SCHEDULES

SCHEDULE 7

HYBRID AND OTHER MISMATCHES

PART 6

ALLOCATION OF DUAL INCLUSION INCOME WITHIN GROUP

15 (1) Part 6A of TIOPA 2010 is amended as follows.

(2) In section 259A (overview of Part), after subsection (16) insert—

"(16A) Chapter 12A contains provision allowing surplus dual inclusion income to be allocated within a group of companies."

(3) After Chapter 12 insert—

"CHAPTER 12A

ALLOCATION OF DUAL INCLUSION INCOME WITHIN GROUP

Introduction

Overview of Chapter

259ZM(1) This Chapter contains provision that allows surplus dual inclusion income to be allocated within a group of companies.

(2) Section 259ZMA contains the conditions that must be met for this Chapter to apply.

(3) Subsection (2) of that section defines "the DII surplus" and subsection (3) of that section defines "the DII shortfall".

(4) Sections 259ZMB to 259ZMD contain provision allowing the unused part of the DII surplus of one company to be treated as dual inclusion income of another company in the same group, where it can be matched against the unused part of the DII shortfall of the other company.

(5) Section 259ZME identifies when companies are in the same group.

Application of Chapter

Circumstances in which Chapter applies

259ZMA(1) This Chapter applies if conditions A to E are met.

(2) Condition A is that, for an accounting period ("the surplus period"), the dual inclusion income of a company ("company A") exceeds its counteraction amount.

In this Chapter, the amount of the excess is referred to as "the DII surplus".

(3) Condition B is that, for an accounting period ("the shortfall period"), the counteraction amount of another company ("company B") exceeds its dual inclusion income.

In this Chapter, the amount of the excess is referred to as "the DII shortfall".

(4) See section 259ZMF for the meanings of "dual inclusion income" and "counteraction amount".

(5) Condition C is that there is a period ("the overlapping period") that is common to both the surplus period and the shortfall period (and see subsections (8) and (9)).

(6) Condition D is that there is a time during the overlapping period when both company A and company B are within the charge to corporation tax.

(7) Condition E is that there is a time during the overlapping period when company A and company B are members of the same group of companies (see section 259ZME).

(8) Subsection (9) applies if, during any part of the overlapping period—

(a) either company A or company B is not within the charge to corporation tax, or

(b) company A and company B are not members of the same group of companies.

(9) That part is treated as not forming part of the overlapping period but instead as—

(a) forming part of the surplus period that is not included in the overlapping period, and

(b) forming part of the shortfall period that is not included in the overlapping period.

Allocation of DII surplus

Claims for allocation of DII surplus

259ZMB (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—

(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.

The unused part of the DII surplus

259ZMC (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,

(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.

The unused part of the DII shortfall

259ZMD (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—

(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.

Groups

Groups of companies

259ZME (1) For the purposes of this Chapter, company A and company B are members of the same group of companies if—

(a) one is a 75% subsidiary of the other, or

(b) both are 75% subsidiaries of a third company.

(2) In subsection (1), “75% subsidiary” has the same meaning as in Part 5 of CTA 2010 (group relief) (see section 151 of that Act).

(3) Sections 154, 155A, 155B and 156 of CTA 2010 (members of group of companies: arrangements for transfers of companies) apply for the purposes of this Chapter as they apply for the purposes of Part 5 of CTA 2010, but as if references to a surrenderable amount were to the DII surplus.

"Dual inclusion income" and "counteraction amount"

Meaning of "dual inclusion income" and "counteraction amount"

259ZM(1) This section applies for the purposes of this Chapter.

(2) The "dual inclusion income" of a company for an accounting period means the amount of any income that is dual inclusion income of the company for that period for the purposes of any provision of this Part.

(3) An amount of income that is dual inclusion income of a company for the purposes of more than one provision of this Part is not counted more than once for the purposes of subsection (2).

(4) The "counteraction amount" of a company for an accounting period means the total of all the following amounts that are applicable to the company for that period—

(a) the restricted deduction, within the meaning given by section 259EC(2);

(b) where section 259ED applies and there is only one payee, the relevant amount, within the meaning given by section 259ED(3);

(c) where section 259ED applies and there is more than one payee, the payee's share of the relevant amount, within the meaning given by section 259ED(3) and (6);

(d) the excessive PE deduction, within the meaning given by section 259FA(8);

(e) where section 259IB applies, the hybrid entity double deduction amount, within the meaning given by section 259IA(4);

(f) where section 259IC applies, the restricted deduction, within the meaning given by section 259IC(3);

(g) the dual territory double deduction amount, within the meaning given by section 259JA(5), reduced by the amount of the impermissible overseas deduction (if any), within the meaning given by section 259JC(2);

(h) a dual territory double deduction, within the meaning given by section 259KB(2);

(i) an excessive PE deduction, within the meaning given by section 259KB(3) to (5)."

16 In Schedule 18 to FA 1998 (company tax returns, assessments and related matters), after Part 8 insert—

"PART 8A

CLAIMS FOR ALLOCATION OF SURPLUS DUAL INCLUSION INCOME

Introduction

77B (1) This Part of this Schedule applies to allocation claims under Chapter 12A of Part 6A of TIOPA 2010 (hybrid and other mismatches: allocation of dual inclusion income within group).

(2) Expressions used in this Part of this Schedule and in that Chapter have the same meaning in this Part of this Schedule as they have in that Chapter.

Claims to be included in company tax return

77C (1) An allocation claim must be made by being included in the company tax return of the claimant company ("company B") for the shortfall period.

(2) It may be included in the return originally made or by amendment.

Consent to allocation claim

77D (1) In accordance with Requirement 1 in section 259ZMB of TIOPA 2010, an allocation claim in respect of all or part of the DII surplus of a company ("company A") requires the company's consent.

(2) The necessary consent must be given—
- (a) by notice in writing,
- (b) to an officer of Revenue and Customs,
- (c) at or before the time the allocation claim is made.

Otherwise the allocation claim is ineffective.

(3) An allocation claim by company B is ineffective unless it is accompanied by a copy of the notice of consent to the allocation claim given by company A.

Notice of consent

77E (1) Notice of consent to an allocation claim given by company A must contain all the following details—
- (a) the name of company A;
- (b) the name of company B;
- (c) the amount of the DII surplus to be allocated to company B;
- (d) the accounting period of company A which is the surplus period.

(2) Notice of consent may not be amended, but it may be withdrawn and replaced by another notice of consent.

(3) Notice of consent may be withdrawn by notice to an officer of Revenue and Customs.

(4) Except where the consent is withdrawn under paragraph 77I (withdrawal in consequence of reduction of DII surplus), the notice of withdrawal must be accompanied by a notice signifying the consent of company B to the withdrawal.

Otherwise the notice of withdrawal is ineffective.

(5) Company B must, so far as it may do so, amend its company tax return for the accounting period for which the allocation claim was made so as to reflect the withdrawal of consent.

Notice of consent requiring amendment of return

77F (1) Where company A gives notice of consent to an allocation claim in respect of all or part of an accounting period after filing its company tax return for the accounting period, company A must amend its company tax return for the accounting period so as to reflect the notice of consent.

(2) The time limits otherwise applicable to amendment of a company tax return do not prevent an amendment being made under sub-paragraph (1).

(3) If company A fails to comply with sub-paragraph (1), the notice of consent is ineffective.

Withdrawal or amendment of allocation claim

77G (1) An allocation claim may be withdrawn by company B only by amending its company tax return.

(2) An allocation claim may not be amended, but must be withdrawn and replaced by another allocation claim.

Time limit for allocation claims

77H (1) An allocation claim may be made or withdrawn at any time up to whichever is the last of the following dates—

(a) the first anniversary of the filing date for the company tax return of company B for the accounting period for which the claim is made;

(b) if notice of enquiry is given into that return, 30 days after the enquiry is completed;

(c) if after such an enquiry an officer of Revenue and Customs amends the return under paragraph 34(2), 30 days after notice of the amendment is issued;

(d) if an appeal is brought against such an amendment, 30 days after the date on which the appeal is finally determined.

(2) An allocation claim may be made or withdrawn at a later time if an officer of Revenue and Customs allows it.

(3) The time limits otherwise applicable to amendment of a company tax return do not apply to an amendment to the extent that it makes or

withdraws an allocation claim within the time allowed by or under this paragraph,

(4) The references in sub-paragraph (1) to an enquiry into a company tax return do not include an enquiry restricted to a previous amendment making or withdrawing a claim.

(5) An enquiry is so restricted if—

(a) the scope of the enquiry is limited as mentioned in paragraph 25(2), and

(b) the amendment giving rise to the enquiry consisted of the making or withdrawing of an allocation claim.

Reduction in DII surplus

77I (1) This paragraph applies if, after company A has given one or more notices of consent to an allocation claim or claims, the unused part of the DII surplus of company A is reduced to less than the amount stated in the notice of consent, or the total of the amounts stated in the notices of consent.

(2) Company A must within 30 days withdraw the notice of consent, or as many of the notices of consent as is necessary to bring the total amount of the DII surplus to which the claim or claims relate within the new unused part of the DII surplus of company A.

(3) Company A may give one or more new notices of consent.

(4) Company A must give notice in writing of the withdrawal of consent, and send a copy of any new notice of consent—

(a) to each of the companies affected, and

(b) to an officer of Revenue and Customs.

(5) If company A fails to act in accordance with sub-paragraph (2), an officer of Revenue and Customs may by notice to company A give such directions as the officer thinks fit as to which notice or notices are to be ineffective or are to have effect in a lesser amount.

(6) The power in sub-paragraph (5) must not be exercised to any greater extent than is necessary to secure that the total amount stated in the notice or notices is consistent with the unused part of the DII surplus of company A.

(7) An officer of Revenue and Customs must at the same time send a copy of the notice to each company affected by the exercise of the power.

(8) A company which receives—

(a) notice of the withdrawal of consent, or a copy of a new notice of consent, under sub-paragraph (4), or

(b) a copy of a notice containing directions by an officer of Revenue and Customs under sub-paragraph (7),

must, so far as it may do so, amend its company tax return for the accounting period for which the claim is made so that it is consistent with the new position with regard to consent to an allocation claim.

(9) An appeal may be brought by company A against any directions given by an officer of Revenue and Customs under sub-paragraph (5).

(10) Notice of appeal must be given—

(a) in writing,

(b) within 30 days after the notice containing the directions was issued, and

(c) to the officer of Revenue and Customs by whom the notice was given.

Assessments on other companies

77J (1) This paragraph applies where, after company A has given notice of consent to an allocation claim, company B has become liable to tax in consequence of receiving—

(a) notice of the withdrawal of consent, or a copy of a new notice of consent, under paragraph 77I(4), or

(b) a copy of a notice containing directions by an officer of Revenue and Customs under paragraph 77I(7).

(2) If any of the tax is unpaid 6 months after company B's time limit for allocation claims, an officer of Revenue and Customs may make an assessment to tax in the name of company B on any other company that has benefited as a result of the consent given by company A.

(3) The assessment may not be made more than two years after that time limit.

(4) The amount of the assessment must not exceed—

(a) the amount of the unpaid tax, or

(b) if less, the amount of tax which the other company saves by virtue of the consent.

(5) A company assessed to an amount of tax under sub-paragraph (2) is entitled to recover from company B—

(a) a sum equal to that amount, and

(b) any interest on that amount which it has paid under section 87A of the Taxes Management Act 1970 (interest on unpaid corporation tax).

(6) For the purposes of this paragraph, company B's time limit for allocation claims is the last of the dates mentioned in paragraph 77H(1) on which company B could make or withdraw an allocation claim for the accounting period for which the claim in question is made.

Assessment to recover excessive amount claimed

77K (1) If an officer of Revenue and Customs discovers that any amount which is the subject of an allocation claim is or has become excessive, the officer may make an assessment to tax in the amount which in the officer's opinion ought to be charged.

(2) This power is without prejudice to—

(a) the power to make a discovery assessment under paragraph 41(1);

(b) the making of all such adjustments by way of discharge or repayment of tax or otherwise as may be required where an amount claimed by company B on an allocation claim is excessive or company A has given consent to an allocation claim in respect of a corresponding amount.

(3) If an assessment under this paragraph is made because company B fails, or is unable, to amend its company tax return under paragraph 77I(8), the assessment is not out of time if it is made within one year from—

(a) the date on which company A gives notice of the withdrawal of consent, or (if later) sends a copy of a new notice of consent, to company B under paragraph 77I(4), or

(b) the date on which an officer of Revenue and Customs sends company B a copy of a notice containing the officer's direction under paragraph 77I(7).

Joint amended returns

77L (1) The Treasury may by regulations make provision for arrangements under which—

(a) an allocation claim may be made without being accompanied by a copy of the notice of consent to the claim given by company A, provided authority for the claim being so made is given by a company which is authorised in relation to company B as mentioned in paragraph (b), and

(b) one company may be authorised to act on behalf of two or more companies in the same group in amending their company tax returns for the purpose of making an allocation claim or giving consent to an allocation claim or revising the amount to which an allocation claim or consent relates.

(2) Regulations under this paragraph may add to, exclude or modify the operation of any provisions of this Part of this Schedule to such extent as the Treasury think necessary or expedient for the purpose of, or in connection with, such arrangements.

(3) Provision may in particular be made—

(a) altering the conditions for making and withdrawing allocation claims, and

(b) giving an officer of revenue and Customs power to recover from the authorised company or another company in the group any amount which might be recovered from company B by an assessment under paragraph 77K.”

Changes to legislation:
There are currently no known outstanding effects for the Finance Act 2021, PART 6.