SCHEDULES

SCHEDULE 7

Section 36

HYBRID AND OTHER MISMATCHES

PART 1

MEANING OF "TAX"

1 After section 259B(3) of TIOPA 2010 insert—

"(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."

PART 2

CHAPTER 3 MISMATCHES: RELEVANT DEBT RELIEF CIRCUMSTANCES

2 Part 6A of TIOPA is amended as follows.

3 In section 259CB (hybrid or otherwise impermissible deduction/non-inclusion mismatches and their extent), for subsection (3) substitute—

"(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)."

4 In section 259CC (interpretation of section 259CB), after subsection (3) insert—

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

5 After section 259NEA insert—

"Relevant debt relief circumstances

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.

(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).

259NED Release 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.

259NEE Release 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."

PART 3

CHAPTER 3 MISMATCHES: INVESTMENT TRUSTS

6 Chapter 3 of Part 6A of TIOPA is amended as follows.

7 In section 259CB (hybrid or otherwise impermissible deduction/non-inclusion mismatches and their extent)—

(a) after subsection (3) (as substituted by paragraph 3) insert—

"(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).", and

(b) in subsection (4), in the opening words, for "that and subsection" substitute " subsections (3), (3A) and ".

8 In section 259CC (interpretation of section 259CB), after subsection (3A) (as inserted by paragraph 4) insert—

"(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)."

PART 4

DEEMED DUAL INCLUSION INCOME

9 Part 6A of TIOPA 2010 (hybrid and other mismatches) is amended as follows.

10 (1) Chapter 5 (hybrid payer deduction/non-inclusion mismatches) is amended as follows.

(2) In section 259EC (counteraction where the hybrid payer is within the charge to corporation tax for the payment period), in subsection (4) omit "arises in connection with the arrangement mentioned in section 259EA(2) and".

(3) After subsection (5) insert—

"(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."

(4) In section 259ED(9) (counteraction where a payee is within the charge to corporation tax) omit "arises in connection with the arrangement mentioned in section 259EA(2) and".

11 (1) Chapter 6 (deduction/non-inclusion mismatches relating to transfers by permanent establishments) is amended as follows.

(2) In section 259FB (counteraction of the excessive PE deduction), after subsection (4) insert—

"(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."

(3) After section 259FB insert—

"**259FC Meaning of excessive PE inclusion income**

(1) In section 259FB(5), "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 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."

12 (1) Chapter 9 (hybrid entity double deduction mismatches) is amended as follows.

(2) In section 259IC (counteraction where the hybrid entity is within the charge to corporation tax), in subsection (4), for the words from "unless" to the end substitute " unless it is deducted from dual inclusion income for that period. "

(3) After section 259IC insert—

"**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;

(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."

(4) Omit section 259ID (section 259ID income for the purposes of section 259IC).

13 (1) Chapter 10 (dual territory double deduction cases) is amended as follows.

(2) In section 259JD (counteraction where mismatch arises because of a relevant multinational and is not counteracted in the parent jurisdiction), after subsection (9) insert—

"(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."

(3) After section 259JD insert—

"**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—

(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."

PART 5

DEEMED DUAL INCLUSION INCOME: ANTI-AVOIDANCE

14 In Chapter 13 of Part 6A of TIOPA 2010 (hybrid and other mismatches: anti-avoidance), in section 259M(4) (countering the effect of avoidance arrangements), omit the "or" after paragraph (a) and after paragraph (b) insert ", 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."

PART 6

ALLOCATION OF DUAL INCLUSION INCOME WITHIN GROUP

15 (1) Part 6A of TIOPA 2010 is amended as follows.

(2) In section 259A (overview of Part), after subsection (16) insert—

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

(3) After Chapter 12 insert—

"CHAPTER 12A

ALLOCATION OF DUAL INCLUSION INCOME WITHIN GROUP

Introduction

Overview of Chapter

259ZM(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

Circumstances in which Chapter applies

259ZMA(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

Claims for allocation of DII surplus

259ZMB(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.

The unused part of the DII surplus

259ZMC (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.

The unused part of the DII shortfall

259ZMD(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

(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

Groups of companies

259ZME(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"

Meaning of "dual inclusion income" and "counteraction amount"

259ZMF(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);

(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)."

16 In Schedule 18 to FA 1998 (company tax returns, assessments and related matters), after Part 8 insert—

"**PART 8A**

CLAIMS FOR ALLOCATION OF SURPLUS DUAL INCLUSION INCOME

Introduction

77B (1) This Part of this Schedule applies to allocation claims under Chapter 12A of Part 6A of TIOPA 2010 (hybrid and other mismatches: allocation of dual inclusion income within group).

(2) Expressions used in this Part of this Schedule and in that Chapter have the same meaning in this Part of this Schedule as they have in that Chapter.

Claims to be included in company tax return

77C (1) An allocation claim must be made by being included in the company tax return of the claimant company ("company B") for the shortfall period.

(2) It may be included in the return originally made or by amendment.

Consent to allocation claim

77D (1) In accordance with Requirement 1 in section 259ZMB of TIOPA 2010, an allocation claim in respect of all or part of the DII surplus of a company ("company A") requires the company's consent.

(2) The necessary consent must be given—

(a) by notice in writing,

(b) to an officer of Revenue and Customs,

(c) at or before the time the allocation claim is made.

Otherwise the allocation claim is ineffective.

(3) An allocation claim by company B is ineffective unless it is accompanied by a copy of the notice of consent to the allocation claim given by company A.

Notice of consent

77E (1) Notice of consent to an allocation claim given by company A must contain all the following details—

(a) the name of company A;

(b) the name of company B;

(c) the amount of the DII surplus to be allocated to company B;

(d) the accounting period of company A which is the surplus period.

(2) Notice of consent may not be amended, but it may be withdrawn and replaced by another notice of consent.

(3) Notice of consent may be withdrawn by notice to an officer of Revenue and Customs.

(4) Except where the consent is withdrawn under paragraph 77I (withdrawal in consequence of reduction of DII surplus), the notice of withdrawal must be accompanied by a notice signifying the consent of company B to the withdrawal.

Otherwise the notice of withdrawal is ineffective.

(5) Company B must, so far as it may do so, amend its company tax return for the accounting period for which the allocation claim was made so as to reflect the withdrawal of consent.

Notice of consent requiring amendment of return

77F (1) Where company A gives notice of consent to an allocation claim in respect of all or part of an accounting period after filing its company tax return for the accounting period, company A must amend its company tax return for the accounting period so as to reflect the notice of consent.

(2) The time limits otherwise applicable to amendment of a company tax return do not prevent an amendment being made under sub-paragraph (1).

(3) If company A fails to comply with sub-paragraph (1), the notice of consent is ineffective.

Withdrawal or amendment of allocation claim

77G (1) An allocation claim may be withdrawn by company B only by amending its company tax return.

(2) An allocation claim may not be amended, but must be withdrawn and replaced by another allocation claim.

Time limit for allocation claims

77H (1) An allocation claim may be made or withdrawn at any time up to whichever is the last of the following dates—

(a) the first anniversary of the filing date for the company tax return of company B for the accounting period for which the claim is made;

(b) if notice of enquiry is given into that return, 30 days after the enquiry is completed;

(c) if after such an enquiry an officer of Revenue and Customs amends the return under paragraph 34(2), 30 days after notice of the amendment is issued;

(d) if an appeal is brought against such an amendment, 30 days after the date on which the appeal is finally determined.

(2) An allocation claim may be made or withdrawn at a later time if an officer of Revenue and Customs allows it.

(3) The time limits otherwise applicable to amendment of a company tax return do not apply to an amendment to the extent that it makes or

withdraws an allocation claim within the time allowed by or under this paragraph,

(4) The references in sub-paragraph (1) to an enquiry into a company tax return do not include an enquiry restricted to a previous amendment making or withdrawing a claim.

(5) An enquiry is so restricted if—

(a) the scope of the enquiry is limited as mentioned in paragraph 25(2), and

(b) the amendment giving rise to the enquiry consisted of the making or withdrawing of an allocation claim.

Reduction in DII surplus

77I (1) This paragraph applies if, after company A has given one or more notices of consent to an allocation claim or claims, the unused part of the DII surplus of company A is reduced to less than the amount stated in the notice of consent, or the total of the amounts stated in the notices of consent.

(2) Company A must within 30 days withdraw the notice of consent, or as many of the notices of consent as is necessary to bring the total amount of the DII surplus to which the claim or claims relate within the new unused part of the DII surplus of company A.

(3) Company A may give one or more new notices of consent.

(4) Company A must give notice in writing of the withdrawal of consent, and send a copy of any new notice of consent—

(a) to each of the companies affected, and

(b) to an officer of Revenue and Customs.

(5) If company A fails to act in accordance with sub-paragraph (2), an officer of Revenue and Customs may by notice to company A give such directions as the officer thinks fit as to which notice or notices are to be ineffective or are to have effect in a lesser amount.

(6) The power in sub-paragraph (5) must not be exercised to any greater extent than is necessary to secure that the total amount stated in the notice or notices is consistent with the unused part of the DII surplus of company A.

(7) An officer of Revenue and Customs must at the same time send a copy of the notice to each company affected by the exercise of the power.

(8) A company which receives—

(a) notice of the withdrawal of consent, or a copy of a new notice of consent, under sub-paragraph (4), or

(b) a copy of a notice containing directions by an officer of Revenue and Customs under sub-paragraph (7),

must, so far as it may do so, amend its company tax return for the accounting period for which the claim is made so that it is consistent with the new position with regard to consent to an allocation claim.

(9) An appeal may be brought by company A against any directions given by an officer of Revenue and Customs under sub-paragraph (5).

(10) Notice of appeal must be given—

(a) in writing,

(b) within 30 days after the notice containing the directions was issued, and

(c) to the officer of Revenue and Customs by whom the notice was given.

Assessments on other companies

77J (1) This paragraph applies where, after company A has given notice of consent to an allocation claim, company B has become liable to tax in consequence of receiving—

(a) notice of the withdrawal of consent, or a copy of a new notice of consent, under paragraph 77I(4), or

(b) a copy of a notice containing directions by an officer of Revenue and Customs under paragraph 77I(7).

(2) If any of the tax is unpaid 6 months after company B's time limit for allocation claims, an officer of Revenue and Customs may make an assessment to tax in the name of company B on any other company that has benefited as a result of the consent given by company A.

(3) The assessment may not be made more than two years after that time limit.

(4) The amount of the assessment must not exceed—

(a) the amount of the unpaid tax, or

(b) if less, the amount of tax which the other company saves by virtue of the consent.

(5) A company assessed to an amount of tax under sub-paragraph (2) is entitled to recover from company B—

(a) a sum equal to that amount, and

(b) any interest on that amount which it has paid under section 87A of the Taxes Management Act 1970 (interest on unpaid corporation tax).

(6) For the purposes of this paragraph, company B's time limit for allocation claims is the last of the dates mentioned in paragraph 77H(1) on which company B could make or withdraw an allocation claim for the accounting period for which the claim in question is made.

Assessment to recover excessive amount claimed

77K (1) If an officer of Revenue and Customs discovers that any amount which is the subject of an allocation claim is or has become excessive, the officer may make an assessment to tax in the amount which in the officer's opinion ought to be charged.

(2) This power is without prejudice to—

(a) the power to make a discovery assessment under paragraph 41(1);

(b) the making of all such adjustments by way of discharge or repayment of tax or otherwise as may be required where an amount claimed by company B on an allocation claim is excessive or company A has given consent to an allocation claim in respect of a corresponding amount.

(3) If an assessment under this paragraph is made because company B fails, or is unable, to amend its company tax return under paragraph 77I(8), the assessment is not out of time if it is made within one year from—

(a) the date on which company A gives notice of the withdrawal of consent, or (if later) sends a copy of a new notice of consent, to company B under paragraph 77I(4), or

(b) the date on which an officer of Revenue and Customs sends company B a copy of a notice containing the officer's direction under paragraph 77I(7).

Joint amended returns

77L (1) The Treasury may by regulations make provision for arrangements under which—

(a) an allocation claim may be made without being accompanied by a copy of the notice of consent to the claim given by company A, provided authority for the claim being so made is given by a company which is authorised in relation to company B as mentioned in paragraph (b), and

(b) one company may be authorised to act on behalf of two or more companies in the same group in amending their company tax returns for the purpose of making an allocation claim or giving consent to an allocation claim or revising the amount to which an allocation claim or consent relates.

(2) Regulations under this paragraph may add to, exclude or modify the operation of any provisions of this Part of this Schedule to such extent as the Treasury think necessary or expedient for the purpose of, or in connection with, such arrangements.

(3) Provision may in particular be made—

(a) altering the conditions for making and withdrawing allocation claims, and

(b) giving an officer of revenue and Customs power to recover from the authorised company or another company in the group any amount which might be recovered from company B by an assessment under paragraph 77K.”

PART 7

FINANCING COST OF LOAN CAPITAL

17 (1) Chapter 6 of Part 6A of TIOPA 2010 (hybrid and other mismatches: deduction/non-inclusion mismatches relating to transfers by permanent establishments) is amended in accordance with sub-paragraph (2).

(2) In section 259FA(4) (circumstances in which the Chapter applies), omit the "and" after paragraph (a) and after paragraph (b) insert ", 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)."

PART 8

CHAPTERS 9 AND 10: CARRY FORWARD OF ILLEGITIMATE OVERSEAS DEDUCTION

18 (1) Part 6A of TIOPA is amended as follows.

(2) In section 259IC (counteraction where hybrid entity is within charge to corporation tax), in subsection (8), after "person" insert " other than an investor in the hybrid entity ".

(3) In section 259JB (counteraction where mismatch arises because of a dual resident company), in subsection (6), after "person" insert " other than the company ".

(4) In section 259JD (counteraction where mismatch arises because of a relevant multinational and is not counteracted in the parent jurisdiction), in subsection (6), after "person" insert " other than the company ".

PART 9

IMPORTED MISMATCHES

19 Chapter 11 of Part 6A of TIOPA (imported mismatches) is amended as follows.

20 In section 259K (overview of chapter), after subsection (4A) insert—

"(4B) Section 259KE sets a limit on reductions under section 259KC."

21 (1) Section 259KA (circumstances in which Chapter) is amended as follows.

(2) For subsection (7) substitute—

"(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)).”

(3) Omit subsection (8).

(4) After subsection (9)(a) for “as the payer, or a payee” substitute “ as a payee ”.

22 In section 259KC(2A), at the end insert “ and section 259KE (limit on reduction under section 259KC) ”.

23 After section 259KD insert—

“**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.”

PART 10

MEANING OF “ACT TOGETHER”

24 (1) Section 259ND of TIOPA 2010 (meaning of “50% investment” and “25% investment”) is amended as follows.

(2) For subsection (7) substitute—

“(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)."

(3) In subsection (8)—

(a) omit "But", and

(b) for "paragraph (d) of subsection (7)" substitute " paragraph (b) of subsection (7A) ".

PART 11

EXEMPT INVESTORS IN HYBRID ENTITIES

25 Part 6A of TIOPA 2010 is amended as follows.

26 In section 259BC (the basic rules), after subsection (8) insert—

"(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."

27 (1) Section 259EB (hybrid payer deduction/non-inclusion mismatches and their extent) is amended in accordance with sub-paragraphs (2) and (3).

(2) In subsection (3), at the beginning insert " Subject to subsections (4A) to (4C) ".

(3) After subsection (4), insert—

"(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."

28 In section 259GB (hybrid payee deduction/non-inclusion mismatches and their extent), after subsection (2) insert—

"(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."

29 After section 259ND insert—

"Qualifying institutional investors etc

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.

(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."

PART 12

INTERACTION WITH PART 4 OF TIOPA 2010

30 TIOPA 2010 is amended as follows.

31 In Part 4 (transfer pricing), after section 192 insert—

"**192A Provision for cases within Part 6A**

(1) Subsection (2) applies to the extent that—

(a) there is an amount to be deducted in respect of a payment by the issuing company under the security,

(b) that amount is required to be reduced (whether or not to nil) under section 147(3) or (5),

(c) the guarantor company makes a claim under section 192(1) in respect of that reduction, and

(d) as regards the payment, provision in Part 6A would, but for the reduction, apply in relation to the tax treatment of the issuing company ("the relevant tax treatment").

(2) The relevant tax treatment is to apply in relation to the guarantor company."

32 In Chapter 11 of Part 6A (imported mismatches), in section 259K (overview of chapter), after subsection (4B) (as inserted by paragraph 20) insert—

"(4C) Section 259KF contains provision for cases also falling within Part 4 (transfer pricing)."

33 After section 259KE (as inserted by paragraph 23) insert—

"**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)."

PART 13

SECURITISATION COMPANIES

34 After section 259NE of TIOPA 2010 insert—

"Securitisation companies

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)."

PART 14

TRANSPARENT FUNDS

35 (1) Part 6A of TIOPA 2010 is amended as follows.

(2) In section 259A (overview of Part), after subsection (17) insert—

"(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)."

(3) After Chapter 13 insert—

"CHAPTER 13A

SPECIAL PROVISION CONCERNING TRANSPARENT FUNDS

Meaning of "transparent fund"

259MA(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.

Application of Chapters 3, 4, 5 and 7

259MB(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).

Application of Chapter 9

259MC1 (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).

Application of Chapter 11

259MD(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."

PART 15

COMMENCEMENT

36 Part 6A of TIOPA 2010 has effect, and is deemed always to have had effect—

(a) with the amendments contained in Parts 2 to 3, 7, 10 and 13 of this Schedule, and

(b) with the amendment made by paragraph 26 so far as it applies in relation to a qualifying institutional investor that is an investment trust.

37 The amendments made by Parts 1, 4, 5, 8, 9, 11, 12 and 14 of this Schedule (except that made by paragraph 26 so far as it applies by virtue of paragraph 36(b)) have effect—

(a) in the case of their application to Chapter 6 of Part 6A of TIOPA 2010, in relation to excessive deductions in relation to which the relevant PE period begins on or after the day on which this Act is passed,

(b) in the case of their application to Chapter 9 or 10 of Part 6A of TIOPA 2010, in relation to accounting periods beginning on or after that date, and

(c) in the case of their application to any other Chapter of Part 6A of TIOPA 2010, in relation to—

(i) payments made on or after that date, or

(ii) quasi-payments in relation to which the payment period begins on or after that date.

38 (1) For the purposes of paragraph 37, where there is a straddling period—

(a) so much of the straddling period as falls before the day on which this Act is passed, and so much of it as falls on or after that date, are to be treated as separate accounting periods or taxable periods (as the case may be), and

(b) if it is necessary to apportion an amount for the straddling period to the two separate periods, it is to be apportioned—

(i) on a time basis, according to the respective length of the separate periods, or

(ii) if that would produce a result that is unjust or unreasonable, on a just and reasonable basis.

(2) A "straddling period" is an accounting period or payment period (as the case may be) beginning before the day on which this Act is passed and ending on or after that date.

39 (1) Notwithstanding paragraph 37, a taxpayer may make an election (a "Part 4 retrospection election") that the amendments made by Part 4 of this Schedule are to be deemed always to have had effect in relation to the taxpayer.

(2) A Part 4 retrospection election must be made on or before 31 December 2021.

(3) Sub-paragraphs (4) to (9) apply where a Part 4 retrospection election is made by a taxpayer.

(4) The taxpayer may, in consequence of the Part 4 retrospection election, make reasonable adjustments to claims, returns and elections made before the Part 4 retrospection election.

(5) Any such adjustments must be made on or before 31 December 2021 but, subject to that, the time limits otherwise applicable to amending or withdrawing the claim, return or election in question do not prevent an adjustment being made under sub-paragraph (4).

(6) Sub-paragraph (7) applies where—

(a) before the Part 4 retrospection election is made, the taxpayer has made a group relief claim, and

(b) under sub-paragraph (4), the taxpayer withdraws the group relief claim, or withdraws the group relief claim and replaces it with a group relief claim for a lesser amount.

(7) The surrendering company may make such adjustments to claims, returns and elections made before the Part 4 retrospection election as are reasonably necessary in consequence of the withdrawal, or the withdrawal and replacement, of the group relief claim.

(8) Any such adjustments must be made on or before 31 December 2021 but, subject to that, the time limits otherwise applicable to amending or withdrawing the claim, return or election in question do not prevent an adjustment being made under sub-paragraph (7).

(9) In sub-paragraphs (6) to (8)—

"group relief claim" means—

(a) a claim for group relief under Part 5 of CTA 2010, or

(b) a claim for group relief for carried-forward losses under Part 5A of CTA 2010;

"surrendering company" has the same meaning as in Part 5 or 5A (as the case may be) of CTA 2010.

40 (1) Part 6 of this Schedule (allocation of dual inclusion income within group) has effect in relation to accounting periods of a claimant company that begin on or after 1 January 2021.

(2) A "claimant company" is a company that makes an allocation claim for the purposes of Chapter 12A of Part 6A of TIOPA 2010 (inserted by Part 6 of this Schedule).

(3) For the purposes of sub-paragraph (1), where there is a straddling period—

(a) so much of the straddling period as falls before 1 January 2021, and so much of it as falls on or after that date, are to be treated as separate accounting periods, and

(b) if it is necessary to apportion an amount for the straddling period to the two separate periods, it is to be apportioned—

(i) on a time basis, according to the respective length of the separate periods, or

(ii) if that would produce a result that is unjust or unreasonable, on a just and reasonable basis.

(4) A "straddling period" is an accounting period beginning before 1 January 2021 and ending on or after that date.

Changes to legislation:
There are currently no known outstanding effects for the Finance Act 2021, SCHEDULE 7.