
Changes to legislation: There are currently no known outstanding effects for the Finance Act 2021, Paragraph 11. (See end of Document for details)

SCHEDULES

SCHEDULE 7

HYBRID AND OTHER MISMATCHES

PART 4

DEEMED DUAL INCLUSION INCOME

- 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

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- (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.”

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