



Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

[^{F1}PART 6A

HYBRID AND OTHER MISMATCHES

[^{F1}CHAPTER 1

INTRODUCTION

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](#)

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

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- (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.
- [Chapter 12A contains provision allowing surplus dual inclusion income to be allocated^{F2}(16A) within a group of companies.]
- (17) Chapter 13 contains anti-avoidance provision.
- [Chapter 13A makes provision about the application of Chapters 3, 4, 5, 7, 9 and 11 in^{F3}(17A) 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)**

Changes to legislation:

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