



Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

[^{F1}PART 6A

HYBRID AND OTHER MISMATCHES

[^{F2}CHAPTER 12A

ALLOCATION OF DUAL INCLUSION INCOME WITHIN GROUP

[^{F1}]^{F2} Allocation of DII surplus

Textual Amendments

- F1** Pt. 6A inserted (with effect in accordance with Sch. 10 paras. 18-21 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 10 para. 1](#)
- F2** 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\(3\)](#)

259ZMBClaims 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—

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- (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,

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- (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—

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- (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.]]

Changes to legislation:

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