
Changes to legislation: There are currently no known outstanding effects
for the Finance Act 2021, PART 4. (See end of Document for details)

SCHEDULES

SCHEDULE 7

HYBRID AND OTHER MISMATCHES

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—

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- (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.

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- (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—

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- (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.”

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(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

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- (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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