability partnership.

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

(4) Section 259GB defines "hybrid payee deduction/non-inclusion mismatch" and provides how the amount of the mismatch is to be calculated.

(5) Section 259GC contains provision that counteracts the mismatch where the payer is within the charge to corporation tax for the payment period.

(6) Section 259GD contains provision that counteracts the mismatch where an investor in the payee is within the charge to corporation tax and the mismatch is not fully counteracted by section 259GC or an equivalent provision under the law of a territory outside the United Kingdom.

(7) Section 259GE contains provision that counteracts the mismatch where a payee is a hybrid entity and limited liability partnership and the mismatch is not otherwise fully counteracted.

(8) See also—
- (a) section 259BB for the meaning of "payment", "quasi-payment", "payment period", "relevant deduction", "payer" and "payee";
- (b) section 259BE for the meaning of "hybrid entity", "investor" and "investor jurisdiction".

Application of Chapter

259GA Circumstances in which the Chapter applies

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

(2) Condition A is that a payment or quasi-payment is made under, or in connection with, an arrangement.

(3) Condition B is that a payee is a hybrid entity (a "hybrid payee").

(4) Condition C is that—

(a) the payer is within the charge to corporation tax for the payment period,
(b) an investor in a hybrid payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, or
(c) a hybrid payee is a limited liability partnership.

(5) Condition D is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (6), there would be a hybrid payee deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259GB).

(6) The provisions are—
(a) this Chapter and Chapters 8 to 10, and
(b) any equivalent provision under the law of a territory outside the United Kingdom.

(7) Condition E is that—
(a) it is a quasi-payment that is made as mentioned in subsection (2) and the payer is also a hybrid payee (see section 259BB(7)),
(b) the payer and a hybrid payee or an investor in a hybrid payee are in the same control group (see section 259NB) at any time in the period—
(i) beginning with the day on which the arrangement mentioned in subsection (2) is made, and
(ii) ending with the last day of the payment period, or
(c) that arrangement is a structured arrangement.

(8) The arrangement is "structured" if it is reasonable to suppose that—
(a) the arrangement is designed to secure a hybrid payee deduction/non-inclusion mismatch, or
(b) the terms of the arrangement share the economic benefit of the mismatch between the parties to the arrangement or otherwise reflect the fact that the mismatch is expected to arise.

(9) The arrangement may be designed to secure a hybrid payee deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.

(10) The following provisions contain provision for the counteraction of the hybrid payee deduction/non-inclusion mismatch—
(a) section 259GC (cases where the payer is within the charge to corporation tax for the payment period),
(b) section 259GD (cases where an investor in a hybrid payee is within the charge to corporation tax), and
(c) section 259GE (cases where a hybrid payee is a limited liability partnership).

259GB Hybrid payee deduction/non-inclusion mismatches and their extent

(1) There is a "hybrid payee deduction/non-inclusion mismatch", in relation to a payment or quasi-payment, if—
(a) the relevant deduction exceeds the sum of the amounts of ordinary income that, by reason of the payment or quasi-payment, arise to each payee for a permitted taxable period, and
(b) all or part of that excess arises by reason of one or more payees being hybrid entities.

[F36(1A) But there is no hybrid payee deduction/non-inclusion mismatch so far as the relevant deduction is—
(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.]

(2) The extent of the hybrid payee deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (1)(b).

[F37(2A) No excess is to be taken to arise by reason of a hybrid payee being a hybrid entity for the purposes of subsection (1)(b) so far as it is attributable to a qualifying institutional investor based in a territory under the law of which—
(a) the income or profits of the hybrid entity are not treated as income or profits of the investor, or
(b) the hybrid entity is regarded as a distinct and separate person to the investor.

(2B) Excess is attributable to such a qualifying institutional investor to the extent that ordinary income (arising by reason of the payment or quasi-payment) would fall to be brought into account by the investor if—
(a) where subsection (2A)(a) applies, under the law of the territory the income or profits of the hybrid entity were treated as income or profits of the investor, and
(b) where subsection (2A)(b) applies, under the law of the territory the hybrid entity were not regarded as a distinct and separate person to the investor.

(2C) To determine if a "qualifying institutional investor" is "based" in a particular territory for the purposes of subsections (2A) and (2B) see section 259NDA.]

(3) A relevant amount of the excess is to be taken (so far as would not otherwise be the case) to arise as mentioned in subsection (1)(b) where—
(a) a payee is a hybrid entity,
(b) there is no territory—
(i) where that payee is resident for the purposes of a tax charged [F38at a higher rate than nil] under the law of that territory, or
(ii) under the law of which ordinary income arises to that payee, by reason of the payment or quasi-payment, for the purposes of a tax that is charged on that payee by virtue of that payee having a permanent establishment in that territory, and
(c) no income arising to that payee, by reason of the payment or quasi-payment, is brought into account in calculating chargeable profits for the purposes of the CFC charge or a foreign CFC charge.

(4) For the purposes of subsection (3), the "relevant amount" of the excess is the lesser of—
(a) the amount of the excess, and
(b) an amount equal to the amount of ordinary income that it is reasonable to suppose would, by reason of the payment or quasi-payment, arise to the payee for corporation tax purposes, if—
(i) the payee were a company, and

(ii) the payment or quasi-payment were made in connection with a trade carried on by the payee in the United Kingdom through a permanent establishment in the United Kingdom.

[F39] (4A) [In applying subsection (4)(b) in a case where the payee is a partnership [[F40] or a relevant transparent entity], it is to be assumed that no amount of ordinary income arises to the payee, by reason of the payment or quasi-payment, if—

(a) a partner in the partnership [[F41], or a member of the entity,] is entitled to the amount, and

(b) having regard only to—

(i) the law of the territory where the partnership [[F42] or entity] is established, and

(ii) the law of the territory where the partner [[F43] or member] is resident for tax purposes or, if the partner [[F43] or member] is not resident anywhere for tax purposes, where the partner [[F43] or member] is established,

the payee would not be regarded as a hybrid entity.

[F44] (4AA) [Subsection (4AB) applies in relation to a payment or quasi-payment if—

(a) one or more of the payees is a partnership or a relevant transparent entity,

(b) there is a territory under the law of which an amount of ordinary income would arise, or would potentially arise, to a hybrid entity as a result of the circumstances giving rise to the relevant deduction if the entity were a person resident in that territory for the purposes of a tax charged under the law of that territory, and

(c) that hybrid entity is not (ignoring subsection (4AB)(b)) a payee.

(4AB) Where this subsection applies—

(a) if any such hybrid entity is not either a partnership or a relevant transparent entity, subsection (4A) does not apply, or

(b) otherwise, every such hybrid entity is to be treated as a payee for the purposes of determining, for the purposes of subsection (1)(b), if an excess arises by reason of one or more payees being hybrid entities.]

(4B) In [[F45] subsections (4A) to (4AB) and (4C)] "partnership" has the meaning given by section 259NE(4).]

[F46] (4C) [An entity is a "relevant transparent entity" if—

(a) the entity is not a partnership,

(b) the entity is legally constituted in a territory outside the United Kingdom,

(c) all of the entity's income or profits for the purposes of a tax charged under the law of that territory are treated (or would be if there were any) for the purposes of that tax as the income or profits of its members, and

(d) any such tax that is, or that would be, charged on such a member that is resident for tax purposes in that territory is not charged at a nil rate.

(4D) For the purposes of subsection (4C), a person is a "member" of an entity if the person is entitled to a proportion of the profits of the entity as a result of—

(a) where the entity has share capital, holding shares forming part of that capital, or

(b) where the entity does not have share capital, an entitlement similar to that which would be enjoyed if the entity had share capital and the person held shares forming part of that capital.]

***Status:** Point in time view as at 10/06/2021.*
***Changes to legislation:** There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 6A. (See end of Document for details)*

(5) In subsection (3)(c) "chargeable profits"—

(a) in relation to the CFC charge, has the same meaning as in Part 9A (see section 371VA), and

(b) in relation to a foreign CFC charge, means the concept (by whatever name known) corresponding to chargeable profits within the meaning of that Part.

(6) 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

(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.

Textual Amendments

F36 S. 259GB(1A) inserted (retrospectively) by Finance (No. 2) Act 2017 (c. 32), **s. 24(7)**(13)

F37 S. 259GB(2A)-(2C) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 28**

F38 Words in s. 259GB(3)(b)(i) inserted (with effect in accordance with Sch. 7 para. 19(1) of the amending Act) by Finance Act 2018 (c. 3), **Sch. 7 para. 5**

F39 S. 259GB(4A)(4B) inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 7 paras. 11**, 19(4)

F40 Words in s. 259GB(4A) inserted (retrospectively) by Finance Act 2022 (c. 3), **s. 26(2)(a)(6)** (with s. 26(7)-(10))

F41 Words in s. 259GB(4A)(a) inserted (retrospectively) by Finance Act 2022 (c. 3), **s. 26(2)(b)(6)** (with s. 26(7)-(10))

F42 Words in s. 259GB(4A)(b)(i) inserted (retrospectively) by Finance Act 2022 (c. 3), **s. 26(2)(c)(i)(6)** (with s. 26(7)-(10))

F43 Words in s. 259GB(4A)(b)(ii) inserted (retrospectively) by Finance Act 2022 (c. 3), **s. 26(2)(c)(ii)(6)** (with s. 26(7)-(10))

F44 S. 259GB(4AA)(4AB) inserted (retrospectively) by Finance Act 2022 (c. 3), **s. 26(3)(6)** (with s. 26(7)-(10))

F45 Words in s. 259GB(4B) substituted (retrospectively) by Finance Act 2022 (c. 3), **s. 26(4)(6)** (with s. 26(7)-(10))

F46 S. 259GB(4C)(4D) inserted (retrospectively) by Finance Act 2022 (c. 3), **s. 26(5)(6)** (with s. 26(7)-(10))

Counteraction

259GC Counteraction where the payer is within the charge to corporation tax for the payment period

(1) This section applies where the payer is within the charge to corporation tax for the payment period.

(2) For corporation tax purposes, the relevant deduction that may be deducted from the payer's income for the payment period is reduced by an amount equal to the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5).

259GD Counteraction where the investor is within the charge to corporation tax

(1) This section applies in relation to an investor in a hybrid payee where—

(a) the investor is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, and

(b) it is reasonable to suppose that—

(i) neither section 259GC nor any equivalent provision under the law of a territory outside the United Kingdom applies, or

(ii) a provision of the law of a territory outside the United Kingdom that is equivalent to section 259GC applies, but does not fully counteract the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5).

(2) A provision of the law of a territory outside the United Kingdom that is equivalent to section 259GC does not fully counteract that mismatch if (and only if)—

(a) it does not reduce the relevant deduction by the full amount of the mismatch, and

(b) the payer is still able to deduct some of the relevant deduction from income in calculating taxable profits.

(3) In this section "the relevant amount" is—

(a) in a case where subsection (1)(b)(i) applies, an amount equal to the hybrid payee deduction/non-inclusion mismatch, or

(b) in a case where subsection (1)(b)(ii) applies, the lesser of—

(i) the amount by which that mismatch exceeds the amount by which it is reasonable to suppose the relevant deduction is reduced by a provision of the law of a territory outside the United Kingdom that is equivalent to section 259GC, and

(ii) the amount of the relevant deduction that may still be deducted as mentioned in subsection (2)(b).

(4) If the investor is the only investor in the hybrid payee, the appropriate proportion of the relevant amount is to be treated as income arising to the investor for the counteraction period.

(5) If there is more than one investor in the hybrid payee, an amount equal to the investor's share of the appropriate proportion of the relevant amount is to be treated as income arising to the investor for the counteraction period.

(6) For the purposes of subsections (4) and (5) the "appropriate proportion of the relevant amount"—

(a) if the hybrid payee is the only hybrid payee, is all of the relevant amount, or

(b) if there is more than one hybrid payee, is the proportion of the relevant amount apportioned to the hybrid payee upon an apportionment of that amount between all the hybrid payees on a just and reasonable basis having regard (in particular) to—

(i) any arrangements as to profit sharing that may exist between some or all of the payees, and

(ii) the extent to which it is reasonable to suppose that the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5) arises by reason of each hybrid payee being a hybrid entity.

(7) The investor's share of the appropriate proportion of the relevant amount is to be determined by apportioning that proportion of that amount between all the investors in the hybrid payee on a just and reasonable basis, having regard (in particular) to any arrangements as to profit sharing that may exist between some or all of those investors.

(8) An amount of income that is treated as arising under subsection (4) or (5) is chargeable under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(23) of that Act).

(9) The "counteraction period" means—
(a) if an accounting period of the investor coincides with the payment period, that accounting period, or
(b) otherwise, the first accounting period of the investor that is wholly or partly within the payment period.

259GE Counteraction where a hybrid payee is an LLP

(1) This section applies in relation to a hybrid payee where the hybrid payee is a limited liability partnership and it is reasonable to suppose that—
(a) none of the following provisions applies—
(i) section 259GC;
(ii) section 259GD;
(iii) any provision under the law of a territory outside the United Kingdom that is equivalent to either of those sections, or
(b) one or more of those provisions apply, but the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5) is not fully counteracted.

(2) The mismatch is not fully counteracted if (and only if), after the application of such of those provisions as apply—
(a) the relevant deduction is not reduced by the full amount of the mismatch,
(b) the payer is still able to deduct some of the relevant deduction from income in calculating taxable profits, and
(c) the lesser of—
(i) the difference between the amount of the mismatch and the amount by which it is reasonable to suppose the relevant deduction is reduced, and
(ii) the amount of the relevant deduction that may still be deducted,

exceeds the sum of any amounts of income treated as arising under section 259GD or any equivalent provision under the law of a territory outside the United Kingdom.

(3) In this section "the relevant amount" is—
(a) in a case where subsection (1)(a) applies, an amount equal to the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5), or
(b) in a case where subsection (1)(b) applies, an amount equal to the excess mentioned in subsection (2)(c).

(4) If the hybrid payee is the only hybrid payee, an amount equal to the relevant amount is to be treated as income arising to the hybrid payee on the last day of the payment period.

Status: *Point in time view as at 10/06/2021.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 6A. (See end of Document for details)*

(5) If there is more than one hybrid payee, an amount equal to the hybrid payee's share of the relevant amount is to be treated as income arising to the hybrid payee on the last day of the payment period.

(6) The hybrid payee's share of the relevant amount is to be determined by apportioning that amount between all the hybrid payees on a just and reasonable basis, having regard (in particular) to—

(a) any arrangements as to profit sharing that may exist between some or all of the payees, and

(b) the extent to which it is reasonable to suppose that the hybrid payee deduction/ non-inclusion mismatch mentioned in section 259GA(5) arises by reason of each hybrid payee being a hybrid entity.

(7) An amount of income that is treated as arising under subsection (4) or (5) is chargeable to corporation tax on the hybrid payee (as opposed to being chargeable to tax on any of its members) under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(2) of that Act).

(8) Section 863 of ITTOIA 2005 (treatment of certain limited liability partnerships for income tax purposes) and section 1273 of CTA 2009 (treatment of certain limited liability partnerships for corporation tax purposes) are disapplied in relation to the hybrid payee to the extent necessary for the purposes of subsection (7).

(9) This section is to be disregarded for the purposes of determining whether the hybrid payee is within the charge to corporation tax for the purposes of any other provision of this Part, except section 259M (anti-avoidance).

CHAPTER 8

MULTINATIONAL PAYEE DEDUCTION/NON-INCLUSION MISMATCHES

Introduction

259H Overview of Chapter

(1) This Chapter contains provision that counteracts deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments, where the payer is within the charge to corporation tax, because a payee is multinational company.

(2) The Chapter counteracts mismatches by altering the corporation tax treatment of the payer.

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

(4) Subsection (4) of that section defines "multinational company", "parent jurisdiction" and "PE jurisdiction".

(5) Section 259HB defines "multinational payee deduction/non-inclusion mismatch" and provides how the amount of the mismatch is to be calculated.

(6) Section 259HC contains provision that counteracts the mismatch.

(7) See also—
(a) section 259BB for the meaning of "payment", "quasi-payment", "payment period", "relevant deduction", "payer" and "payee";
(b) section 259BF for the meaning of "permanent establishment".

Application of Chapter

259HA Circumstances in which the Chapter applies

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

(2) Condition A is that a payment or quasi-payment is made under, or in connection with, an arrangement.

(3) Condition B is that a payee is a multinational company.

(4) For the purposes of this Chapter, a company is a "multinational company" if—
(a) it is resident in a territory ("the parent jurisdiction") for tax purposes under the law of that territory, and
(b) it is regarded as carrying on a business in another territory ("the PE jurisdiction") through a permanent establishment in that territory (whether it is so regarded under the law of the parent jurisdiction, the PE jurisdiction or any other territory).

[F47(5) Condition C is that—
(a) the payer is within the charge to corporation tax for the payment period, or
(b) the multinational company—
(i) is UK resident for the payment period, and
(ii) under the law of the parent jurisdiction, is regarded as carrying on a business in the PE jurisdiction through a permanent establishment in that territory but, under the law of the PE jurisdiction, is not regarded as doing so.]

(6) Condition D is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (7), there would be a multinational payee deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259HB).

(7) The provisions are—
(a) this Chapter and Chapters 9 and 10, and
(b) any equivalent provision under the law of a territory outside the United Kingdom.

(8) Condition E is that—
(a) it is a quasi-payment that is made as mentioned in subsection (2) and the payer is also a payee (see section 259BB(7)),
(b) the payer and the multinational company are in the same control group (see section 259NB) at any time in the period—
(i) beginning with the day on which the arrangement mentioned in subsection (2) is made, and
(ii) ending with the last day of the payment period, or
(c) that arrangement is a structured arrangement.

Status: *Point in time view as at 10/06/2021.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 6A. (See end of Document for details)*

(9) The arrangement is "structured" if it is reasonable to suppose that—

(a) the arrangement is designed to secure a multinational **[**[F48]payee**]** deduction/non-inclusion mismatch, or

(b) the terms of the arrangement share the economic benefit of the mismatch between the parties to the arrangement or otherwise reflect the fact that the mismatch is expected to arise.

(10) The arrangement may be designed to secure a multinational payee deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.

(11) Section 259HC contains provision for the counteraction of the multinational payee deduction/non-inclusion mismatch.

Textual Amendments

F47 S. 259HA(5) substituted (with effect in accordance with s. 19(5)(6) of the amending Act) by Finance Act 2019 (c. 1), **s. 19(2)(a)**

F48 Word in s. 259HA(9)(a) substituted (retrospective to 15.9.2016) by the Finance Act 2019 (c. 1), **s. 19(2)(b)(7)**

259HB Multinational payee deduction/non-inclusion mismatches and their extent

(1) There is a "multinational payee deduction/non-inclusion mismatch", in relation to a payment or quasi-payment, if—

(a) the relevant deduction exceeds the sum of the amounts of ordinary income that, by reason of the payment or quasi-payment, arise to each payee for a permitted taxable period, and

(b) all or part of that excess arises by reason of one or more payees being multinational companies.

[F49](1A) **[** But there is no multinational payee deduction/non-inclusion mismatch so far as the relevant deduction is—

(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.**]**

(2) The extent of the multinational payee deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (1)(b).

[F50](2A) **[** The excess is to be taken (so far as would not otherwise be the case) to arise for the purposes of subsection (1)(b) by reason of a payee being a multinational company so far as it would not arise if it is assumed—

(a) that the company is not regarded, under the law of the parent jurisdiction, the PE jurisdiction or any other territory, as carrying on a business in the PE jurisdiction through a permanent establishment in that jurisdiction, and

Status: *Point in time view as at 10/06/2021.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 6A. (See end of Document for details)*

(b) that, for tax purposes under the law of the parent jurisdiction, all amounts of ordinary income arising, by reason of the payment or quasi-payment, to the company are regarded as arising to it in that jurisdiction and nowhere else.]

(3) For the purposes of subsection (1)(b)—

(a) where the law of a PE jurisdiction in relation to a payee that is a multinational company makes no provision for charging tax on any companies, so much of the excess as arises as a result is to be taken not to arise by reason of that payee being a multinational company, but

(b) subject to that, it does not matter whether the excess or part arises for another reason as well as one or more payees being multinational companies (even if it would have arisen for that other reason regardless of whether any payees are multinational companies).

(4) 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

(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.

Textual Amendments

F49 S. 259HB(1A) inserted (retrospectively) by Finance (No. 2) Act 2017 (c. 32), **s. 24(8)**(13)

F50 S. 259HB(2A) inserted (with effect in accordance with Sch. 7 para. 19(1) of the amending Act) by Finance Act 2018 (c. 3), **Sch. 7 para. 12**

Counteraction

[F51 259HC Counteraction of the multinational payee deduction/non-inclusion mismatch

For corporation tax purposes—

(a) if paragraph (b) of Condition C in subsection (5) of section 259HA is met, an amount equal to the multinational payee deduction/non-inclusion mismatch mentioned in subsection (6) of that section is to be treated as income arising to the multinational company in the United Kingdom (and nowhere else) for the payment period, and

(b) in any other case, the relevant deduction that may be deducted from the payer's income for that period is to be reduced by that amount.]

Textual Amendments

F51 S. 259HC substituted (with effect in accordance with s. 19(5)(6) of the amending Act) by Finance Act 2019 (c. 1), **s. 19(3)**

CHAPTER 9

HYBRID ENTITY DOUBLE DEDUCTION MISMATCHES

Introduction

259I Overview of Chapter

(1) This Chapter contains provision that counteracts double deduction mismatches that it is reasonable to suppose would otherwise arise by reason of a person being a hybrid entity.

(2) The Chapter counteracts mismatches where the hybrid entity, or an investor in the hybrid entity, is within the charge to corporation tax and does so by altering the corporation tax treatment of the entity or investor.

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

(4) Subsection (4) of that section defines "hybrid entity double deduction amount".

(5) Section 259IB contains provision that counteracts the mismatch where an investor in the hybrid entity is within the charge to corporation tax.

(6) Section 259IC contains provision that, in certain circumstances, counteracts the mismatch where the hybrid entity is within the charge to corporation tax and the mismatch is not fully counteracted by provision under the law of a territory outside the United Kingdom that is equivalent to section 259IB.

(7) See also section 259BE for the meaning of "hybrid entity", "investor" and "investor jurisdiction".

Application of Chapter

259IA Circumstances in which the Chapter applies

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

(2) Condition A is that there is an amount or part of an amount that, disregarding the provisions mentioned in subsection (3), it is reasonable to suppose—

- (a) could be deducted from the income of a hybrid entity for the purposes of calculating the taxable profits of that entity for a taxable period ("the hybrid entity deduction period"), and
- (b) could also be deducted, under the law of the investor jurisdiction, from the income of an investor in the hybrid entity for the purposes of calculating the taxable profits of that investor for a taxable period ("the investor deduction period").

(3) The provisions are—

- (a) this Chapter and Chapter 10, and
- (b) any equivalent provision under the law of a territory outside the United Kingdom.

(4) In this Chapter the amount or part of an amount mentioned in subsection (2) is referred to as "the hybrid entity double deduction amount".

(5) Condition B is that—
- (a) the investor is within the charge to corporation tax for the investor deduction period, or
- (b) the hybrid entity is within the charge to corporation tax for the hybrid entity deduction period.

(6) Condition C is that—
- (a) the hybrid entity and any investor in it are related (see section 259NC) at any time—
  - (i) in the hybrid entity deduction period, or
  - (ii) in the investor deduction period, or
- (b) an arrangement, to which the hybrid entity or any investor in it is party, is a structured arrangement.

(7) An arrangement is "structured" if it is reasonable to suppose that—
- (a) the arrangement is designed to secure the hybrid entity double deduction amount, or
- (b) the terms of the arrangement share the economic benefit of that amount being deductible by both the hybrid entity and the investor between the parties to the arrangement or otherwise reflect the fact that the amount is expected to arise.

(8) The arrangement may be designed to secure the hybrid entity double deduction amount despite also being designed to secure any commercial or other objective.

(9) Sections 259IB (cases where the investor is within the charge to corporation tax for the investor deduction period) and 259IC (cases where the hybrid entity is within the charge to corporation tax for the hybrid entity deduction period) contain provision for the counteraction of the hybrid entity double deduction amount.

Counteraction

259IB Counteraction where the investor is within the charge to corporation tax

(1) This section applies in relation to the investor in the hybrid entity where the investor is within the charge to corporation tax for the investor deduction period.

(2) For corporation tax purposes, the hybrid entity double deduction amount may not be deducted from the investor's income for the investor deduction period unless it is deducted from dual inclusion income of the investor for that period.

(3) So much of the hybrid entity double deduction amount (if any) as, by virtue of subsection (2), cannot be deducted from the investor's income for the investor deduction period—
- (a) is carried forward to subsequent accounting periods of the investor, and
- (b) for corporation tax purposes, may be deducted from dual inclusion income of the investor for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.

(4) If the Commissioners are satisfied that the investor will have no dual inclusion income—
- (a) for an accounting period after the investor deduction period ("the relevant period"), nor

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(b) for any accounting period after the relevant period,

any of the hybrid entity double deduction amount that has not been deducted from dual inclusion income for an accounting period before the relevant period in accordance with subsection (2) or (3) ("the stranded deduction") may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the investor's taxable total profits of the relevant period.

(5) So much of the stranded deduction (if any) as cannot be deducted, in accordance with subsection (4), at step 2 in section 4(2) of CTA 2010 in calculating the investor's taxable total profits of the relevant period—

(a) is carried forward to subsequent accounting periods of the investor, and

(b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.

(6) Subsection (7) applies if it is reasonable to suppose that all or part of the hybrid entity double deduction amount is (in substance) deducted ("the illegitimate overseas deduction"), under the law of a territory outside the United Kingdom, from income of any person, for a taxable period, that is not dual inclusion income of the investor for an accounting period.

(7) For the purposes of determining how much of the hybrid entity double deduction amount may be deducted (if any) for the accounting period of the investor in which the taxable period mentioned in subsection (6) ends, and any subsequent accounting periods of the investor, an amount of it equal to the illegitimate overseas deduction is to be taken to have already been deducted for a previous accounting period of the investor.

(8) In this section "dual inclusion income" of the investor for an accounting period means an amount that is both—

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

(b) ordinary income of the hybrid entity for a permitted taxable period for the purposes of any tax under the law of a territory outside the United Kingdom.

(9) A taxable period of the hybrid entity is "permitted" for the purposes of paragraph (b) of subsection (8) if—

(a) the period begins before the end of 12 months after the end of the accounting period of the investor 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.

259IC Counteraction where the hybrid entity is within the charge to corporation tax

(1) This section applies where—

(a) the hybrid entity is within the charge to corporation tax for the hybrid entity deduction period,

(b) it is reasonable to suppose that—

(i) no provision under the law of an investor jurisdiction that is equivalent to section 259IB applies, or

(ii) such a provision does apply, but the hybrid entity double deduction amount exceeds the amount that, under that provision, cannot be deducted from income, for the investor deduction period, other than dual inclusion income of the hybrid entity for the hybrid entity deduction period, and

(c) the secondary counteraction condition is met.

(2) The secondary counteraction condition is met if—

(a) the hybrid entity and any investor in it are in the same control group (see section 259NB) at any time in—

(i) the hybrid entity deduction period, or

(ii) the investor deduction period, or

(b) there is an arrangement, to which the hybrid entity or any investor in it is party, that is a structured arrangement (within the meaning given by section 259IA(7) and (8)).

(3) In this section "the restricted deduction" means—

(a) in a case where subsection (1)(b)(i) applies, the hybrid entity double deduction amount, or

(b) in a case where subsection (1)(b)(ii) applies, the hybrid entity double deduction amount so far as it exceeds the amount that it is reasonable to suppose, under a provision of the law of a territory outside the United Kingdom that is equivalent to section 259IB, cannot be deducted from income, for the investor deduction period, other than dual inclusion income of the hybrid entity for the hybrid entity deduction period.

(4) For corporation tax purposes, the restricted deduction may not be deducted from the hybrid entity's income for the hybrid entity deduction period **[**[F52]unless it is deducted from dual inclusion income for that period.**]**

(5) So much of the restricted deduction (if any) as, by virtue of subsection (4), cannot be deducted from the hybrid entity's income for the hybrid entity deduction period—

(a) is carried forward to subsequent accounting periods of the hybrid entity, and

(b) for corporation tax purposes, may be deducted from dual inclusion income of the hybrid entity for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.

(6) If the Commissioners are satisfied that the hybrid entity will have no dual inclusion income—

(a) for an accounting period after the hybrid entity deduction period ("the relevant period"), nor

(b) for any accounting period after the relevant period,

any of the restricted deduction that has not been deducted from dual inclusion income for an accounting period before the relevant period in accordance with subsection (4) or (5) ("the stranded deduction") may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the hybrid entity's taxable total profits of the relevant period.

(7) So much of the stranded deduction (if any) as cannot be deducted, in accordance with subsection (6), at step 2 in section 4(2) of CTA 2010 in calculating the hybrid entity's taxable total profits of the relevant period—

(a) is carried forward to subsequent accounting periods of the hybrid entity, and

(b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.

(8) Subsection (9) applies if it is reasonable to suppose that all or part of the hybrid entity double deduction amount is (in substance) deducted ("the illegitimate overseas deduction"), under the law of a territory outside the United Kingdom, from income of any person **[**[F53]other than an investor in the hybrid entity**]**, for a taxable period, that is not dual inclusion income of the hybrid entity for an accounting period.

(9) For the purposes of determining how much of the hybrid entity double deduction amount may be deducted (if any) for the accounting period of the hybrid entity in which the taxable period mentioned in subsection (8) ends, and any subsequent accounting periods of the hybrid entity, an amount of it equal to the illegitimate overseas deduction is to be taken to have already been deducted for a previous accounting period of the hybrid entity.

(10) In this section "dual inclusion income" of the hybrid entity for an accounting period means an amount that is both—

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

(b) ordinary income of an investor in the hybrid entity for a permitted taxable period for the purposes of any tax charged under the law of an investor jurisdiction.

(11) A taxable period of an investor is "permitted" for the purposes of paragraph (b) of subsection (10) 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.

Textual Amendments

F52 Words in s. 259IC(4) substituted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 12(2)**

F53 Words in s. 259IC(8) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 18(2)**

[[F54]259ICA Deemed dual inclusion income for the purposes of section 259IC

(1) For the purposes of section 259IC(10)(b) the reference to ordinary income of an investor in the hybrid entity for a permitted taxable period for the purposes of any tax charged under the law of an investor jurisdiction is taken to include a reference to an amount that meets the following requirements.

(2) The requirements are that—

(a) the amount may not be deducted under the law of any territory from the income of any person for the purposes of calculating taxable profits for a relevant taxable period;

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(b) in the case of a person resident for tax purposes in a zero-tax territory, the amount could not be deducted from the income of the person for the purposes of calculating taxable profits for a relevant taxable period if the person were resident in the United Kingdom for tax purposes; and

(c) under the law of the investor jurisdiction, the amount could be deducted from the income of the investor in the hybrid entity for the purposes of calculating the investor's taxable profits for a relevant taxable period if the following assumptions were made.

(3) The assumptions are that, for the purposes of identifying the recipient of the amount for tax purposes in the investor jurisdiction, it is assumed that—

(a) condition B in section 259BE(3) was not met by the hybrid entity as respects the investor jurisdiction, and

(b) as a result of that, the hybrid entity was not a hybrid entity as respects the investor jurisdiction.

(4) In subsection (2), "zero-tax territory", in relation to a person, means a territory in which the person—

(a) is not within the charge to tax, or

(b) is within the charge to tax at a nil rate.

(5) Section 259B(5) (determination of residence where no concept of residence for tax purposes exists) applies to the reference in subsection (2)(b) to a person's residence for tax purposes in a zero-tax territory as it applies to references to a person's residence for tax purposes in Chapter 8 or 11.

(6) A taxable period of an investor or another person is "relevant" for the purposes of subsection (2) if—

(a) the period begins before the end of 12 months after the end of the accounting period mentioned in section 259IC(10)(a), or

(b) where the period begins after that, it is just and reasonable for the question of whether the amount concerned may or could be deducted in calculating taxable profits to be determined by reference to that taxable period rather than an earlier period.**]**

Textual Amendments

F54 S. 259ICA inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 12(3)**

[F55]259ID Section 259ID income for the purposes of section 259IC

. . . .

Textual Amendments

F55 S. 259ID omitted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by virtue of Finance Act 2021 (c. 26), **Sch. 7 para. 12(4)**

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CHAPTER 10

DUAL TERRITORY DOUBLE DEDUCTION CASES

Introduction

259J Overview of Chapter

(1) This Chapter contains provision that counteracts double deduction mismatches that it is reasonable to suppose would otherwise arise as a result of a company—
(a) being a dual resident company, or
(b) being a relevant multinational company.

(2) The counteraction operates by altering the corporation tax treatment of the company.

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

(4) Subsection (3) of that section defines "dual resident company".

(5) Subsection (4) of that section defines "relevant multinational company", "parent jurisdiction" and "PE jurisdiction".

(6) Subsection (5) of that section defines "dual territory double deduction amount".

(7) Section 259JB contains provision that counteracts the mismatch where the company is a dual resident company.

(8) Section 259JC contains provision that counteracts the mismatch where the company is a multinational company and the United Kingdom is the parent jurisdiction.

(9) Section 259JD contains provision that counteracts the mismatch where the company is a relevant multinational company, the United Kingdom is the PE jurisdiction and the mismatch is not counteracted under a provision of the law of a territory outside the United Kingdom that is equivalent to section 259JC.

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

Application of Chapter

259JA Circumstances in which the Chapter applies

(1) This Chapter applies if conditions A and B are met.

(2) Condition A is that a company is a—
(a) dual resident company, or
(b) relevant multinational company.

(3) For the purposes of this Chapter a company is a "dual resident company" if—
(a) it is UK resident, and
(b) it is also within the charge to a tax under the law of a territory outside the United Kingdom because—
(i) it derives its status as a company from that law,
(ii) its place of management is in that territory, or

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(iii) it is for some other reason treated under that law as resident in that territory for the purposes of that tax.

(4) For the purposes of this Chapter a company is a "relevant multinational company" if—
(a) it is within the charge to a tax, under the law of a territory ("the PE jurisdiction") in which it is not resident for tax purposes, because it carries on business in that territory through a permanent establishment in that territory, and
(b) either—
(i) the PE jurisdiction is the United Kingdom, or
(ii) the territory in which the company is resident for tax purposes ("the parent jurisdiction") is the United Kingdom.

(5) Condition B is that there is an amount ("the dual territory double deduction amount") that, disregarding this Chapter and any equivalent provision under the law of a territory outside the United Kingdom, it is reasonable to suppose could, by reason of the company being a dual resident company or a relevant multinational company—
(a) be deducted from the company's income for an accounting period ("the deduction period") for corporation tax purposes, and
(b) also be deducted from the company's income for a taxable period ("the foreign deduction period") for the purposes of a tax charged under the law of a territory outside the United Kingdom.

(6) The following provisions provide for the counteraction of the dual territory double deduction amount—
(a) section 259JB (cases where a company is dual resident),
(b) section 259JC (cases where a company is a relevant multinational and the United Kingdom is the parent jurisdiction), and
(c) section 259JD (cases where a company is a relevant multinational, the United Kingdom is the PE jurisdiction and the amount is not counteracted in the parent jurisdiction).

Counteraction

259JB Counteraction where mismatch arises because of a dual resident company

(1) This section applies where the dual territory double deduction amount arises by reason of the company being a dual resident company.

(2) For corporation tax purposes, the dual territory double deduction amount may not be deducted from the company's income for the deduction period unless it is deducted from dual inclusion income of the company for that period.

(3) So much of the dual territory double deduction amount (if any) as, by virtue of subsection (2), cannot be deducted from the company's income for the deduction 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.

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(4) If the Commissioners are satisfied that the company has ceased to be a dual resident company, any of the dual territory double deduction amount that has not been deducted from dual inclusion income in accordance with subsection (2) or (3) ("the stranded deduction") may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the company's taxable total profits of the accounting period in which it ceased to be a dual resident company.

(5) So much of the stranded deduction (if any) as cannot be deducted, in accordance with subsection (4), at step 2 in section 4(2) of CTA 2010 in calculating the company's taxable total profits of the accounting period in which the company ceased to be a dual resident company—

(a) is carried forward to subsequent accounting periods of the company, and

(b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.

(6) Subsection (7) applies if it is reasonable to suppose that all or part of the dual territory double deduction amount is (in substance) deducted ("the illegitimate overseas deduction"), under the law of a territory outside the United Kingdom, from income of any person **[**[F56]other than the company**]**, for a taxable period, that is not dual inclusion income of the company for an accounting period.

(7) For the purposes of determining how much of the dual territory double deduction amount may be deducted (if any) for the accounting period of the company in which the taxable period mentioned in subsection (6) ends, and any subsequent accounting periods of the company, an amount of it equal to the illegitimate overseas deduction is to be taken to have already been deducted for a previous accounting period of the company.

(8) 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 a territory outside the United Kingdom.

(9) A taxable period of the company is "permitted" for the purposes of paragraph (b) of subsection (8) 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.

Textual Amendments

F56 Words in s. 259JB(6) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 18(3)**

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259JC Counteraction where mismatch arises because of a relevant multinational and the UK is the parent jurisdiction

(1) This section applies where—

(a) the dual territory double deduction amount arises by reason of the company being a relevant multinational company, and

(b) the United Kingdom is the parent jurisdiction.

(2) If some or all of the dual territory double deduction amount is (in substance) deducted ("the impermissible overseas deduction"), for the purposes of a tax under the law of a territory outside the United Kingdom, from the income of any person, for any taxable period, that is not dual inclusion income of the company—

(a) the dual territory double deduction amount that may be deducted, for corporation tax purposes, from the company's income for the deduction period is reduced by the amount of the impermissible overseas deduction, and

(b) such just and reasonable adjustments (if any) as are required to give effect to that reduction, for corporation tax purposes, are to be made.

(3) Any adjustment required to be made under subsection (2) may be made (whether or not by an officer of Revenue and Customs)—

(a) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise, and

(b) despite any time limit imposed by or under any enactment.

(4) In this section "dual inclusion income" of the company means an amount that is both—

(a) ordinary income of the company for an accounting 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 a territory outside the United Kingdom.

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

(a) the period begins before the end of 12 months after the end of the accounting period of the company 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.

259JD Counteraction where mismatch arises because of a relevant multinational and is not counteracted in the parent jurisdiction

(1) This section applies where—

(a) the dual territory double deduction amount arises as a result of the company being a relevant multinational company,

(b) the United Kingdom is the PE jurisdiction, and

(c) it is reasonable to suppose that no provision of the law of the parent jurisdiction that is equivalent to section 259JC applies.

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(2) For corporation tax purposes, the dual territory double deduction amount may not be deducted from the company's income for the deduction period unless it is deducted from dual inclusion income of the company for that period.

(3) So much of the dual territory double deduction amount (if any) as, by virtue of subsection (2), cannot be deducted from the company's income for the deduction 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.

(4) If the Commissioners are satisfied that the company has ceased to be a relevant multinational company, any of the dual territory double deduction amount that has not been deducted from dual inclusion income in accordance with subsection (2) or (3) ("the stranded deduction") may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the company's taxable total profits of the accounting period in which it ceased to be a relevant multinational company.

(5) So much of the stranded deduction (if any) as cannot be deducted, in accordance with subsection (4), at step 2 in section 4(2) of CTA 2010 in calculating the company's taxable total profits of the accounting period in which the company ceased to be a relevant multinational company—

(a) is carried forward to subsequent accounting periods of the company, and

(b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.

(6) Subsection (7) applies if it is reasonable to suppose that all or part of the dual territory double deduction amount is (in substance) deducted ("the illegitimate overseas deduction"), under the law of a territory outside the United Kingdom, from income of any person **[**[F57]other than the company**]**, for a taxable period, that is not dual inclusion income of the company for an accounting period.

(7) For the purposes of determining how much of the dual territory double deduction amount may be deducted (if any) for the accounting period of the company in which the taxable period mentioned in subsection (6) ends, and any subsequent accounting periods of the company, an amount of it equal to the illegitimate overseas deduction is to be taken to have already been deducted for a previous accounting period of the company.

(8) 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 a territory outside the United Kingdom.

(9) A taxable period of the company is "permitted" for the purposes of paragraph (b) of subsection (8) 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—

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(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.

F58(10) **[** For the purposes of subsection (8)(b) the reference to ordinary income of the company for a permitted taxable period for the purposes of a tax charged under the law of a territory outside the United Kingdom is taken to include a reference to excessive PE inclusion income of the company.

(11) Section 259JE defines "excessive PE inclusion income" of the company for this purpose.**]**

Textual Amendments

F57 Words in s. 259JD(6) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 18(4)**

F58 S. 259JD(10)(11) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 13(2)**

[F59 259JE Meaning of excessive PE inclusion income

("1) In section 259JD(10), "excessive PE inclusion income" of the company means—

(a) where paragraph (a) of subsection (4) applies, the PE inclusion income of the company, or

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

(2) For this purpose, "PE inclusion income" of a company for an accounting period means an amount in respect of which conditions A and B are met.

(3) Condition A is that the amount is in respect of a transfer of money or money's worth from the company in the parent jurisdiction to the company in the United Kingdom that—

(a) is actually made, or

(b) is (in substance) treated as being made for corporation tax purposes.

(4) Condition B is that it is reasonable to suppose that—

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

(i) a reduction in the taxable profits of the company for a relevant taxable period, or

(ii) an increase in a loss made by the company for a relevant taxable period,

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

(b) those circumstances will result in such a reduction or increase for one or more relevant taxable periods, but the amount exceeds the aggregate effect on taxable profits.

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

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(a) any reductions, resulting from the circumstances giving rise to the amount, in the taxable profits of the company, for a relevant 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 relevant taxable period, for the purposes of a tax charged under the law of the parent jurisdiction, is increased as a result of the circumstances giving rise to the amount.

(6) For the purposes of subsections (4) and (5), any reduction in taxable profits or increase of losses is to be ignored in any case where tax is charged at a nil rate under the law of the parent jurisdiction.

(7) A taxable period of the company is "relevant" for the purposes of subsections (4) and (5) if—

(a) the period begins before the end of 12 months after the end of the accounting period mentioned in section 259JD(8)(a), or

(b) where the period begins after that, it is just and reasonable for the question of whether the circumstances giving rise to the amount will result in a reduction in taxable profits or an increase in a loss to be determined by reference to that taxable period rather than an earlier period.**]**

Textual Amendments

F59 S. 259JE inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 13(3)**

CHAPTER 11

IMPORTED MISMATCHES

Introduction

259K Overview of Chapter

(1) This Chapter contains provision denying deductions in connection with payments or quasi-payments that are made under, or in connection with, imported mismatch arrangements where the payer is within the charge to corporation tax for the payment period.

(2) Section 259KA contains the conditions that must be met for this Chapter to apply and defines "imported mismatch payment" and "imported mismatch arrangement".

(3) Section 259KB defines "dual territory double deduction", "excessive PE deduction" and "PE jurisdiction".

(4) Section 259KC contains provision for denying some or all of a relevant deduction in relation to an imported mismatch payment.

[F60](4A) **[** Section 259KD provides for relief where an amount is deducted from dual inclusion income.**]**

[Section 259KE sets a limit on reductions under section 259KC.**]**

***Status:** Point in time view as at 10/06/2021.*
***Changes to legislation:** There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 6A. (See end of Document for details)*

F61(4B)

F62(4C) **[** Section 259KF contains provision for cases also falling within Part 4 (transfer pricing).**]**

(5) See also section 259BB for the meaning of "payment", "quasi-payment", "relevant deduction", "payment period" and "payer".

Textual Amendments

F60 S. 259K(4A) inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 7 paras. 15**, 19(4)

F61 S. 259K(4B) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 20**

F62 S. 259K(4C) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 32**

Application of Chapter

259KA Circumstances in which the Chapter applies

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

(2) Condition A is that a payment or quasi-payment ("the imported mismatch payment") is made under, or in connection with, an arrangement ("the imported mismatch arrangement").

(3) Condition B is that, in relation to the imported mismatch payment, the payer ("P") is within the charge to corporation tax for the payment period.

(4) Condition C is that the imported mismatch arrangement is one of a series of arrangements.

(5) A "series of arrangements" means a number of arrangements that are each entered into (whether or not one after the other) in pursuance of, or in relation to, another arrangement ("the over-arching arrangement").

(6) Condition D is that—

(a) under an arrangement in the series other than the imported mismatch arrangement, there is a payment or quasi-payment ("the mismatch payment") in relation to which it is reasonable to suppose that there is or will be—

(i) a hybrid or otherwise impermissible deduction/non-inclusion mismatch (see section 259CB),

(ii) a hybrid transfer deduction/non-inclusion mismatch (see section 259DC),

(iii) a hybrid payer deduction/non-inclusion mismatch (see section 259EB),

(iv) a hybrid payee deduction/non-inclusion mismatch (see section 259GB),

(v) a multinational payee deduction/non-inclusion mismatch (see section 259HB),

(vi) a hybrid entity double deduction amount (see section 259IA(4)), or

(vii) a dual territory double deduction (see section 259KB), or

Status: *Point in time view as at 10/06/2021.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 6A. (See end of Document for details)*

(b) as a consequence of an arrangement in the series other than the imported mismatch arrangement, there is or will be an excessive PE deduction (see section 259KB),

and in this Chapter "the relevant mismatch" means the mismatch, amount or deduction concerned.

[F63(7) Condition E is that it is reasonable to suppose that the relevant mismatch is not capable of counteraction.

(7A) A relevant mismatch is capable of counteraction to the extent it is capable of being considered, for the purposes of determining the tax treatment of a person, other than P, under the law of a territory that is OECD mismatch compliant.

(7B) If a proportion of the relevant mismatch is not capable of being so considered under the law of any such territory—

(a) Condition E is met in relation to that proportion, and

(b) the remainder of the relevant mismatch is to be ignored for the purposes of this Part.

(7C) A determination about the extent to which a relevant mismatch is capable of being so considered is to be made on a just and reasonable basis.

(7D) A territory is OECD mismatch compliant if under the law of that territory effect is given to the Final Report on Neutralising the Effects of Hybrid Mismatch Arrangements published by the Organisation for Economic Cooperation and Development on 5 October 2015 or any replacement or supplementary publication (within the meaning of section 259BA(3)).]

F64(8) . . . .

(9) Condition G is that—

(a) subsection (6)(a) applies and P is in the same control group (see section 259NB) [F65as a payee], in relation to the mismatch payment, at any time in the period—

(i) beginning with the day the over-arching arrangement is made, and

(ii) ending with the last day of the payment period in relation to the imported mismatch payment,

(b) subsection (6)(b) applies and P is in the same control group as the company in relation to whom the excessive PE deduction arises at any time in that period, or

(c) the imported mismatch arrangement, or the over-arching arrangement, is a structured arrangement.

(10) The imported mismatch arrangement, or the over-arching arrangement, is a "structured arrangement" if it is reasonable to suppose that—

(a) the arrangement concerned is designed to secure the relevant mismatch, or

(b) the terms of the arrangement concerned share the economic benefit of the relevant mismatch between the parties to that arrangement or otherwise reflect the fact that the relevant mismatch is expected to arise.

(11) An arrangement may be designed to secure the relevant mismatch despite also being designed to secure any commercial or other objective.

Status: Point in time view as at 10/06/2021.
Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 6A. (See end of Document for details)

(12) Section 259KC contains provision for denying all or part of the relevant deduction in relation to the imported mismatch payment by reference to the relevant mismatch.

Textual Amendments

F63 S. 259KA(7)-(7D) substituted for s. 259KA(7) (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 21(2)**

F64 S. 259KA(8) omitted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by virtue of Finance Act 2021 (c. 26), **Sch. 7 para. 21(3)**

F65 Words in s. 259KA(9)(a) substituted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 21(4)**

259KB Meaning of "dual territory double deduction", "excessive PE deduction" and "PE jurisdiction"

(1) This section has effect for the purposes of this Chapter.

(2) A "dual territory double deduction" means an amount that can be deducted by a company both—

(a) from income for the purposes of a tax charged under the law of one territory, and

(b) from income for the purposes of a tax charged under the law of another territory.

(3) A "PE deduction" is an amount that—

(a) may (in substance) be deducted from a company's income for the purposes of calculating the company's taxable profits, for a taxable period, for the purposes of a tax that is charged on the company, under the law of a territory ("the PE jurisdiction"), by virtue of the company having a permanent establishment in that territory, and

(b) is in respect of a transfer of money or money's worth, from the company in the PE jurisdiction to the company in another territory ("the parent jurisdiction") in which it is resident for the purposes of a tax, that—

(i) is actually made, or

(ii) is (in substance) treated as being made for tax purposes.

F66(3A) [For the purposes of this section a "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.]

(4) A PE deduction is "excessive" so far as it exceeds 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.

[F67] (4A) **[** For the purposes of subsection (4) 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.**]**

(5) A taxable period of the company is "permitted" for the purposes of subsection (4) if—

(a) the period begins before the end of 12 months after the end of the taxable period mentioned in subsection (3)(a), 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 subsection (4), 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.

Textual Amendments

F66 S. 259KB(3A) inserted (retrospectively) by Finance (No. 2) Act 2017 (c. 32), **s. 24(9)**(13)

F67 S. 259KB(4A) inserted (with effect in accordance with Sch. 7 para. 19(1) of the amending Act) by Finance Act 2018 (c. 3), **Sch. 7 para. 6**

Counteraction

259KC Denial of the relevant deduction in relation to the imported mismatch payment

(1) If, in addition to the imported mismatch payment, there are, or will be, one or more relevant payments in relation to the relevant mismatch, subsection (3) applies.

(2) Otherwise, for corporation tax purposes, in relation to the imported mismatch payment, the relevant deduction that may be deducted from P's income for the payment period is to be reduced by the amount of the relevant mismatch.

[F68] (2A) **[** But any reduction under this section has effect subject to section 259KD (deductions from dual inclusion income)**][**[F69]and section 259KE (limit on reduction under section 259KC)**]**.

(3) For corporation tax purposes, where this subsection applies, in relation to the imported mismatch payment, the relevant deduction that may be deducted from P's income for the payment period is to be reduced by P's share of the relevant mismatch.

(4) P's share of the relevant mismatch is to be determined by apportioning the relevant mismatch between P and every payer in relation to a relevant payment on a just and reasonable basis—

(a) where **[**[F70]section 259KA(6)(a)**]** applies, having regard (in particular) to the extent to which the imported mismatch payment and each relevant payment funds (directly or indirectly) the mismatch payment, or

(b) where the relevant mismatch is an excessive PE deduction, having regard (in particular) to—

(i) if the transfer of money or money's worth mentioned in section 259KB(3)(b) is actually made, the extent to which the

imported mismatch payment and each relevant payment funds (directly or indirectly) the transfer, or

(ii) if the transfer of money or money's worth mentioned in section 259KB(3)(b) is (in substance) treated as being made, the extent to which the imported mismatch payment and each relevant payment would have funded (directly or indirectly) the transfer if it had actually been made.

(5) For the purposes of subsection (4)(a) and (b)(i), the imported mismatch payment is to be taken to fund the mismatch payment or transfer to the extent that the mismatch payment or transfer cannot be shown instead to be funded (directly or indirectly) by one or more relevant payments.

(6) For the purposes of subsection (4)(b)(ii), it is to be assumed that the imported mismatch payment would have funded the transfer if it had actually been made to the extent that it cannot be shown by P that, if it had been made, the transfer would have instead been funded (directly or indirectly) by one or more relevant payments.

(7) For the purposes of this section, a payment or quasi-payment, other than the imported mismatch payment or any mismatch payment, is a “relevant payment” in relation to the relevant mismatch if it is made under an arrangement in the series of arrangements mentioned in section 259KA(4) and—

(a) where **[**[F71]section 259KA(6)(a)**]** applies, it funds (directly or indirectly) the mismatch payment,

(b) where the relevant mismatch is an excessive PE deduction and the transfer of money or money's worth mentioned in section 259KB(3)(b) is actually made, it funds (directly or indirectly) that transfer, or

(c) where the relevant mismatch is an excessive PE deduction and the transfer of money or money's worth mentioned in section 259KB(3)(b) is (in substance) treated as being made, it would have funded (directly or indirectly) that transfer had that transfer actually been made.

(8) In proceedings before a court or tribunal in connection with this section—

(a) in relation to subsection (1), it is for P to show that, in addition to the imported mismatch payment, there are one or more relevant payments in relation to the relevant mismatch, and

(b) in relation to subsection (5), it is for P to show that the mismatch payment or transfer is funded (directly or indirectly) by one or more relevant payments instead of by the imported mismatch payment.

Textual Amendments

F68 S. 259KC(2A) inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 7 paras. 16(2)**, 19(4)

F69 Words in s. 259KC(2A) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 22**

F70 Words in s. 259KC(4)(a) substituted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 7 paras. 16(3)**, 19(4)

F71 Words in s. 259KC(7)(a) substituted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 7 paras. 16(3)**, 19(4)

Status: *Point in time view as at 10/06/2021.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 6A. (See end of Document for details)*

[F72 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

(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.**]**

Textual Amendments

F72 S. 259KD inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 7 paras. 17**, 19(4)

[F73 259KE Limit on reduction under section 259KC

(1) This section applies where, in relation to the imported mismatch payment, the relevant deduction that may be deducted from P's income for a payment period is to be reduced under section 259KC.

(2) The reduction is not to exceed the amount that the relevant mismatch would have been if the amount of the mismatch payment had been equal to the amount of the imported mismatch payment.**]**

Textual Amendments

F73 S. 259KE inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 23**

[F74 259KF Provision for cases within Part 4

(1) This section applies where, in calculating the profits and losses of P for tax purposes, the amount to be deducted in respect of the imported mismatch payment is required to be reduced (whether or not to nil) under section 147(3) or (5) (tax calculations to be based on arm's length, not actual, provision).

(2) For the purposes of section 259KC(2), the amount of the relevant mismatch is to be determined as if the mismatch payment was reduced by the same proportion as the reduction mentioned in subsection (1).

(3) For the purposes of section 259KC(3)—

(a) the amount of the relevant mismatch is taken to be the amount it would have been had the arm's length provision been made or imposed instead of the actual provision in relation to the imported mismatch payment (making such assumptions as to the amount of the mismatch payment as are reasonable in the circumstances), and

(b) P's share of the relevant mismatch is to be determined accordingly.

(4) In subsection (3) "the arm's length provision" and "the actual provision" are to be construed in accordance with section 147(1).**]**

Status: Point in time view as at 10/06/2021.
Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 6A. (See end of Document for details)

Textual Amendments

F74 S. 259KF inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 33**

CHAPTER 12

ADJUSTMENTS IN LIGHT OF SUBSEQUENT EVENTS ETC

259L Adjustments where suppositions cease to be reasonable

(1) Where—

(a) a reasonable supposition is made for the purposes of any provision of this Part, and

(b) the supposition turns out to be mistaken or otherwise ceases to be reasonable,

such consequential adjustments as are just and reasonable may be made.

(2) The adjustments may be made (whether or not by an officer of Revenue and Customs) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.

(3) But the power to make adjustments by virtue of this section is subject to any time limit imposed by or under any enactment other than this Part.

(4) No adjustment is to be made under this section on the basis that an amount of ordinary income arises, as a result of a payment or quasi-payment, to a payee after that payee's last permitted taxable period in relation to the payment or quasi-payment (see section 259LA, which makes provision about certain such cases).

259LA Deduction from taxable total profits where an amount of ordinary income arises late

(1) This section applies where—

(a) a relevant deduction in respect of a payment or quasi-payment is reduced by section 259CD, 259DF, 259GC or 259HC or by more than one of those sections,

(b) no other provision of this Part, or any equivalent provision of the law of a territory outside the United Kingdom, applies or will apply to the tax treatment of any person in respect of the payment or quasi-payment,

(c) the section or sections had effect because it was reasonable to suppose that the relevant deduction exceeded, or would exceed, the sum of the amounts of ordinary income arising, by reason of the payment or quasi-payment, to each payee for a permitted taxable period, and

(d) an amount of ordinary income ("the late income") arises—

(i) by reason of the payment or quasi-payment, but

(ii) not as a consequence of any provision of this Part or any equivalent provision of the law of a territory outside the United Kingdom,

to a payee for a taxable period ("the late period") that is not a permitted taxable period.

Status: Point in time view as at 10/06/2021.
Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 6A. (See end of Document for details)

(2) An amount equal to the late income may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the payer's taxable total profits of the accounting period in which the late period ends.

(3) So much of that amount (if any) as cannot be deducted, in accordance with subsection (2), at step 2 in section 4(2) of CTA 2010 in calculating the taxable total profits of the accounting period in which the late period ends—

(a) is carried forward to subsequent accounting periods of the payer, and

(b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.

(4) But the total amount deducted from taxable total profits under this section, in relation to a payment or quasi-payment, may not exceed the total amount by which the relevant deduction is reduced as mentioned in (1)(a).

(5) In this section "permitted taxable period"—

(a) where the relevant deduction was reduced under section 259CD, has the meaning given by section 259CC(2),

(b) where the relevant deduction was reduced under section 259DF, has the meaning given by section 259DD(2),

(c) where the relevant deduction was reduced under section 259GC, has the meaning given by section 259GB(6),

(d) where the relevant deduction was reduced under section 259HC, has the meaning given by section 259HB(4), or

(e) where the relevant deduction was reduced under two or more of the sections mentioned in the preceding paragraphs of this subsection, includes any taxable period that is a permitted period under a provision mentioned in the paragraphs concerned.

[F75 259LB Adjustments in light of later treatment for accounting purposes

(1) This section applies where—

(a) a payment or quasi-payment gives rise to a debit of a company that is recognised for accounting purposes,

(b) a relevant deduction of the company in respect of some or all of the debit is reduced by any provision of this Part,

(c) there is a reversal of some or all of the debit by a credit of the company that is recognised for accounting purposes after the end of the payment period, and

(d) the credit is brought into account for corporation tax purposes.

(2) Such consequential adjustments as are just and reasonable may be made in respect of so much of the debit as gives rises to the relevant deduction and as is reversed by the credit.

(3) The adjustments may be made (whether or not by an officer of Revenue and Customs) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.

(4) The power to make adjustments by virtue of this section may be exercised despite any time limit imposed by or under any enactment.**]**

Status: Point in time view as at 10/06/2021.
Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 6A. (See end of Document for details)

Textual Amendments

F75 S. 259LB inserted (retrospectively) by Finance Act 2018 (c. 3), **Sch. 7 paras. 18**, 19(4)

[F76CHAPTER 12A

ALLOCATION OF DUAL INCLUSION INCOME WITHIN GROUP

Textual Amendments

F76 Pt. 6A Ch. 12A inserted (with effect in accordance with Sch. 7 para. 40 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 15(3)**

Introduction

259ZM Overview of Chapter

(1) This Chapter contains provision that allows surplus dual inclusion income to be allocated within a group of companies.

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

(3) Subsection (2) of that section defines “the DII surplus” and subsection (3) of that section defines “the DII shortfall”.

(4) Sections 259ZMB to 259ZMD contain provision allowing the unused part of the DII surplus of one company to be treated as dual inclusion income of another company in the same group, where it can be matched against the unused part of the DII shortfall of the other company.

(5) Section 259ZME identifies when companies are in the same group.

Application of Chapter

259ZMA Circumstances in which Chapter applies

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

(2) Condition A is that, for an accounting period (“the surplus period”), the dual inclusion income of a company (“company A”) exceeds its counteraction amount.

In this Chapter, the amount of the excess is referred to as “the DII surplus”.

(3) Condition B is that, for an accounting period (“the shortfall period”), the counteraction amount of another company (“company B”) exceeds its dual inclusion income.

In this Chapter, the amount of the excess is referred to as “the DII shortfall”.

(4) See section 259ZMF for the meanings of “dual inclusion income” and “counteraction amount”.

(5) Condition C is that there is a period ("the overlapping period") that is common to both the surplus period and the shortfall period (and see subsections (8) and (9)).

(6) Condition D is that there is a time during the overlapping period when both company A and company B are within the charge to corporation tax.

(7) Condition E is that there is a time during the overlapping period when company A and company B are members of the same group of companies (see section 259ZME).

(8) Subsection (9) applies if, during any part of the overlapping period—
(a) either company A or company B is not within the charge to corporation tax, or
(b) company A and company B are not members of the same group of companies.

(9) That part is treated as not forming part of the overlapping period but instead as—
(a) forming part of the surplus period that is not included in the overlapping period, and
(b) forming part of the shortfall period that is not included in the overlapping period.

Allocation of DII surplus

259ZMB Claims for allocation of DII surplus

(1) Company B may make a claim (an "allocation claim") for all or part of the unused part of the DII surplus of company A for the overlapping period (see section 259ZMC) to be allocated to company B for the shortfall period, if the following requirements are met.

Requirement 1 Company A consents to the allocation claim.

Requirement 2 The allocation claim identifies the amount of the DII surplus to which it relates.

Requirement 3 Company B has an amount of ordinary income for the shortfall period ("matchable income") that—
(a) is not dual inclusion income, and
(b) is equal to or exceeds the amount of the DII surplus to which the allocation claim relates.

Requirement 4 The allocation claim identifies the amount of matchable income to which the claim relates.

Requirement 5 The amount of matchable income to which the claim relates—
(a) is equal to the amount of the DII surplus to which the claim relates, and
(b) does not exceed the unused part of the DII shortfall of company B for the shortfall period (see section 259ZMD).

(2) If company B makes an allocation claim—
(a) the amount of company A's dual inclusion income for the surplus period is reduced by the amount of matchable income to which the claim relates, and
(b) the amount of matchable income to which the claim relates is treated in relation to company B as if the following assumptions were made.

(3) The assumptions are that—
(a) things done by or to company A in relation to that amount are treated as done by or to company B, and

(b) all other factual circumstances (or circumstances treated as existing as a result of any provision made by this Part) in relation to that amount are unchanged.

259ZMC The unused part of the DII surplus

(1) This section identifies the unused part of the DII surplus of company A for the overlapping period, for the purposes of an allocation claim made by company B ("the current allocation claim").

(2) The unused part of the DII surplus of company A for the overlapping period is the amount equal to—

(a) the DII surplus for the overlapping period (see subsection (3)), less

(b) the amount of prior allocations for that period (see subsections (4) to (7)).

(3) To determine the DII surplus for the overlapping period—

(a) take the proportion of the surplus period included in the overlapping period, and

(b) apply that proportion to the DII surplus for the surplus period.

The DII surplus for the overlapping period is the amount given as a result of paragraph (b).

(4) To determine the amount of prior allocations for the overlapping period—

(a) identify any prior allocation claims for the purposes of this section (see subsection (5)), and

(b) take the steps set out in subsection (6) in relation to each such claim.

The amount of prior allocations for the overlapping period is the total of the previously used amounts given at Step 3 in subsection (6) for all the prior allocation claims.

(5) An allocation claim is a prior allocation claim for the purposes of this section if—

(a) it is an allocation claim made by a company in respect of all or part of the DII surplus of company A for the surplus period,

(b) it is made before the current allocation claim, and

(c) it has not been withdrawn.

(6) These are the steps referred to in subsection (4)(b) to be taken in relation to each prior allocation claim.

Step 1 Identify the overlapping period for the prior allocation claim.

Step 2 Identify any period that is common to the overlapping period for the current allocation claim and the overlapping period for the prior allocation claim. If there is a common period, go to Step 3. If there is no common period, there is no previously allocated amount in relation to the prior allocation claim (and ignore Step 3).

Step 3 Determine the previously allocated amount of the DII surplus in relation to the prior allocation claim (see subsection (7)).

(7) To determine the previously allocated amount of the DII surplus in relation to the prior allocation claim—

(a) take the proportion of the overlapping period for the prior allocation claim that is included in the common period identified at Step 2 in subsection (6) in relation to that claim, and

(b) apply that proportion to the amount of the DII surplus allocated on the prior allocation claim.

The previously allocated amount of the DII surplus in relation to the prior allocation claim is the amount given as a result of paragraph (b).

(8) If two or more allocation claims are made at the same time, for the purposes of this section treat the claims as made—

(a) in such order as the companies making them may jointly elect, or

(b) if no such election is made, in such order as an officer of Revenue and Customs may direct.

(9) 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.

(10) If the use of the proportion mentioned in subsection (3) or (7) would, in the circumstances of a particular case, produce a result that is unjust or unreasonable, the proportion is to be modified so far as necessary to produce a result that is just and reasonable.

259ZMD The unused part of the DII shortfall

(1) This section identifies the unused part of the DII shortfall of company B for the shortfall period, for the purposes of an allocation claim made by company B ("the current allocation claim").

(2) The unused part of the DII shortfall of company B for the shortfall period is the amount equal to—

(a) the DII shortfall for the shortfall period, less

(b) the amount of prior matches for the shortfall period (see subsections (3) to (5)).

(3) To determine the amount of prior matches for the shortfall period—

(a) identify any prior allocation claims for the purposes of this section (see subsection (4)), and

(b) determine the previously matched amount of the DII shortfall in relation to each prior allocation claim (see subsection (5)).

The amount of prior matches for the shortfall period is the total of the previously matched amounts of the DII shortfall in relation to all the prior allocation claims.

(4) An allocation claim is a prior allocation claim for the purposes of this section if—

(a) it is an allocation claim made by company B for the shortfall period,

(b) it is made before the current allocation claim, and

(c) it has not been withdrawn.

(5) The previously matched amount of the DII shortfall in relation to a prior allocation claim is the amount that is treated as dual inclusion income of company B for the shortfall period as a result of the claim (see section 259ZMB(3)(a)).

(6) If two or more allocation claims are made at the same time, for the purposes of this section treat the claims as made—

(a) in such order as company B may elect, or

Status: *Point in time view as at 10/06/2021.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 6A. (See end of Document for details)*

(b) if no such election is made, in such order as an officer of Revenue and Customs may direct.

(7) 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.

Groups

259ZME Groups of companies

(1) For the purposes of this Chapter, company A and company B are members of the same group of companies if—
(a) one is a 75% subsidiary of the other, or
(b) both are 75% subsidiaries of a third company.

(2) In subsection (1), "75% subsidiary" has the same meaning as in Part 5 of CTA 2010 (group relief) (see section 151 of that Act).

(3) Sections 154, 155A, 155B and 156 of CTA 2010 (members of group of companies: arrangements for transfers of companies) apply for the purposes of this Chapter as they apply for the purposes of Part 5 of CTA 2010, but as if references to a surrenderable amount were to the DII surplus.

"Dual inclusion income" and "counteraction amount"

259ZMF Meaning of "dual inclusion income" and "counteraction amount"

(1) This section applies for the purposes of this Chapter.

(2) The "dual inclusion income" of a company for an accounting period means the amount of any income that is dual inclusion income of the company for that period for the purposes of any provision of this Part.

(3) An amount of income that is dual inclusion income of a company for the purposes of more than one provision of this Part is not counted more than once for the purposes of subsection (2).

(4) The "counteraction amount" of a company for an accounting period means the total of all the following amounts that are applicable to the company for that period—
(a) the restricted deduction, within the meaning given by section 259EC(2);
(b) where section 259ED applies and there is only one payee, the relevant amount, within the meaning given by section 259ED(3);
(c) where section 259ED applies and there is more than one payee, the payee's share of the relevant amount, within the meaning given by section 259ED(3) and (6);
(d) the excessive PE deduction, within the meaning given by section 259FA(8);
(e) where section 259IB applies, the hybrid entity double deduction amount, within the meaning given by section 259IA(4);
(f) where section 259IC applies, the restricted deduction, within the meaning given by section 259IC(3);

Status: Point in time view as at 10/06/2021.
Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 6A. (See end of Document for details)

(g) the dual territory double deduction amount, within the meaning given by section 259JA(5), reduced by the amount of the impermissible overseas deduction (if any), within the meaning given by section 259JC(2);

(h) a dual territory double deduction, within the meaning given by section 259KB(2);

(i) an excessive PE deduction, within the meaning given by section 259KB(3) to (5).]

CHAPTER 13

ANTI-AVOIDANCE

259M Countering the effect of avoidance arrangements

(1) This section applies where—

(a) relevant avoidance arrangements exist,

(b) as a result of those arrangements, any person (whether party to the arrangements or not) would, apart from this section, obtain a relevant tax advantage, and

(c) that person is—

(i) within the charge to corporation tax at the time the person would obtain the relevant tax advantage, or

(ii) would be within the charge to corporation tax at that time but for the relevant avoidance arrangements.

(2) The relevant tax advantage is to be counteracted by making such adjustments to the person's treatment for corporation tax purposes as are just and reasonable.

(3) Any adjustments required to be made under this section (whether or not by an officer of Revenue and Customs) may be made by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.

(4) A person obtains a "relevant tax advantage" if—

(a) the person avoids, to any extent, any provision of this Part, or any equivalent provision of the law of a territory outside the United Kingdom, restricting whether or how that person may make a deduction from income for the purposes of calculating taxable profits, F77...

(b) the person avoids, to any extent, an amount being treated as income of that person under any provision of this Part or any equivalent provision of the law of a territory outside the United Kingdom[F78, or

(c) the person does anything which, to any extent, results in an amount being treated as dual inclusion income of that person under any provision of this Part.]

(5) "Relevant avoidance arrangements" means arrangements the main purpose, or one of the main purposes, of which is to enable any person to obtain a relevant tax advantage.

(6) But arrangements are not "relevant avoidance arrangements" if the obtaining of the relevant tax advantage can reasonably be regarded as consistent with the principles on which the provisions of this Part, or the equivalent provisions under the law of a

Status: Point in time view as at 10/06/2021.
Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 6A. (See end of Document for details)

territory outside the United Kingdom, that are relevant to the arrangements are based (whether express or implied) and the policy objectives of those provisions.

(7) For the purposes of determining the principles and policy objectives mentioned in subsection (6), regard may, where appropriate, be had to the Final Report on Neutralising the Effects of Hybrid Mismatch Arrangements published by the Organisation for Economic Cooperation and Development ("OECD") on 5 October 2015 or any replacement or supplementary publication.

(8) In subsection (7) "replacement or supplementary publication" means any document that is approved and published by the OECD in place of, or to update or supplement, the report mentioned in that subsection (or any replacement of, or supplement to, it).

Textual Amendments

F77 Word in s. 259M(4) omitted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by virtue of Finance Act 2021 (c. 26), **Sch. 7 para. 14**

F78 S. 259M(4)(c) and word inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 14**

[F79CHAPTER 13A

SPECIAL PROVISION CONCERNING TRANSPARENT FUNDS

Textual Amendments

F79 Pt. 6A Ch. 13A inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 35(3)**

259MA Meaning of "transparent fund"

(1) In this Chapter "transparent fund" means a collective investment scheme, or an AIF (that is not a collective investment scheme), if—

(a) were all of the profits or income of the fund to arise from sources inside the United Kingdom and

(b) were all of its participants within the charge to income tax,

its profits or income would be profits or income of its participants for the purposes of that tax.

(2) In this section—

"AIF" has the meaning given by regulation 3 of the Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773);

"collective investment scheme" has the meaning given by section 235 of the Financial Services and Markets Act 2000;

"participant", in relation to a transparent fund, means a person who—

(a) takes part in the arrangements constituting the fund, whether by becoming the owner of, or of any part of, the property that is the subject of the arrangements or otherwise, and

(b) does not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions.

259MB Application of Chapters 3, 4, 5 and 7

(1) This section applies where—

(a) Chapter 3, 4, 5 or 7 applies in respect of a payment or quasi-payment,

(b) the relevant structured arrangement condition is not met, and

(c) it is reasonable to suppose that a proportion of the payment or quasi-payment is attributable to a person as a result of that person's interest (direct or indirect) in a transparent fund that is the primary fund in relation to that person.

(2) For the purposes of this section, a proportion of a payment or quasi-payment is attributable to a person if, as a result of that payment or quasi-payment—

(a) ordinary income arises to that person, or

(b) would arise if the person were resident for tax purposes in the United Kingdom.

(3) The primary fund in relation to a person is—

(a) where the income arises or would arise because of an indirect interest the person has in a transparent fund as a result of another transparent fund, or a series of transparent funds, having an interest in that first fund, that first fund, or

(b) where the income arises or would arise because of a direct or indirect interest the person has in a single transparent fund, that fund.

(4) The relevant structured arrangement condition is the condition—

(a) where Chapter 3 applies, in section 259CA(6)(c),

(b) where Chapter 4 applies, in section 259DA(6)(c),

(c) where Chapter 5 applies, in section 259EA(7)(c), and

(d) where Chapter 7 applies, in section 259GA(7)(c).

(5) The Chapter in question applies subject to subsection (6).

(6) If it is reasonable to suppose that the proportion of the payment or quasi-payment that is attributable to a person as a result of the person's interest in the primary fund is less than 10% of the relevant amount, that proportion is to be ignored for the purposes of determining the extent of a mismatch under the Chapter in question.

(7) For the purposes of subsection (6) "the relevant amount" means the amount of ordinary income that it would, on the relevant assumption, have been reasonable to expect to arise to the primary fund as a result of—

(a) in the case of a payment, the payment, or

(b) in the case of a quasi payment, the circumstances giving rise to the relevant deduction (see section 259BB(2)).

(8) The relevant assumption is that the primary fund were a person to whom ordinary income would arise as a result of that payment or those circumstances.

(9) Where a person to whom a proportion of the payment or quasi-payment is attributable as a result of the person's interest in the primary fund is connected (within the meaning given by section 1122 of CTA 2010, ignoring subsections (4) and (7) of that section) to another person to whom a proportion is attributable as a result of that person's interest in that same fund, the rights and interests of those persons are to be aggregated (and accordingly if the proportion attributable between them is 10% or more of the relevant amount, that proportion is not to be ignored).

Status: Point in time view as at 10/06/2021.
Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 6A. (See end of Document for details)

259MC Application of Chapter 9

(1) This section applies where—

(a) Chapter 9 applies in relation to a hybrid entity double deduction amount (see section 259IA(4)) in respect of an investor in a hybrid entity,

(b) the condition in section 259IA(6)(b) is not met, and

(c) that investor in the hybrid entity is an investor in it as a result of an interest (direct or indirect) it has in a transparent fund ("the relevant fund") that directly holds an interest in—

(i) the hybrid entity, or

(ii) another entity that is not a transparent fund and which holds a direct or indirect interest in the hybrid entity.

(2) Chapter 9 applies subject to subsection (3).

(3) If it is reasonable to suppose that—

(a) some or all of the hybrid entity double deduction amount that relates to the investor arises as a result of the investor's interest in the relevant fund, and

(b) the amount that arises as a result of that interest ("the relevant amount") is less than 10% of the potential double deduction amount,

the relevant amount is to be ignored for the purposes of determining the extent of a mismatch under that Chapter.

(4) In this section "potential double deduction amount" means the hybrid double deduction amount that would arise in relation to the relevant fund if it were an investor in the hybrid entity.

(5) Where the investor is connected (within the meaning given by section 1122 of CTA 2010, ignoring subsections (4) and (7) of that section) to another investor with an interest in the relevant fund, the rights and interests of those investors are to be aggregated (and accordingly, if the sum of the relevant amounts in respect of each of them is 10% or more of the potential double deduction amount, that proportion is not to be ignored).

259MD Application of Chapter 11

(1) Subsection (2) applies where—

(a) Chapter 11 applies as a result of sub-paragraph (i), (ii), (iii) or (iv) of section 259KA(6)(a) applying as a result of a payment or quasi-payment to which section 259MB would apply if the Chapter corresponding to that sub-paragraph applied in relation to that payment or quasi-payment, and

(b) the condition in section 259KA(9)(c) is not met.

(2) Where this subsection applies, section 259MB(6) applies for the purposes of determining the extent of a relevant mismatch under Chapter 11.

(3) The Chapters corresponding to the sub-paragraphs of section 269KA(6)(a) mentioned in subsection (1) are as follows—

Sub-paragraph (i)	Chapter 3
Sub-paragraph (ii)	Chapter 4
Sub-paragraph (iii)	Chapter 5

Sub-paragraph (iv)	Chapter 7.

(4) Subsection (5) applies where—

(a) Chapter 11 applies as a result of section 259KA(6)(a)(vi) applying as a result of a hybrid double deduction amount to which section 259MC would apply if Chapter 9 applied in relation to that amount, and

(b) the condition in section 259KA(9)(c) is not met.

(5) Where this subsection applies, section 259MC(3) applies for the purposes of determining the extent of a relevant mismatch under Chapter 11.]

CHAPTER 14

INTERPRETATION

Financial instruments

259N Meaning of "financial instrument"

(1) A "financial instrument" means—

(a) an arrangement profits or deficits arising from which would, on the assumption that the person to whom they arise is within the charge to corporation tax, fall to be brought into account for corporation tax purposes in accordance with Part 5 or 6 of CTA 2009 (loan relationships and relationships treated as loan relationships),

(b) a contract profits or losses arising from which would, on the assumption that the person to whom they arise is within the charge to corporation tax, fall to be brought into account for corporation tax purposes in accordance with Part 7 of CTA 2009 (derivative contracts),

(c) a type 1, type 2 or type 3 finance arrangement for the purposes of Chapter 2 of Part 16 of CTA 2010 (factoring of income etc: finance arrangements),

(d) a share forming part of a company's issued share capital or any arrangement that provides a person with economic rights corresponding to those provided by holding such a share, or

(e) anything else that is a financial instrument.

(2) In subsection (1)(e) "financial instrument" has the meaning that it has for the purposes of UK generally accepted accounting practice.

(3) But "financial instrument" does not include—

(a) a hybrid transfer arrangement (within the meaning given by section 259DB), or

[F80(b) anything of a description specified in regulations made by the Treasury.]

F81(4) . . . .

Textual Amendments

F80 S. 259N(3)(b) substituted (with effect in accordance with s. 19(8)(9) of the amending Act) by Finance Act 2019 (c. 1), **s. 19(4)(a)**

Status: *Point in time view as at 10/06/2021.*
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F81 S. 259N(4) omitted (with effect in accordance with s. 19(8)(9) of the amending Act) by virtue of Finance Act 2019 (c. 1), **s. 19(4)(b)**

Relevant investment funds

259NA Meaning of "relevant investment fund"

(1) "Relevant investment fund" means—

(a) an open-ended investment company within the meaning of section 613 of CTA 2010,

(b) an authorised unit trust within the meaning of section 616 of that Act, or

(c) an offshore fund within the meaning of section 354 of this Act (see section 355),

which meets the genuine diversity of ownership condition (whether or not a clearance has been given to that effect).

(2) "The genuine diversity of ownership condition" means—

(a) in the case of an offshore fund, the genuine diversity of ownership condition in regulation 75 of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001), and

(b) in the case of an open-ended investment company or an authorised unit trust, the genuine diversity of ownership condition in regulation 9A of the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964).

Control groups and related persons

259NB Control groups

(1) A person ("A") is in the same control group as another person ("B")—

(a) throughout any period for which they are consolidated for accounting purposes,

(b) on any day on which the participation condition is met in relation to them, or

(c) on any day on which the 50% investment condition is met in relation to them.

(2) A and B are consolidated for accounting purposes for a period if—

(a) their financial results for the period are required to be comprised in group accounts,

(b) their financial results for the period would be required to be comprised in group accounts but for the application of an exemption, or

(c) their financial results for the period are in fact comprised in group accounts.

(3) In subsection (2), "group accounts" means accounts prepared under—

(a) section 399 of the Companies Act 2006, or

(b) any corresponding provision of the law of a territory outside the United Kingdom.

(4) The participation condition is met in relation to A and B ("the relevant parties") on a day if, within the period of 6 months beginning with the day—

(a) one of the relevant parties directly or indirectly participates in the management, control or capital of the other, or

(b) the same person or persons directly or indirectly participate in the management, control or capital of each of the relevant parties.

(5) For the interpretation of subsection (4), see sections 157(1), 158(4), 159(1) and 160(1) (which have the effect that references in subsection (4) to direct or indirect participation are to be read in accordance with provisions of Chapter 2 of Part 4).

(6) The 50% investment condition is met in relation to A and B if—

(a) A has a 50% investment in B, or

(b) a third person has a 50% investment in each of A and B.

(7) Section 259ND applies for the purposes of determining whether a person has a "50% investment" in another person.

259NC Related persons

(1) Two persons are "related" on any day that—

(a) they are in the same control group (see section 259NB), or

(b) the 25% investment condition is met in relation to them.

(2) The 25% investment condition is met in relation to a person ("A") and another person ("B") if—

(a) A has a 25% investment in B, or

(b) a third person has a 25% investment in each of A and B.

(3) Section 259ND applies for the purposes of determining whether a person has a "25% investment" in another person.

Modifications etc. (not altering text)

C1 S. 259NC applied by 2010 c. 4, s. 356OT(6) (as inserted (with effect in accordance with s. 81 of the amending Act) by Finance Act 2016 (c. 24), **s. 77(1)** (and also with effect in accordance with Finance (No. 2) Act 2017 (c. 32), s. 39(1)(2)))

C2 S. 259NC applied by 2007 c. 3, s. 517U(6) (as inserted (with effect in accordance with s. 82 of the amending Act) by Finance Act 2016 (c. 24), **s. 79(1)** (and also with effect in accordance with Finance (No. 2) Act 2017 (c. 32), s. 39(1)(2)))

259ND Meaning of "50% investment" and "25% investment"

(1) Where this section applies for the purposes of determining whether a person has a "50% investment" in another person for the purposes of section 259NB(6), references in this section to X% are to be read as references to 50%.

(2) Where this section applies for the purposes of determining whether a person has a "25% investment" in another person for the purposes of section 259NC(2), references in this section to X% are to be read as references to 25%.

(3) A person ("P") has an X% investment in a company ("C") if it is reasonable to suppose that—

(a) P possesses or is entitled to acquire X% or more of the share capital or issued share capital of C,

(b) P possesses or is entitled to acquire X% or more of the voting power in C, or

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Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 6A. (See end of Document for details)

(c) if the whole of C's share capital were disposed of, P would receive (directly or indirectly and whether at the time of disposal or later) X% or more of the proceeds of the disposal.

(4) A person ("P") has an X% investment in another person ("Q") if it is reasonable to suppose that—

(a) if the whole of Q's income were distributed, P would receive (directly or indirectly and whether at the time of the distribution or later) X% or more of the distributed amount, or

(b) in the event of a winding-up of Q or in any other circumstances, P would receive (directly or indirectly and whether or not at the time of the winding-up or other circumstances or later) X% or more of Q's assets which would then be available for distribution.

(5) In this section, references to a person receiving any proceeds, amount or assets include references to the proceeds, amount or assets being applied (directly or indirectly) for that person's benefit.

(6) For the purposes of subsections (3) and (4), in determining what percentage investment a person ("P") has in another person ("U"), where P acts together with a third person ("T") in relation to U, P is to be taken to have all of T's rights and interests in relation to U.

[F82(7) P is to be taken to "act together" with T in relation to U if (and only if) subsection (7A) or (7B) applies.

(7A) This subsection applies if—

(a) P and T are party to a partnership agreement that—

(i) it is reasonable to suppose is designed to affect the value of any of T's rights or interest in relation to U, or

(ii) relates to the exercise of any of T's rights in relation to U, or

(b) the same person manages—

(i) some or all of P's rights or interests in relation to U, and

(ii) some or all of T's rights or interests in relation to U.

(7B) This subsection applies if P has a relevant investment in U and—

(a) P and T are connected (within the meaning given by section 163),

(b) for the purposes of influencing the conduct of U's affairs—

(i) P is able to secure that T acts in accordance with P's wishes,

(ii) T can reasonably be expected to act, or typically acts, in accordance with P's wishes,

(iii) T is able to secure that P acts in accordance with T's wishes, or

(iv) P can reasonably be expected to act, or typically acts, in accordance with T's wishes, or

(c) P and T are party to any arrangement that—

(i) it is reasonable to suppose is designed to affect the value of any of T's rights or interests in relation to U, or

(ii) relates to the exercise of any of T's rights in relation to U.

(7C) To determine whether P has a "relevant investment" in U at a particular time, subsections (3) and (4) apply but as if—

(a) for "an X%", in both places, there were substituted " a relevant ", and

(b) for "X% or more", in each place, there were substituted " greater than 5% ".

(7D) For that purpose—

(a) subsection (6) is to be ignored, and

(b) P's rights and interests are to be aggregated with the rights and interests of persons connected to P (within the meaning given by section 1122 of CTA 2010, ignoring subsection (4) of that section).**]**

(8) [F83]... P does not "act together" with T in relation to U under **[**[F84]paragraph (b) of subsection (7A)**]** where—

(a) the person who manages the rights or interests of P mentioned in sub-paragraph (i) of that paragraph, does so as the operator of a collective investment scheme,

(b) that person manages the rights or interests of T mentioned in sub-paragraph (ii) of that paragraph as the operator of a different collective investment scheme, and

(c) the Commissioners are satisfied that the management of the schemes is not coordinated for the purpose of influencing the conduct of U 's affairs.

(9) In subsection (8) "collective investment scheme" and "operator" have the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see sections 235 and 237 of that Act).

Textual Amendments

F82 S. 259ND(7)-(7D) substituted for s. 259ND(7) (retrospectively) by Finance Act 2021 (c. 26), **Sch. 7 paras. 24(2)**, 36

F83 Word in s. 259ND(8) omitted (retrospectively) by virtue of Finance Act 2021 (c. 26), **Sch. 7 paras. 24(3)(a)**, 36

F84 Words in s. 259ND(8) substituted (retrospectively) by Finance Act 2021 (c. 26), **Sch. 7 paras. 24(3)(b)**, 36

Modifications etc. (not altering text)

C3 S. 259ND(3)-(9) applied (with modifications) (with effect in accordance with s. 121(6) of the amending Act) by 2014 c. 26, Sch. 33A para. 2(4) (as inserted by Finance Act 2021 (c. 26), **Sch. 30 para. 10**)

[[F85]*Qualifying institutional investors etc*

Textual Amendments

F85 S. 259NDA and cross-heading inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 29**

259NDA Meaning of "qualifying institutional investor" etc

(1) This section has effect for the purposes of this Part.

(2) References to "qualifying institutional investor" have the meaning given by paragraph 30A of Schedule 7AC to TCGA 1992.

Status: *Point in time view as at 10/06/2021.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 6A. (See end of Document for details)*

(3) A qualifying institutional investor is "based" in a territory—

(a) if it is resident for tax purposes in the territory, or

(b) where it is not resident anywhere for tax purposes, if it is established in the territory.]

Partnerships

259NE Treatment of a person who is a member of a partnership

(1) This section applies where a person is a member of a partnership.

(2) Any reference in this Part to income, profits or an amount of the person includes a reference to the person's share of (as the case may be) income, profits or an amount of the partnership.

(3) For this purpose "the person's share" of income, profits or an amount is determined by apportioning the income, profits or amount between the partners on a just and reasonable basis.

(4) In this section—

(a) "partnership" includes an entity established under the law of a territory outside the United Kingdom of a similar character to a partnership, and

(b) "member" of a partnership is to be read accordingly.

[F86 Securitisation companies

Textual Amendments

F86 S. 259NEZA and cross-heading inserted (retrospectively) by Finance Act 2021 (c. 26), **Sch. 7 paras. 34**, 36

259NEZA Securitisation companies

(1) If the tax treatment of a securitisation company would (apart from this section) fall to be adjusted by virtue of provision in this Part, the provision is to be treated as of no effect as regards that company (and accordingly, no such adjustment may be made).

(2) In this section—

"securitisation company" means a company to which specified regulations apply;

"specified regulations" has the meaning given by regulation 2 of the Taxation of Securitisation Companies Regulations 2006 (S.I. 2006/3296).]

[F87 Priority

Textual Amendments

F87 S. 259NEA and cross-heading inserted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 20**

Status: *Point in time view as at 10/06/2021.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 6A. (See end of Document for details)*

259NEA Priority

For the purposes of this Part, the provisions of Part 10 (corporate interest restriction) are to be treated as of no effect.**]**

[F88 Relevant debt relief circumstances

Textual Amendments

F88 Ss. 259NEB-259NEF and cross-heading inserted (retrospectively) by Finance Act 2021 (c. 26), **Sch. 7 paras. 5**, 36

259NEB Relevant debt relief circumstances: introductory

(1) This section applies for the purposes of section 259CB(3).

(2) Excess arises in "relevant debt relief circumstances" if (and only if)—

- (a) the payment or quasi-payment mentioned in section 259CB(2) comprises the release of a liability to pay an amount under a debtor relationship (within the meaning given by section 302(6) of CTA 2009), and
- (b) the circumstances in section 259NEC, 259NED, 259NEE, or 259NEF apply.

(3) For the purposes of those sections references to—

- (a) "the relevant release" means the release of liability mentioned in subsection (2)(a),
- (b) "loan relationship" is to be construed in accordance with section 302 of CTA 2009,
- (c) "amortised cost basis of accounting" is to be construed in accordance with section 313(4) and (4A) of that Act,
- (d) "connected companies relationship" is to be construed in accordance with section 348 of that Act, and
- (e) "deemed release" and "relevant rights" are to be construed in accordance with section 358(3) to (4A) of that Act.

259NEC Release of debts

(1) This section is to be read with section 259NEB (relevant debt relief circumstances: introductory).

(2) The circumstances in this section are—

- (a) the relevant release takes place in an accounting period for which an amortised cost basis of accounting is used in respect of the debtor relationship, and
- (b) condition A, B, C, D or E is met.

(3) Condition A is that the release is part of a statutory insolvency arrangement (within the meaning of section 1319 of CTA 2009).

(4) Condition B is that the release is not a release of relevant rights and is—

- (a) in consideration of shares forming part of the ordinary share capital of a payee, or
- (b) in consideration of any entitlement to such shares.

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(5) Condition C is that—

(a) a payee meets one of the insolvency conditions (see subsection (8)), and

(b) the debtor relationship is not a connected companies relationship.

(6) Condition D is that the release is in consequence of the making of a mandatory reduction instrument or a third country instrument or the exercise of a stabilisation power under Part 1 of the Banking Act 2009.

(7) Condition E is that—

(a) the release is neither a deemed release nor a release of relevant rights, and

(b) immediately before the release, it is reasonable to assume that, without the release and any arrangements of which the release forms part, there would be a material risk that at some time within the next 12 months a payee would be unable to pay its debts.

(8) For the purposes of this section a company meets the insolvency conditions if—

(a) it is in insolvent liquidation,

(b) it is in insolvent administration,

(c) it is in insolvent administrative receivership,

(d) an appointment of a provisional liquidator is in force in relation to the company under section 135 of the Insolvency Act 1986 or Article 115 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or

(e) under the law of a country or territory outside the United Kingdom circumstances corresponding to those mentioned in paragraph (a), (b), (c) or (d) exist.

(9) Section 323(A1) of CTA 2009 applies for the interpretation of subsection (7)(b); and the rest of that section applies for the interpretation of subsection (8).

259NEDRelease of connected companies debts

(1) This section is to be read with section 259NEB (relevant debt relief circumstances: introductory).

(2) The circumstances in this section are—

(a) the relevant release takes place in an accounting period for which—

(i) an amortised cost basis of accounting is used in respect of the debtor relationship, and

(ii) the debtor relationship is a connected companies relationship, and

(b) the release is neither—

(i) a deemed release, nor

(ii) a release of relevant rights.

259NEERelease of connected companies debts during creditor's insolvency

(1) This section is to be read with section 259NEB (relevant debt relief circumstances: introductory).

(2) The circumstances in this section are—

(a) the relevant release takes place in an accounting period for which an amortised cost basis of accounting is used in respect of the debtor relationship,

(b) condition A, B, C, D or E in section 357 of CTA 2009 is met in relation to the payer,

(c) immediately before the time when any of those conditions was first met the debtor relationship was a connected companies relationship, and

(d) immediately after that time it was not such a relationship.

259NEF Corporate rescue: debt released shortly after connection arises

(1) This section is to be read with section 259NEB (relevant debt relief circumstances: introductory).

(2) The circumstances in this section are—

(a) the relevant release takes place within 60 days of the payer and a payee becoming connected with one another (within the meaning of section 363 of CTA 2009), and

(b) the corporate rescue conditions are met.

(3) The corporate rescue conditions are—

(a) that the payer and the payee became connected as a result of an arm's length transaction, and

(b) immediately before the payer and the payee became connected it was reasonable to assume that, without the connection and any arrangements of which the connection forms part, there would be a material risk that at some point within the next 12 months the payee would have been unable to pay its debts.

(4) For the purposes of subsection (3)(b), a payee is unable to pay its debts if—

(a) it is unable to pay its debts as they fall due, or

(b) the value of its assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.**]**

Definitions

259NF Definitions

In this Part—

"arrangement" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

"CFC" and "CFC charge" have the meaning given by section 259B(4);

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

"control group" has the meaning given by section 259NB;

"financial instrument" has the meaning given by section 259N;

"foreign CFC" and "foreign CFC charge" have the meaning given by section 259B(4);

"hybrid entity" has the meaning given by section 259BE;

"investor", in relation to a hybrid entity, has the meaning given by section 259BE(4);

"investor jurisdiction" has the meaning given by section 259BE(4);

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"ordinary income" is to be read in accordance with sections 259BC and 259BD;

"payee"—

(a) in relation to a payment, has the meaning given by section 259BB(6)(a), and

(b) in relation to a quasi-payment, has the meaning given by section 259BB(6)(b);

"payee jurisdiction" has the meaning given by 259BB(9);

"payer"—

(a) in relation to a payment, has the meaning given by section 259BB(1)(a), and

(b) in relation to a quasi-payment, has the meaning given by section 259BB(2);

"payment" has the meaning given by section 259BB(1);

"payment period"—

(a) in relation to a payment, has the meaning given by section 259BB(1)(b), and

(b) in relation to a quasi-payment, has the meaning given by section 259BB(2);

"permanent establishment" has the meaning given by section 259BF;

"quasi-payment" has the meaning given by section 259BB(2) to (5);

"related" has the meaning given by section 259NC;

"relevant deduction"—

(a) in relation to a payment, has the meaning given by section 259BB(1)(b), and

(b) in relation to a quasi-payment, has the meaning given by section 259BB(2)(a);

"relevant investment fund" has the meaning given by section 259NA;

"tax" has the meaning given by section 259B;

"taxable period" means—

(a) in relation to corporation tax, an accounting period,

(b) in relation to income tax, a tax year,

(c) in relation to the CFC charge, a relevant corporation tax accounting period (within the meaning given by section 371BC(3)),

(d) in relation to a foreign CFC charge, a period (by whatever name known) that corresponds to a relevant corporation tax accounting period, and

(e) in relation to any other tax, a period for which the tax is charged;

"taxable profits" is to be read in accordance with sections 259BC(2) and 259BD(5).**]**

Status:
Point in time view as at 10/06/2021.

Changes to legislation:
There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 6A.