



# Taxation (International and Other Provisions) Act 2010

## 2010 CHAPTER 8

### [<sup>F1</sup>PART 6A

#### HYBRID AND OTHER MISMATCHES

### CHAPTER 5

#### HYBRID PAYER DEDUCTION/NON-INCLUSION MISMATCHES

#### *[<sup>F1</sup>Application of Chapter*

#### **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](#)

#### **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.

---

*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Cross Heading: Application of Chapter. (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.
- [ But there is no hybrid payer deduction/non-inclusion mismatch so far as the relevant <sup>F2</sup>(1A) 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.]

---

**Changes to legislation:** There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Cross Heading: Application of Chapter. (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) [<sup>F3</sup>Subject 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.
- [ No excess is to be taken to arise by reason of a hybrid payer being a hybrid entity for
- <sup>F4</sup>(4A) 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

---

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

---

(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**

- F2** S. 259EB(1A) inserted (retrospectively) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 24\(5\)\(13\)](#)
- F3** 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\(2\)](#)
- F4** [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\(3\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Cross Heading: Application of Chapter.