



Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

[^{F1}PART 6A

HYBRID AND OTHER MISMATCHES

CHAPTER 7

HYBRID PAYEE DEDUCTION/NON-INCLUSION MISMATCHES

Application of Chapter

[^{F1}259GB] **Hybrid payee deduction/non-inclusion mismatches and their extent**

- (1) There is a “hybrid payee deduction/non-inclusion mismatch”, in relation to a payment or quasi-payment, if—
- 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
 - all or part of that excess arises by reason of one or more payees being hybrid entities.

[But there is no hybrid payee deduction/non-inclusion mismatch so far as the relevant ^{F2}(1A) deduction is—

- 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
- 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, Section 259GB. (See end of Document for details)

- (2) The extent of the hybrid payee deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (1)(b).
- [No excess is to be taken to arise by reason of a hybrid payee being a hybrid entity for
- ^{F3}(2A) 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 not treated as income or profits of the investor, or
 - (b) the hybrid entity is regarded as a distinct and separate person to the investor.
- (2B) 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 (2A)(a) applies, under the law of the territory the income or profits of the hybrid entity were treated as income or profits of the investor, and
 - (b) where subsection (2A)(b) applies, under the law of the territory the hybrid entity were not regarded as a distinct and separate person to the investor.
- (2C) To determine if a “qualifying institutional investor” is “based” in a particular territory for the purposes of subsections (2A) and (2B) see section 259NDA.]
- (3) A relevant amount of the excess is to be taken (so far as would not otherwise be the case) to arise as mentioned in subsection (1)(b) where—
- (a) a payee is a hybrid entity,
 - (b) there is no territory—
 - (i) where that payee is resident for the purposes of a tax charged [^{F4}at a higher rate than nil] under the law of that territory, or
 - (ii) under the law of which ordinary income arises to that payee, by reason of the payment or quasi-payment, for the purposes of a tax that is charged on that payee by virtue of that payee having a permanent establishment in that territory, and
 - (c) no income arising to that payee, by reason of the payment or quasi-payment, is brought into account in calculating chargeable profits for the purposes of the CFC charge or a foreign CFC charge.
- (4) For the purposes of subsection (3), the “relevant amount” of the excess is the lesser of—
- (a) the amount of the excess, and
 - (b) an amount equal to the amount of ordinary income that it is reasonable to suppose would, by reason of the payment or quasi-payment, arise to the payee for corporation tax purposes, if—
 - (i) the payee were a company, and
 - (ii) the payment or quasi-payment were made in connection with a trade carried on by the payee in the United Kingdom through a permanent establishment in the United Kingdom.
- [In applying subsection (4)(b) in a case where the payee is a partnership [^{F6}or a relevant
- ^{F5}(4A) transparent entity], it is to be assumed that no amount of ordinary income arises to the payee, by reason of the payment or quasi-payment, if—
- (a) a partner in the partnership [^{F7}, or a member of the entity,] is entitled to the amount, and

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Section 259GB. (See end of Document for details)

- (b) having regard only to—
 - (i) the law of the territory where the partnership [^{F8}or entity] is established, and
 - (ii) the law of the territory where the partner [^{F9}or member] is resident for tax purposes or, if the partner [^{F9}or member] is not resident anywhere for tax purposes, where the partner [^{F9}or member] is established,the payee would not be regarded as a hybrid entity.

[Subsection (4AB) applies in relation to a payment or quasi-payment if—

- ^{F10}(4AA) (a) one or more of the payees is a partnership or a relevant transparent entity,
- (b) there is a territory under the law of which an amount of ordinary income would arise, or would potentially arise, to a hybrid entity as a result of the circumstances giving rise to the relevant deduction if the entity were a person resident in that territory for the purposes of a tax charged under the law of that territory, and
- (c) that hybrid entity is not (ignoring subsection (4AB)(b)) a payee.

(4AB) Where this subsection applies—

- (a) if any such hybrid entity is not either a partnership or a relevant transparent entity, subsection (4A) does not apply, or
- (b) otherwise, every such hybrid entity is to be treated as a payee for the purposes of determining, for the purposes of subsection (1)(b), if an excess arises by reason of one or more payees being hybrid entities.]

(4B) In [^{F11}subsections (4A) to (4AB) and (4C)] “partnership” has the meaning given by section 259NE(4).]

[An entity is a “relevant transparent entity” if—

- ^{F12}(4C) (a) the entity is not a partnership,
- (b) the entity is legally constituted in a territory outside the United Kingdom,
- (c) all of the entity’s income or profits for the purposes of a tax charged under the law of that territory are treated (or would be if there were any) for the purposes of that tax as the income or profits of its members, and
- (d) any such tax that is, or that would be, charged on such a member that is resident for tax purposes in that territory is not charged at a nil rate.

(4D) For the purposes of subsection (4C), a person is a “member” of an entity if the person is entitled to a proportion of the profits of the entity as a result of—

- (a) where the entity has share capital, holding shares forming part of that capital, or
- (b) where the entity does not have share capital, an entitlement similar to that which would be enjoyed if the entity had share capital and the person held shares forming part of that capital.]

(5) In subsection (3)(c) “chargeable profits”—

- (a) in relation to the CFC charge, has the same meaning as in Part 9A (see section 371VA), and
- (b) in relation to a foreign CFC charge, means the concept (by whatever name known) corresponding to chargeable profits within the meaning of that Part.

(6) 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—

Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Section 259GB. (See end of Document for details)*

- (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
 - (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

- 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** S. 259GB(1A) inserted (retrospectively) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [s. 24\(7\)\(13\)](#)
- F3** S. 259GB(2A)-(2C) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 7 para. 28](#)
- F4** Words in s. 259GB(3)(b)(i) inserted (with effect in accordance with Sch. 7 para. 19(1) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 7 para. 5](#)
- F5** S. 259GB(4A)(4B) inserted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 7 paras. 11](#), 19(4)
- F6** Words in s. 259GB(4A) inserted (retrospectively) by [Finance Act 2022 \(c. 3\)](#), [s. 26\(2\)\(a\)\(6\)](#) (with s. 26(7)-(10))
- F7** Words in s. 259GB(4A)(a) inserted (retrospectively) by [Finance Act 2022 \(c. 3\)](#), [s. 26\(2\)\(b\)\(6\)](#) (with s. 26(7)-(10))
- F8** Words in s. 259GB(4A)(b)(i) inserted (retrospectively) by [Finance Act 2022 \(c. 3\)](#), [s. 26\(2\)\(c\)\(i\)\(6\)](#) (with s. 26(7)-(10))
- F9** Words in s. 259GB(4A)(b)(ii) inserted (retrospectively) by [Finance Act 2022 \(c. 3\)](#), [s. 26\(2\)\(c\)\(ii\)\(6\)](#) (with s. 26(7)-(10))
- F10** S. 259GB(4AA)(4AB) inserted (retrospectively) by [Finance Act 2022 \(c. 3\)](#), [s. 26\(3\)\(6\)](#) (with s. 26(7)-(10))
- F11** Words in s. 259GB(4B) substituted (retrospectively) by [Finance Act 2022 \(c. 3\)](#), [s. 26\(4\)\(6\)](#) (with s. 26(7)-(10))
- F12** S. 259GB(4C)(4D) inserted (retrospectively) by [Finance Act 2022 \(c. 3\)](#), [s. 26\(5\)\(6\)](#) (with s. 26(7)-(10))

Changes to legislation:

There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Section 259GB.