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# SCHEDULES

## SCHEDULE 10

Section 66

### HYBRID AND OTHER MISMATCHES

#### PART 1

##### MAIN PROVISIONS

1 In TIOPA 2010, after Part 6 insert—

#### “PART 6A

##### HYBRID AND OTHER MISMATCHES

#### CHAPTER 1

##### INTRODUCTION

#### Overview of Part

- 259A(1) This Part has effect for the purposes of counteracting certain cases that it is reasonable to suppose would otherwise give rise to—
- (a) a deduction/non-inclusion mismatch, or
  - (b) a double deduction mismatch.
- (2) A deduction/non-inclusion mismatch arises where an amount is deductible from a person's income—
- (a) without a corresponding amount of ordinary income arising to another person, or
  - (b) where an amount of ordinary income does arise to a person but is under taxed.
- (3) A double deduction mismatch arises where—
- (a) an amount is deductible from more than one person's income, or
  - (b) an amount is deductible from a person's income for the purposes of more than one tax.
- (4) The cases with which this Part is concerned involve—
- (a) payments or quasi-payments under or in connection with financial instruments or repos, stock lending arrangements or other transfers of financial instruments,
  - (b) hybrid entities,
  - (c) companies with permanent establishments, or

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- (d) dual resident companies.
- (5) This Part counteracts mismatches that would otherwise arise by making certain adjustments to a person's treatment for corporation tax purposes.
- (6) Chapter 2 contains some key definitions for the purposes of this Part, see in particular—
  - (a) section 259B which provides that “tax” means income tax, corporation tax on income, the diverted profits tax, the CFC charge, foreign tax or a foreign CFC charge,
  - (b) section 259BB which defines “payment”, “quasi-payment”, “payment period”, “relevant deduction”, “payer”, “payee”, and “payee jurisdiction”,
  - (c) section 259BC which defines “ordinary income” and “taxable profits”, in relation to taxes other than the CFC charge and foreign CFC charges,
  - (d) section 259BD which contains corresponding provision for the CFC charge and foreign CFC charges,
  - (e) section 259BE which defines “hybrid entity” and other related terms, and
  - (f) section 259BF which defines “permanent establishment”.
- (7) Chapter 3 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments under, or in connection with, financial instruments.
- (8) Chapter 4 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments and involving certain repos, stock lending arrangements or other arrangements for, or relating to, transfers of financial instruments.
- (9) Chapter 5 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments in relation to which the payer is a hybrid entity.
- (10) Chapter 6 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising in relation to internal transfers of money or money's worth made, or treated as made, by a multinational company's permanent establishment in the United Kingdom to the territory in which the company is resident for tax purposes.
- (11) Chapter 7 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments in relation to which a payee is a hybrid entity.
- (12) Chapter 8 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments in relation to which a payee is a multinational company.
- (13) Chapter 9 contains provision for the counteraction of certain double deduction mismatches arising from a company being a hybrid entity.
- (14) Chapter 10 contains provision for the counteraction of certain double deduction mismatches involving dual resident companies or relevant multinational companies.

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- (15) Chapter 11 contains provision about imported mismatches.
- (16) Chapter 12 contains provision—
- (a) for adjustments to be made where a reasonable supposition made for the purposes of this Part turns out to be mistaken or otherwise ceases to be reasonable, and
  - (b) for deductions from taxable total profits to be made where a relevant deduction has been denied under certain provisions of this Part and amounts of ordinary income arise later than is permitted.
- (17) Chapter 13 contains anti-avoidance provision.
- (18) Chapter 14 contains definitions and other provision about the interpretation of this Part.
- (19) Each of Chapters 3 to 10 contains provision specifying that some or all of this Part (and any corresponding provision under the law of a territory outside the United Kingdom) is to be disregarded when determining whether a mismatch arises for the purposes of that Chapter and, if so, in what amount, see—
- (a) section 259CA(4) and (5),
  - (b) section 259DA(5),
  - (c) section 259EA(5) and (6),
  - (d) section 259FA(4), (5) and (6),
  - (e) section 259GA(5) and (6),
  - (f) section 259HA(6) and (7),
  - (g) section 259IA(2) and (3), and
  - (h) section 259JA(5).
- (20) The effect of the provisions mentioned in subsection (19) is that Chapters 3 to 10 (or any corresponding provision under the law of a territory outside the United Kingdom) have effect in the following sequence—
- (a) Chapter 4,
  - (b) Chapter 3,
  - (c) Chapter 5,
  - (d) Chapter 6,
  - (e) Chapter 7,
  - (f) Chapter 8,
  - (g) Chapter 9, and
  - (h) Chapter 10.

## CHAPTER 2

### KEY DEFINITIONS

#### *Meaning of “tax”*

**“Tax” means certain taxes on income and includes foreign tax etc**

259B) In this Part “tax” means—

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- (a) income tax,
  - (b) the charge to corporation tax on income,
  - (c) diverted profits tax,
  - (d) the CFC charge,
  - (e) foreign tax, or
  - (f) a foreign CFC charge.
- (2) In subsection (1) “foreign tax” means a tax chargeable under the law of a territory outside the United Kingdom so far as it—
- (a) is charged on income and corresponds to United Kingdom income tax, or
  - (b) is charged on income and corresponds to the United Kingdom charge to corporation tax on income.
- (3) A tax is not outside the scope of subsection (2) by reason only that it—
- (a) is chargeable under the law of a province, state or other part of a country, or
  - (b) is levied by or on behalf of a municipality or other local body.
- (4) In this Part—
- “CFC” and “the CFC charge” have the same meaning as in Part 9A (see section 371VA);
- “foreign CFC charge” means a charge (by whatever name known) under the law of a territory outside the United Kingdom which is similar to the CFC charge (and reference to a “foreign CFC” is to be read accordingly).

*Equivalent provision to this Part under foreign law*

**References to equivalent provision to this Part under the law of a territory outside the United Kingdom**

- 259BA(1) A reference in this Part to provision under the law of a territory outside the United Kingdom that is equivalent to—
- (a) this Part, or
  - (b) a provision of this Part,
- is to be read in accordance with subsection (2).
- (2) The reference is to provision under the law of a territory outside the United Kingdom that it is reasonable to suppose—
- (a) is based on the Final Report on Neutralising the Effects of Hybrid Mismatch Arrangements published by the Organisation for Economic Cooperation and Development (“OECD”) on 5 October 2015 or any replacement or supplementary publication, and
  - (b) has effect for the same, or similar, purposes to this Part or (as the case may be) the provision of this Part.
- (3) In paragraph (a) of subsection (2) “replacement or supplementary publication” means any document that is approved and published by the OECD in place of, or to update or supplement, the report mentioned in that paragraph (or any replacement of, or supplement to, it).

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### *Payments and quasi-payments etc*

#### **Meaning of “payment”, “quasi-payment”, “payer”, “payee” etc**

- 259B(1) In this Part “payment” means any transfer—
- (a) of money or money's worth directly or indirectly from one person (“the payer”) to one or more other persons, and
  - (b) in relation to which (disregarding this Part and any equivalent provision under the law of a territory outside the United Kingdom) an amount (a “relevant deduction”) may be deducted from the payer's income for a taxable period (the “payment period”) for the purposes of calculating the payer's taxable profits.
- (2) For the purposes of this Part, there is a “quasi-payment”, in relation to a taxable period (the “payment period”) of a person (“the payer”), if (disregarding this Part and any equivalent provision under the law of a territory outside the United Kingdom)—
- (a) an amount (a “relevant deduction”) may be deducted from the payer's income for that period for the purposes of calculating the payer's taxable profits, and
  - (b) making the assumptions in subsection (4), it would be reasonable to expect an amount of ordinary income to arise to one or more other persons as a result of the circumstances giving rise to the relevant deduction.
- (3) But a quasi-payment does not arise under subsection (2) if—
- (a) the relevant deduction is an amount that is deemed, under the law of the payer jurisdiction, to arise for tax purposes, and
  - (b) the circumstances giving rise to the relevant deduction do not include any economic rights, in substance, existing between the payer and a person mentioned in subsection (2)(b).
- (4) The assumptions are that (so far as would not otherwise be the case)—
- (a) any question as to whether an entity is a distinct and separate person from the payer is determined in accordance with the law of the payer jurisdiction,
  - (b) any persons to whom amounts arise, or potentially arise, as a result of the circumstances giving rise to the relevant deduction adopt the same approach to accounting for those circumstances as the payer, and
  - (c) any persons to whom amounts arise, or potentially arise, as a result of those circumstances—
    - (i) are, under the law of the payer jurisdiction, resident in that jurisdiction for tax purposes, and
    - (ii) carry on a business, in connection with which those circumstances arise, in the payer jurisdiction.
- (5) In this Part—
- (a) references to a quasi-payment include all the circumstances giving rise to the relevant deduction mentioned in subsection (2)(a), and

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- (b) references to a quasi-payment being made are to those circumstances arising.
- (6) In this Part “payee” means—
  - (a) in the case of a payment, any person—
    - (i) to whom the transfer is made as mentioned in subsection (1)(a), or
    - (ii) to whom an amount of ordinary income arises as a result of the payment, and
  - (b) in the case of a quasi-payment, any person—
    - (i) to whom it would be reasonable to expect an amount of ordinary income to arise as mentioned in subsection (2)(b), or
    - (ii) to whom an amount of ordinary income arises as a result of the quasi-payment.
- (7) For the purposes of this Part, in the case of a quasi-payment, the payer is “also a payee” if—
  - (a) an entity is not a distinct and separate person from the payer for the purposes of a tax charged under the law of the United Kingdom,
  - (b) that entity is a distinct and separate person from the payer for the purposes of a tax charged under the law of the payer jurisdiction, and
  - (c) it would be reasonable to expect an amount of ordinary income to arise to that entity as mentioned in subsection (2)(b).
- (8) In this section “payer jurisdiction” means the jurisdiction under the law of which the relevant deduction may (disregarding this Part and any equivalent provision under the law of a territory outside the United Kingdom) be deducted.
- (9) In this Part “payee jurisdiction”, in relation to a payee, means a territory in which—
  - (a) the payee is resident for tax purposes under the law of that territory, or
  - (b) the payee has a permanent establishment.

### *Ordinary income*

#### **The basic rules**

259B(1) This section has effect for the purposes of this Part.

- (2) “Ordinary income” means income that is brought into account, before any deductions, for the purposes of calculating the income or profits on which a relevant tax is charged (“taxable profits”).
- (3) But an amount of income is not brought into account for those purposes to the extent that it is excluded, reduced or offset by any exemption, exclusion, relief or credit—
  - (a) that applies specifically to all or part of the amount of income (as opposed to ordinary income generally), or

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- (b) that arises as a result of, or otherwise in connection with, a payment or quasi-payment that gives rise to the amount of income.
- (4) If all the relevant tax charged on taxable profits is, or falls to be, refunded, none of the income brought into account in calculating those taxable profits is “ordinary income”.
- (5) If a proportion of the relevant tax charged on taxable profits is, or falls to be, refunded, the amount of any income brought into account in calculating those taxable profits that is “ordinary income” is proportionally reduced.
- (6) For the purposes of subsections (4) and (5) an amount of relevant tax is refunded if and to the extent that—
  - (a) any repayment of relevant tax, or any payment in respect of a credit for relevant tax, is made to any person, and
  - (b) that repayment or payment is directly or indirectly in respect of the whole or part of the amount of relevant tax,but an amount refunded is to be ignored if and to the extent that it results from qualifying loss relief.
- (7) In subsection (6) “qualifying loss relief” means—
  - (a) any means by which a loss might be used for corporation tax or income tax purposes to reduce the amount in respect of which a person is liable to tax, or
  - (b) any corresponding means by which a loss corresponding to a relevant tax loss might be used for the purposes of a relevant tax other than corporation tax or income tax to reduce the amount in respect of which a person is liable to tax,(and in paragraph (b) “relevant tax loss” means a loss that might be used as mentioned in paragraph (a)).
- (8) References to an amount of ordinary income being “included in” taxable profits are to that amount being brought into account for the purposes of calculating those profits.
- (9) In this section “relevant tax” means a tax other than the CFC charge or a foreign CFC charge.
- (10) Section 259BD contains provision for ordinary income to arise to chargeable companies by virtue of the CFC charge or a foreign CFC charge.

### **Chargeable companies in respect of CFCs and foreign CFCs**

259BD) This section has effect for the purposes of this Part.

- (2) Subsections (3) to (7) apply where an amount of income arises to an entity (“C”) that is a CFC, a foreign CFC or both and all or part of that amount (the “relevant income”)—
  - (a) is not ordinary income of C under section 259BC, or
  - (b) arises as a result of a payment or quasi-payment under, or in connection with, a financial instrument or hybrid transfer arrangement and—
    - (i) is (disregarding subsection (4)) ordinary income of C under section 259BC for a taxable period, but

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(ii) under taxed.

- (3) The following steps determine whether, and to what extent, the relevant income is “ordinary income” of a chargeable company in relation to the CFC charge or a foreign CFC charge.

*Step 1 Determine—*

- (a) whether any of the relevant income is brought into account in calculating C's chargeable profits for the purposes of the CFC charge or a foreign CFC charge, and
- (b) if so, the amount of the relevant income that is so brought into account for the purposes of each relevant charge.

If none of the relevant income is so brought into account, then none of it is “ordinary income” of a chargeable company and no further steps are to be taken.

See subsections (10) to (12) for further provision about how this step is to be taken.

For the purposes of this section—

“relevant chargeable profits” are chargeable profits in relation to the calculation of which, for the purposes of the CFC charge or a foreign CFC charge, any of the relevant income is brought into account;

“relevant charge” means a charge in relation to which any of the relevant income is brought into account in calculating chargeable profits.

*Step 2* In relation to each relevant charge, determine the proportion of C's relevant chargeable profits, for the purposes of that charge, that is apportioned to each chargeable company.

For the purposes of this section, each chargeable company to which 25% or more of C's relevant chargeable profits for the purposes of a relevant charge are apportioned is a “relevant chargeable company”.

If there are no relevant chargeable companies in relation to any relevant charges, then none of the relevant income is “ordinary income” of a chargeable company and no further steps are to be taken.

*Step 3* In relation to each relevant chargeable company, determine what is the appropriate proportion of the relevant income brought into account in calculating relevant chargeable profits, for the purposes of the relevant charge concerned.

That proportion of that income is “ordinary income” of that company for the taxable period for which that charge is charged on it by reference to those profits.

For the purposes of this step, the “appropriate proportion”, in relation to a relevant chargeable company, is the same as the proportion of the relevant chargeable profits that is apportioned to it for the purposes of the relevant charge.

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- (4) An amount of relevant income that is ordinary income of a relevant chargeable company in accordance with subsection (3) is not ordinary income of C (so far as it otherwise would be).
- (5) Relevant chargeable profits apportioned to a relevant chargeable company for the purposes of a relevant charge are “taxable profits” of that company for the taxable period for which the charge is charged on it by reference to those profits.
- (6) The amount of the relevant income that is ordinary income of that relevant chargeable company under subsection (3), by virtue of being brought into account in calculating those relevant chargeable profits, is “included in” those taxable profits.
- (7) References to tax charged on taxable profits include a relevant charge charged by reference to relevant chargeable profits that are taxable profits under subsection (5).
- (8) For the purposes of subsection (2)(b), an amount of ordinary income is “under taxed” if the highest rate at which tax is charged, for C’s taxable period, on the taxable profits in which the amount is included, taking into account on a just and reasonable basis any credit for underlying tax, is less than C’s full marginal rate for that period.
- (9) In subsection (8)—
  - (a) C’s “full marginal rate” means the highest rate at which the tax that is chargeable on those taxable profits could be charged on taxable profits, of C for the taxable period, which include ordinary income that arises from, or in connection with, a financial instrument, and
  - (b) “credit for underlying tax” means a credit or relief given to reflect tax charged on profits that are wholly or partly used to fund (directly or indirectly) the payment or quasi-payment mentioned in subsection (2)(b).
- (10) For the purposes of step 1 in subsection (3), section 259BC(3) applies for the purposes of determining the extent to which an amount of relevant income is brought into account in calculating chargeable profits as it applies for the purposes of determining the extent to which an amount of income is brought into account for the purposes of calculating taxable profits.
- (11) Subsection (12) applies for the purposes of step 1 in subsection (3), if—
  - (a) the amount of income arising to C mentioned in subsection (2)—
    - (i) is not all relevant income, and
    - (ii) is only partly brought into account in calculating chargeable profits for the purposes of the CFC charge or a foreign CFC charge, and
  - (b) accordingly, it falls to be determined whether, and to what extent, the relevant income is brought into account in calculating those profits for the purposes of the charge concerned.
- (12) The relevant income is to be taken to be brought into account (if at all) only to the extent that the total amount of income mentioned in subsection (2) that is brought into account exceeds the amount of income mentioned in that subsection that is not relevant income.

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(13) In this section—

“chargeable company”—

- (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 an entity (by whatever name known) corresponding to a chargeable company within the meaning of that Part;

“chargeable profits”—

- (a) in relation to the CFC charge, has the same meaning as in that Part (see that section), 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;

“hybrid transfer arrangement” has the meaning given by section 259DB.

*Hybrid entity etc*

#### **Meaning of “hybrid entity”, “investor” and “investor jurisdiction”**

259BE) For the purposes of this Part, an entity is “hybrid” if it meets conditions A and B.

(2) Condition A is that the entity is regarded as being a person for tax purposes under the law of any territory.

(3) Condition B is that—

- (a) some or all of the entity's income or profits are treated (or would be if there were any) for the purposes of a tax charged under the law of any territory, as the income or profits of a person or persons other than the person mentioned in subsection (2), or
- (b) under the law of a territory other than the one mentioned in subsection (2), the entity is not regarded as a distinct and separate person to an entity or entities that are distinct and separate persons under the law of the territory mentioned in that subsection.

(4) For the purposes of this Part—

- (a) where subsection (3)(a) applies, a person who is treated as having the income or profits of the hybrid entity is an “investor” in it,
- (b) where subsection (3)(b) applies, an entity that—
  - (i) is regarded as a distinct and separate person to the hybrid entity under the law of the territory mentioned in subsection (2), but
  - (ii) is not regarded as a distinct and separate person to the hybrid entity under the law of another territory,
 is an “investor” in the hybrid entity, and
- (c) any territory under the law of which an investor is within the charge to a tax is an “investor jurisdiction” in relation to that investor.

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## *Permanent establishments*

### **Meaning of “permanent establishment”**

- 259B(F) In this Part “permanent establishment” means anything that is—
- (a) a permanent establishment of a company within the meaning of the Corporation Tax Acts (see section 1119 of CTA 2010), or
  - (b) within any similar concept under the law of a territory outside the United Kingdom.
- (2) A concept is not outside the scope of subsection (1)(b) by reason only that it is not based on Article 5 of a Model Tax Convention on Income and Capital published by the Organisation for Economic Cooperation and Development.

## **CHAPTER 3**

### **HYBRID AND OTHER MISMATCHES FROM FINANCIAL INSTRUMENTS**

#### *Introduction*

#### **Overview of Chapter**

- 259(1) This Chapter contains provision that counteracts hybrid or otherwise impermissible deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments under, or in connection with, financial instruments.
- (2) The Chapter counteracts mismatches where the payer or a payee is within the charge to corporation tax and does so by altering the corporation tax treatment of the payer or a payee.
  - (3) Section 259CA contains the conditions that must be met for this Chapter to apply.
  - (4) Section 259CB defines “hybrid or otherwise impermissible deduction/non-inclusion mismatch” and provides how the amount of the mismatch is to be calculated.
  - (5) Section 259CC contains definitions of certain terms used in section 259CB.
  - (6) Section 259CD contains provision that counteracts the mismatch where the payer is within the charge to corporation tax for the payment period.
  - (7) Section 259CE contains provision that counteracts the mismatch where a payee is within the charge to corporation tax and neither section 259CD nor any equivalent provision under the law of a territory outside the United Kingdom fully counteracts the mismatch.
  - (8) See also—
    - (a) section 259BB for the meaning of “payment”, “quasi-payment”, “payment period”, “relevant deduction”, “payer” and “payee”, and
    - (b) section 259N for the meaning of “financial instrument”.

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### *Application of Chapter*

#### **Circumstances in which the Chapter applies**

259CA(1) This Chapter applies if conditions A to D are met.

- (2) Condition A is that a payment or quasi-payment is made under, or in connection with, a financial instrument.
- (3) Condition B is that—
  - (a) the 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.
- (4) Condition C is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (5), there would be a hybrid or otherwise impermissible deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259CB).
- (5) The provisions are—
  - (a) this Chapter and Chapters 5 to 10, and
  - (b) any equivalent provision under the law of a territory outside the United Kingdom.
- (6) Condition D is that—
  - (a) it is a quasi-payment that is made as mentioned in subsection (2) and the payer is also a payee (see section 259BB(7)),
  - (b) the payer and a payee are related (see section 259NC) at any time in the period—
    - (i) beginning with the day on which any arrangement is made by the payer or a payee in connection with the financial instrument, and
    - (ii) ending with the last day of the payment period, or
  - (c) the financial instrument, or any arrangement connected with it, is a structured arrangement.
- (7) The financial instrument, or an arrangement connected with it, is a “structured arrangement” if it is reasonable to suppose that—
  - (a) the financial instrument, or arrangement, is designed to secure a hybrid or otherwise impermissible deduction/non-inclusion mismatch, or
  - (b) the terms of the financial instrument or arrangement share the economic benefit of the mismatch between the parties to the instrument or arrangement or otherwise reflect the fact that the mismatch is expected to arise.
- (8) The financial instrument or arrangement may be designed to secure a hybrid or otherwise impermissible deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.

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- (9) Sections 259CD (cases where the payer is within the charge to corporation tax for the payment period) and 259CE (cases where a payee is within the charge to corporation tax) contain provision for the counteraction of the hybrid or otherwise impermissible deduction/non-inclusion mismatch.

### **Hybrid or otherwise impermissible deduction/non-inclusion mismatches and their extent**

- 259C(1) There is a “hybrid or otherwise impermissible deduction/non-inclusion mismatch”, in relation to a payment or quasi-payment, if either or both of case 1 or 2 applies.
- (2) Case 1 applies where—
- (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 terms, or any other feature, of the financial instrument.
- (3) So far as the excess arises by reason of a relevant debt relief provision, it is to be taken not to arise by reason of the terms, or any other feature, of the financial instrument (whether or not it would have arisen by reason of the terms, or any other feature, of the financial instrument regardless of the relevant debt relief provision).
- (4) Subject to that and subsection (9), for the purposes of subsection (2)(b)—
- (a) it does not matter whether the excess or part arises for another reason as well as the terms, or any other feature, of the financial instrument (even if it would have arisen for that other reason regardless of the terms, or any other feature, of the financial instrument), and
  - (b) an excess or part of an excess is to be taken to arise by reason of the terms, or any other feature, of the financial instrument (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 subsections (5) and (6)), it could arise by reason of the terms, or any other feature, of the financial instrument.
- (5) 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;
  - (c) where a payee is not within the charge to a tax under the law of any territory because there is no territory where the payee is—

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- (i) resident for the purposes of a tax charged under the law of that territory, or
- (ii) within the charge to a tax under the law of that territory as a result of having a permanent establishment in that territory, assume that the payee is a company that is resident for tax purposes, and carries on a business in connection with which the payment or quasi-payment is made, in the United Kingdom.
- (6) Where the relevant assumption in subsection (5)(c) applies in relation to a payee the following provisions are to be disregarded in relation to that payee for the purposes of subsection (4)(b)—
- (a) section 441 of CTA 2009 (loan relationships for unallowable purposes);
  - (b) section 690 of that Act (derivative contracts for unallowable purposes);
  - (c) Part 4 (transfer pricing);
  - (d) this Part;
  - (e) Part 7 (tax treatment of financing costs and income).
- (7) Case 2 applies where there are one or more amounts of ordinary income (“under-taxed amounts”) that—
- (a) arise, by reason of the payment or quasi-payment, to a payee for a permitted taxable period, and
  - (b) are under taxed by reason of the terms, or any other feature, of the financial instrument.
- (8) Subject to subsection (9), for the purposes of subsection (7)(b) it does not matter whether an amount of ordinary income is under taxed for another reason as well as the terms, or any other feature, of the financial instrument (even if it would have been under taxed for that other reason regardless of the terms, or any other feature, of the financial instrument).
- (9) For the purposes of this section disregard—
- (a) any excess or part of an excess mentioned in subsection (2), and
  - (b) any under-taxed amount,
- that arises as a result of a payee being a relevant investment fund (see section 259NA).
- (10) Where case 1 applies, the amount of the hybrid or otherwise impermissible deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (2)(b).
- (11) Where case 2 applies, the amount of the hybrid or otherwise impermissible deduction/non-inclusion mismatch is equal to the sum of the amounts given in respect of each under-taxed amount by—

$$\frac{(\text{UTA} \times (\text{FMR} - R))}{\text{FMR}}$$

where—

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“UTA” is the under-taxed amount;

“FMR” is the payee's full marginal rate (expressed as a percentage) for the permitted taxable period for which the under-taxed amount arises;

“R” is the highest rate (expressed as a percentage) at which tax is charged on the taxable profits in which the under-taxed amount is included, taking into account on a just and reasonable basis the effect of any credit for underlying tax.

- (12) Where cases 1 and 2 both apply, the amount of the hybrid or otherwise impermissible deduction/non-inclusion mismatch is the sum of the amounts given by subsections (10) and (11).
- (13) See section 259CC for the meaning of “permitted taxable period”, “relevant debt relief provision” and “under taxed”.

### **Interpretation of section 259CB**

259C(1) This section has effect for the purposes of section 259CB.

- (2) 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
    - (ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.
- (3) Each of these is a “relevant debt relief provision”—
  - (a) section 322 of CTA 2009 (release of debts: cases where credits not required to be brought into account),
  - (b) section 357 of that Act (insolvent creditors),
  - (c) section 358 of that Act (exclusion of credits on release of connected companies' debts: general),
  - (d) section 359 of that Act (exclusion of credits on release of connected companies' debts during creditor's insolvency),
  - (e) section 361C of that Act (the equity-for-debt exception),
  - (f) section 361D of that Act (corporate rescue: debt released shortly after acquisition), and
  - (g) section 362A of that Act (corporate rescue: debt released shortly after connection arises).
- (4) An amount of ordinary income of a payee, for a permitted taxable period, is “under taxed” if the highest rate at which tax is charged on the taxable profits of the payee in which the amount is included, taking into account on a just and reasonable basis the effect of any credit for underlying tax, is less than the payee's full marginal rate for that period.
- (5) The payee's “full marginal rate” means the highest rate at which the tax that is chargeable on the taxable profits mentioned in subsection (4) could be

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charged on taxable profits, of the payee for the permitted taxable period, which include ordinary income that arises from, or in connection with, a financial instrument.

- (6) A “credit for underlying tax” means a credit or relief given to reflect tax charged on profits that are wholly or partly used to fund (directly or indirectly) the payment or quasi-payment.

### *Counteraction*

#### **Counteraction where the payer is within the charge to corporation tax for the payment period**

- 259CD) This section applies where the payer is within the charge to corporation tax for the payment period.
- (2) For corporation tax purposes, the relevant deduction that may be deducted from the payer's income for the payment period is reduced by an amount equal to the hybrid or otherwise impermissible deduction/non-inclusion mismatch mentioned in section 259CA(4).

#### **Counteraction where a payee is within the charge to corporation tax**

- 259CE) This section applies in relation to a payee where—
- (a) the payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, and
  - (b) it is reasonable to suppose that—
    - (i) neither section 259CD nor any equivalent provision under the law of a territory outside the United Kingdom applies, or
    - (ii) a provision of the law of a territory outside the United Kingdom that is equivalent to section 259CD applies, but does not fully counteract the hybrid or otherwise impermissible deduction/non-inclusion mismatch mentioned in section 259CA(4).
- (2) A provision of the law of a territory outside the United Kingdom that is equivalent to section 259CD does not fully counteract that mismatch if (and only if)—
- (a) it does not reduce the relevant deduction by the full amount of the mismatch, and
  - (b) the payer is still able to deduct some of the relevant deduction from income in calculating taxable profits.
- (3) In this section “the relevant amount” is—
- (a) in a case where subsection (1)(b)(i) applies, an amount equal to the hybrid or otherwise impermissible deduction/non-inclusion mismatch mentioned in section 259CA(4), or
  - (b) in a case where subsection (1)(b)(ii) applies, the lesser of—
    - (i) the amount by which that mismatch exceeds the amount by which it is reasonable to suppose the relevant deduction is reduced by a provision under the law of a territory outside

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- the United Kingdom that is equivalent to section 259CD,  
and
- (ii) the amount of the relevant deduction that may still be deducted as mentioned in subsection (2)(b).
- (4) If the payee is the only payee, the relevant amount is to be treated as income arising to the payee for the counteraction period.
- (5) If there is more than one payee, an amount equal to the payee's share of the relevant amount is to be treated as income arising to the payee for the counteraction period.
- (6) The payee's share of the relevant amount is to be determined by apportioning that amount between all the payees on a just and reasonable basis, having regard (in particular)—
- (a) to any arrangements as to profit sharing that may exist between some or all of the payees,
  - (b) to whom any under-taxed amounts (within the meaning given by section 259CB(7)) arise, and
  - (c) to whom any amounts of ordinary income that it would be reasonable to expect to arise as a result of the payment or quasi-payment, but that do not arise, would have arisen.
- (7) An amount of income that is treated as arising under subsection (4) or (5) is chargeable under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(2) of that Act).
- (8) The “counteraction period” means—
- (a) if an accounting period of the payee coincides with the payment period, that accounting period, or
  - (b) otherwise, the first accounting period of the payee that is wholly or partly within the payment period.

## CHAPTER 4

### HYBRID TRANSFER DEDUCTION/NON-INCLUSION MISMATCHES

#### *Introduction*

#### **Overview of Chapter**

- 259D) This Chapter contains provision that counteracts deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments as a consequence of hybrid transfer arrangements.
- (2) The Chapter counteracts mismatches where the payer or a payee is within the charge to corporation tax and does so by altering the corporation tax treatment of the payer or a payee.
- (3) Section 259DA contains the conditions that must be met for this Chapter to apply.

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- (4) Section 259DB defines “hybrid transfer arrangement”.
- (5) Section 259DC defines “hybrid transfer deduction/non-inclusion mismatch” and provides how the amount of the mismatch is to be calculated.
- (6) Section 259DD contains definitions of certain terms used in section 259DC.
- (7) Section 259DE contains provision in connection with excluding mismatches from counteraction by the Chapter where they arise as a consequence of the tax treatment of a financial trader.
- (8) Section 259DF contains provision that counteracts the mismatch where the payer is within the charge to corporation tax for the payment period.
- (9) Section 259DG contains provision that counteracts the mismatch where a payee is within the charge to corporation tax and neither section 259DF nor any equivalent provision under the law of a territory outside the United Kingdom fully counteracts the mismatch.
- (10) See also section 259BB for the meaning of “payment”, “quasi-payment”, “payment period”, “relevant deduction”, “payer” and “payee”.

#### *Application of Chapter*

#### **Circumstances in which the Chapter applies**

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

- (2) Condition A is that there is a hybrid transfer arrangement in relation to an underlying instrument (see section 259DB).
- (3) Condition B is that a payment or quasi-payment is made under or in connection with—
  - (a) the hybrid transfer arrangement, or
  - (b) the underlying instrument.
- (4) Condition C is that—
  - (a) the 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.
- (5) Condition D is that it is reasonable to suppose that, disregarding this Part and any equivalent provision under the law of a territory outside the United Kingdom, there would be a hybrid transfer deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259DC).
- (6) Condition E is that—
  - (a) it is a quasi-payment that is made as mentioned in subsection (3) and the payer is also a payee (see section 259BB(7)),
  - (b) the payer and a payee are related (see section 259NC) at any time in the period—
    - (i) beginning with the day on which the hybrid transfer arrangement is made, and

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- (ii) ending with the last day of the payment period, or
  - (c) the hybrid transfer arrangement is a structured arrangement.
- (7) The hybrid transfer arrangement is a “structured arrangement” if it is reasonable to suppose that—
- (a) the hybrid transfer arrangement is designed to secure a hybrid transfer deduction/non-inclusion mismatch, or
  - (b) the terms of the hybrid transfer 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.
- (8) The hybrid transfer arrangement may be designed to secure a hybrid transfer deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.
- (9) Sections 259DF (cases where the payer is within the charge to corporation tax for the payment period) and 259DG (cases where a payee is within the charge to corporation tax) make provision for the counteraction of the hybrid transfer deduction/non-inclusion mismatch.

### **Meaning of “hybrid transfer arrangement”, “underlying instrument” etc**

259D~~B~~) This section has effect for the purposes of this Chapter.

- (2) A “hybrid transfer arrangement” means—
- (a) a repo,
  - (b) a stock lending arrangement, or
  - (c) any other arrangement,
- that is an arrangement within subsection (3).
- (3) An arrangement is within this subsection if it provides for, or relates to, the transfer of a financial instrument (“the underlying instrument”) and—
- (a) the dual treatment condition is met in relation to the arrangement, or
  - (b) a substitute payment could be made under the arrangement.
- (4) The dual treatment condition is met in relation to the arrangement if—
- (a) in relation to a person, for the purposes of a tax—
    - (i) the arrangement is regarded as equivalent, in substance, to a transaction for the lending of money at interest, and
    - (ii) a payment or quasi-payment made under, or in connection with, the arrangement or the underlying instrument could be treated so as to reflect the fact the arrangement is so regarded, and
  - (b) in relation to another person, for the purposes of a tax (whether or not the same one), such a payment or quasi-payment would not be treated so as to reflect the arrangement being regarded as equivalent, in substance, to a transaction for the lending of money at interest.
- (5) A payment or quasi-payment is a “substitute payment” if—
- (a) it consists of or involves—
    - (i) an amount being paid, or

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- (ii) a benefit being given (including the release of the whole or part of any liability to pay an amount),
  - (b) that amount, or the value of that benefit, is representative of a return of any kind (“the underlying return”) that arises on, or in connection with, the underlying instrument, and
  - (c) the amount is paid, or the benefit is given, to someone other than the person to whom the underlying return arises.
- (6) For the purposes of subsection (3) where there is an arrangement, to which a person (“P”) and another person (“Q”) are party, under which—
- (a) a financial instrument (“the first instrument”) ceases to be owned by P (whether or not because it ceases to exist), and
  - (b) Q comes to own a financial instrument (“the second instrument”) under which Q has the same, or substantially the same, rights and liabilities as P had under the first instrument,
- the second instrument is to be treated as being transferred from P to Q.

#### **Hybrid transfer deduction/non-inclusion mismatches and their extent**

259D(1) There is a “hybrid transfer deduction/non-inclusion mismatch”, in relation to a payment or quasi-payment, if either or both of case 1 or 2 applies.

- (2) Case 1 applies where—
  - (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 for a reason mentioned in subsection (8).
- (3) Subject to subsection (9), for the purposes of subsection (2)(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 any reasons mentioned in subsection (8)), and
  - (b) an excess or part of an excess is to be taken to arise for a reason mentioned in subsection (8) (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 subsections (4) and (5)), it could arise for a reason mentioned in subsection (8).
- (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;

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- (c) where a payee is not within the charge to a tax under the law of any territory because there is no territory where the payee is—
  - (i) resident for the purposes of a tax charged under the law of that territory, or
  - (ii) within the charge to a tax under the law of that territory as a result of having a permanent establishment in that territory, assume that the payee is a company that is resident for tax purposes, and carries on a business in connection with which the payment or quasi-payment is made, in the United Kingdom.
- (5) Where the relevant assumption in subsection (4)(c) applies in relation to a payee the following provisions are to be disregarded in relation to that payee for the purposes of subsection (3)(b)—
  - (a) section 441 of CTA 2009 (loan relationships for unallowable purposes);
  - (b) Part 4 (transfer pricing);
  - (c) this Part;
  - (d) Part 7 (tax treatment of financing costs and income).
- (6) Case 2 applies where there are one or more amounts of ordinary income (“under-taxed amounts”) that—
  - (a) arise, by reason of the payment or quasi-payment, to a payee for a permitted taxable period, and
  - (b) are under taxed for a reason mentioned in subsection (8).
- (7) Subject to subsection (9), for the purposes of subsection (6)(b) it does not matter whether an amount of ordinary income is under taxed for another reason as well (even if it would have been under taxed for that other reason regardless of any reason mentioned in subsection (8)).
- (8) The reasons are—
  - (a) the dual treatment condition being met in relation to a hybrid transfer arrangement under, or in connection with, which the payment or quasi-payment is made (see section 259DB(4));
  - (b) the payment or quasi-payment being a substitute payment.
- (9) For the purposes of this section, disregard—
  - (a) any excess or part of an excess mentioned in subsection (2), and
  - (b) any under-taxed amount,in relation to which the financial trader exclusion applies (see section 259DE) or that arises as a result of a payee being a relevant investment fund (see section 259NA).
- (10) Where case 1 applies, the amount of the hybrid transfer deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (2)(b).
- (11) Where case 2 applies, the amount of the hybrid transfer deduction/non-inclusion mismatch is equal to the sum of the amounts given in respect of each under-taxed amount by—

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$$\frac{(UTA \times (FMR - R))}{FMR}$$

where—

“UTA” is the under-taxed amount;

“FMR” is the payee's full marginal rate (expressed as a percentage) for the permitted taxable period for which the under-taxed amount arises;

“R” is the highest rate (expressed as a percentage) at which tax is charged on the taxable profits in which the under-taxed amount is included, taking into account on a just and reasonable basis the effect of any credit for underlying tax.

- (12) Where cases 1 and 2 both apply, the amount of the hybrid transfer deduction/non-inclusion mismatch is the sum of the amounts given by subsections (10) and (11).
- (13) See section 259DD for the meaning of “permitted taxable period” and “under taxed”.

#### **Interpretation of section 259DC**

259D(1) This section has effect for the purposes of section 259DC.

- (2) 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
    - (ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.
- (3) An amount of ordinary income of a payee, for a permitted taxable period, is “under taxed” if the highest rate at which tax is charged on the taxable profits of the payee in which the amount is included, taking into account on a just and reasonable basis the effect of any credit for underlying tax, is less than the payee's full marginal rate for that period.
- (4) The payee's “full marginal rate” means the highest rate at which the tax that is chargeable on the taxable profits mentioned in subsection (3) could be charged on taxable profits, of the payee for the permitted taxable period, which include ordinary income that arises from, or in connection with, a financial instrument.
- (5) A “credit for underlying tax” means a credit or relief given to reflect tax charged on profits that are wholly or partly used to fund (directly or indirectly) the payment or quasi-payment.

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### **The financial trader exclusion**

259D(E) This section has effect for the purposes of section 259DC(9).

- (2) The financial trader exclusion applies, in relation to an excess or part of an excess mentioned in section 259DC(2) or an under-taxed amount, where conditions A to C are met.
- (3) Condition A is that the excess or part arises, or the under-taxed amount is under taxed, because the payment or quasi-payment—
  - (a) is a substitute payment,
  - (b) is treated, for the purposes of tax charged on a person, so as to reflect the fact that it is representative of the underlying return, and
  - (c) is brought into account by another person (“the financial trader”) in calculating the profits of a trade under—
    - (i) Part 3 of CTA 2009 (trading income), or
    - (ii) an equivalent provision of the law of a territory outside the United Kingdom.
- (4) Condition B is that the financial trader also brings any associated payments into account as mentioned in subsection (3)(c).
- (5) In subsection (4) “associated payment” means a payment or quasi-payment—
  - (a) in relation to which the financial trader is the payer or a payee, and
  - (b) that is made under, or in connection with, the underlying instrument or an arrangement that relates to the underlying instrument.
- (6) Condition C is that—
  - (a) if the underlying return were to arise, and be paid directly, to the payee or payees in relation to the substitute payment, neither Chapter 3 (hybrid and other mismatches from financial instruments) nor any equivalent provision under the law of a territory outside the United Kingdom would apply, and
  - (b) the hybrid transfer arrangement under, or in connection with, which the substitute payment is made is not a structured arrangement (within the meaning given by section 259DA(7) and (8)).

### *Counteraction*

#### **Counteraction where the payer is within the charge to corporation tax for the payment period**

259D(F) This section applies where the payer is within the charge to corporation tax for the payment period.

- (2) For corporation tax purposes, the relevant deduction that may be deducted from the payer's income for the payment period is reduced by an amount equal to the hybrid transfer deduction/non-inclusion mismatch mentioned in section 259DA(5).

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### **Counteraction where a payee is within the charge to corporation tax**

- 259D**(G)** This section applies in relation to a payee where—
- (a) the payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, and
  - (b) it is reasonable to suppose that—
    - (i) neither section 259DF nor any equivalent provision under the law of a territory outside the United Kingdom applies, or
    - (ii) a provision of the law of a territory outside the United Kingdom that is equivalent to section 259DF applies, but does not fully counteract the hybrid transfer deduction/non-inclusion mismatch mentioned in section 259DA(5).
- (2) A provision of the law of a territory outside the United Kingdom that is equivalent to section 259DF does not fully counteract that mismatch if (and only if)—
- (a) it does not reduce the relevant deduction by the full amount of the mismatch, and
  - (b) the payer is still able to deduct some of the relevant deduction from income in calculating taxable profits.
- (3) In this section “the relevant amount” is—
- (a) in a case where subsection (1)(b)(i) applies, an amount equal to the hybrid transfer deduction/non-inclusion mismatch mentioned in section 259DA(5), or
  - (b) in a case where subsection (1)(b)(ii) applies, the lesser of—
    - (i) the amount by which that mismatch exceeds the amount by which it is reasonable to suppose the relevant deduction is reduced by a provision under the law of a territory outside the United Kingdom that is equivalent to section 259DF, and
    - (ii) the amount of the relevant deduction that may still be deducted as mentioned in subsection (2)(b).
- (4) If the payee is the only payee, the relevant amount is to be treated as income arising to the payee for the counteraction period.
- (5) If there is more than one payee, an amount equal to the payee's share of the relevant amount is to be treated as income arising to the payee for the counteraction period.
- (6) The payee's share of the relevant amount is to be determined by apportioning that amount between all the payees on a just and reasonable basis, having regard (in particular)—
- (a) to any arrangements as to profit sharing that may exist between some or all of the payees,
  - (b) to whom any under-taxed amounts (within the meaning given by section 259DC(6)) arise, and
  - (c) to whom any amounts of ordinary income that it would be reasonable to expect to arise as a result of the payment or quasi-payment, but that do not arise, would have arisen.

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- (7) An amount of income that is treated as arising under subsection (4) or (5) is chargeable under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(2) of that Act).
- (8) The “counteraction period” means—
  - (a) if an accounting period of the payee coincides with the payment period, that accounting period, or
  - (b) otherwise, the first accounting period of the payee that is wholly or partly within the payment period.

## CHAPTER 5

### HYBRID PAYER DEDUCTION/NON-INCLUSION MISMATCHES

#### *Introduction*

#### **Overview of Chapter**

- 259E) This Chapter contains provision that counteracts deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments because the payer is a hybrid entity.
- (2) The Chapter counteracts mismatches where the payer or a payee is within the charge to corporation tax and does so by altering the corporation tax treatment of the payer or a payee.
- (3) Section 259EA contains the conditions that must be met for this Chapter to apply.
- (4) Section 259EB defines “hybrid payer deduction/non-inclusion mismatch” and provides how the amount of the mismatch is to be calculated.
- (5) Section 259EC contains provision that counteracts the mismatch where the payer is within the charge to corporation tax for the payment period.
- (6) Section 259ED contains provision that counteracts the mismatch where a payee is within the charge to corporation tax and the mismatch is not fully counteracted by provision under the law of a territory outside the United Kingdom that is equivalent to section 259EC.
- (7) See also—
  - (a) section 259BB for the meaning of “payment”, “quasi-payment”, “payment period”, “relevant deduction”, “payer” and “payee”, and
  - (b) section 259BE for the meaning of “hybrid entity”, “investor” and “investor jurisdiction”.

#### *Application of Chapter*

#### **Circumstances in which the Chapter applies**

- 259EAI) This Chapter applies if conditions A to E are met.

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- (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.
- (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.

### **Hybrid payer deduction/non-inclusion mismatches and their extent**

259EB) There is a “hybrid payer deduction/non-inclusion mismatch”, in relation to a payment or quasi-payment, if—

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- (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.
- (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) 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.
- (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
    - (ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

#### *Counteraction*

#### **Counteraction where the hybrid payer is within the charge to corporation tax for the payment period**

- 259E(1) This section applies where the hybrid payer is within the charge to corporation tax for the payment period.
- (2) For corporation tax purposes, the relevant deduction so far as it does not exceed the hybrid payer deduction/non-inclusion mismatch mentioned in

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section 259EA(5) (“the restricted deduction”) may not be deducted from the hybrid payer's income for the payment period unless it is deducted from dual inclusion income for that period.

- (3) So much of the restricted deduction (if any) as, by virtue of subsection (2), cannot be deducted from the payer's income for the payment period—
- (a) is carried forward to subsequent accounting periods of the payer, and
  - (b) for corporation tax purposes, may be deducted from dual inclusion income for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.
- (4) In this section “dual inclusion income” of the payer for an accounting period means an amount that arises in connection with the arrangement mentioned in section 259EA(2) and is both—
- (a) ordinary income of the payer for that period for corporation tax purposes, and
  - (b) 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.
- (5) A taxable period of an investor is “permitted” for the purposes of paragraph (b) of subsection (4) if—
- (a) the period begins before the end of 12 months after the end of the accounting period mentioned in paragraph (a) of that subsection, 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.

### **Counteraction where a payee is within the charge to corporation tax**

- 259ED) This section applies in relation to a payee where—
- (a) the payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, and
  - (b) it is reasonable to suppose that—
    - (i) no provision under the law of a territory outside the United Kingdom that is equivalent to section 259EC applies, or
    - (ii) such a provision does apply, but does not fully counteract the hybrid payer deduction/non-inclusion mismatch mentioned in section 259EA(5).
- (2) A provision of the law of a territory outside the United Kingdom that is equivalent to section 259EC does not fully counteract that mismatch if (and only if)—
- (a) the amount of the relevant deduction that the provision prevents from being deducted from income of the hybrid payer, for the payment period, other than dual inclusion income, is less than the amount of the mismatch, and
  - (b) the hybrid payer is still able to deduct some of the relevant deduction from income, for the payment period, that is not dual inclusion income.

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- (3) In this section “the relevant amount” is—
- (a) in a case where subsection (1)(b)(i) applies, an amount equal to the hybrid payer deduction/non-inclusion mismatch mentioned in section 259EA(5), or
  - (b) in a case where subsection (1)(b)(ii) applies, the lesser of—
    - (i) the amount by which that mismatch exceeds the amount of the relevant deduction that it is reasonable to suppose is prevented, by a provision of the law of a territory outside the United Kingdom that is equivalent to section 259EC, from being deducted from income of the hybrid payer, for the payment period, other than dual inclusion income, and
    - (ii) the amount of the relevant deduction that may still be deducted as mentioned in subsection (2)(b).
- (4) If the payee is the only payee, an amount equal to—
- (a) the relevant amount, less
  - (b) any dual inclusion income,
- is to be treated as income arising to the payee for the counteraction period.
- (5) If there is more than one payee, an amount equal to—
- (a) the payee's share of the relevant amount, less
  - (b) the relevant proportion of any dual inclusion income,
- is to be treated as income arising to the payee for the counteraction period.
- (6) The payee's share of the relevant amount is to be determined by apportioning that amount between all the payees on a just and reasonable basis, having regard (in particular)—
- (a) to any arrangements as to profit sharing that may exist between some or all of the payees, and
  - (b) to whom any amounts of ordinary income that it would be reasonable to expect to arise as a result of the payment or quasi-payment, but that do not arise, would have arisen.
- (7) The “relevant” proportion of any dual inclusion income for the payment period is the same as the proportion of the relevant amount apportioned to the payee in accordance with subsection (6).
- (8) An amount of income that is treated as arising under subsection (4) or (5) is chargeable under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(2) of that Act).
- (9) In this section—
- “counteraction period” means—
- (a) if an accounting period of the payee coincides with the payment period, that accounting period, or
  - (b) otherwise, the first accounting period of the payee that is wholly or partly within the payment period;
- “dual inclusion income” means an amount that arises in connection with the arrangement mentioned in section 259EA(2) and is both—
- (a) ordinary income of the payer for the payment period, and

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- (b) ordinary income of an investor in the payer for a permitted taxable period for the purposes of a tax charged under the law of an investor jurisdiction.
- (10) A taxable period of an investor is “permitted” for the purposes of subsection (9) 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
    - (ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

## CHAPTER 6

### DEDUCTION/NON-INCLUSION MISMATCHES RELATING TO TRANSFERS BY PERMANENT ESTABLISHMENTS

#### *Introduction*

#### **Overview of Chapter**

- 259F(1) This Chapter contains provision that counteracts certain excessive deductions that arise in relation to transfers of money or money's worth made, or taken to be made, by a multinational company's permanent establishment in the United Kingdom to the company in the parent jurisdiction.
- (2) The Chapter counteracts such deductions by altering the corporation tax treatment of the company.
  - (3) Section 259FA contains the conditions that must be met for this Chapter to apply.
  - (4) Subsection (3) of that section defines “multinational company” and “the parent jurisdiction”.
  - (5) Subsection (8) of that section defines “the excessive PE deduction”.
  - (6) Section 259FB contains provision for the counteraction of the excessive PE deduction.
  - (7) See also section 259BF for the meaning of “permanent establishment”.

#### *Application of Chapter*

#### **Circumstances in which the Chapter applies**

- 259FA(1) This Chapter applies if conditions A to C are met.
- (2) Condition A is that a company is a multinational company.

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- (3) For the purposes of this Chapter, a company is a multinational company if—
- (a) it is resident in a territory outside the United Kingdom (“the parent jurisdiction”) for the purposes of a tax charged under the law of that territory, and
  - (b) it is within the charge to corporation tax because it carries on a business in the United Kingdom through a permanent establishment in the United Kingdom.
- (4) Condition B is that, disregarding the provisions mentioned in subsection (5), there is an amount (“the PE deduction”) that—
- (a) may (in substance) be deducted from the company's income for the purposes of calculating the company's taxable profits for an accounting period (“the relevant PE period”) for corporation tax purposes, and
  - (b) is in respect of a transfer of money or money's worth from the company in the United Kingdom to the company in the parent jurisdiction that—
    - (i) is actually made, or
    - (ii) is (in substance) treated as being made for corporation tax purposes.
- (5) The provisions are—
- (a) this Chapter and Chapters 7 to 10, and
  - (b) any equivalent provision under the law of a territory outside the United Kingdom.
- (6) Condition C is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (5)—
- (a) the circumstances giving rise to the PE deduction will not result in—
    - (i) an increase in the taxable profits of the company for any permitted taxable period, or
    - (ii) a reduction of a loss made by the company for any permitted taxable period,for the purposes of a tax charged under the law of the parent jurisdiction, or
  - (b) those circumstances will result in such an increase or reduction for one or more permitted taxable periods, but the PE deduction exceeds the aggregate effect on taxable profits.
- (7) “The aggregate effect on taxable profits” is the sum of—
- (a) any increases, resulting from the circumstances giving rise to the PE deduction, in the taxable profits of the company, for a permitted 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 permitted taxable period, for the purposes of a tax charged under the law of the parent jurisdiction, is reduced as a result of the circumstances giving rise to the PE deduction.
- (8) In this Chapter “the excessive PE deduction” means—
- (a) where paragraph (a) of subsection (6) applies, the PE deduction, or

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- (b) where paragraph (b) of subsection (6) applies, the PE deduction so far as it is reasonable to suppose that it exceeds the aggregate effect on taxable profits.
- (9) For the purposes of subsections (6) and (7) a taxable period of the company, for the purposes of a tax charged under the law of the parent jurisdiction, is “permitted” if—
  - (a) the period begins before the end of 12 months after the end of the relevant PE period, or
  - (b) where the period begins after that—
    - (i) a claim has been made for the period to be a permitted period for the purposes of subsections (6) and (7), and
    - (ii) it is just and reasonable for the circumstances giving rise to the PE deduction to affect the profits or loss made for that period rather than an earlier period.
- (10) Section 259FB contains provision for counteracting the excessive PE deduction.

#### *Counteraction*

#### **Counteraction of the excessive PE deduction**

- 259FB) For corporation tax purposes, the excessive PE deduction may not be deducted from the company's income for the relevant PE period unless it is deducted from dual inclusion income for that period.
- (2) So much of the excessive PE deduction (if any) as, by virtue of subsection (1), cannot be deducted from the company's income for the relevant PE period—
    - (a) is carried forward to subsequent accounting periods of the company, and
    - (b) for corporation tax purposes, may be deducted from dual inclusion income of the company for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.
  - (3) In this section “dual inclusion income” of the company for an accounting period means an amount that is both—
    - (a) ordinary income of the company for that period for corporation tax purposes, and
    - (b) ordinary income of the company for a permitted taxable period for the purposes of a tax charged under the law of the parent jurisdiction.
  - (4) A taxable period of the company is “permitted” for the purposes of paragraph (b) of subsection (3) if—
    - (a) the period begins before the end of 12 months after the end of the accounting period mentioned in paragraph (a) of that subsection, 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

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- (ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

## CHAPTER 7

### HYBRID PAYEE DEDUCTION/NON-INCLUSION MISMATCHES

#### *Introduction*

#### **Overview of Chapter**

- 259G(1) This Chapter contains provision that counteracts deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments because a payee is a hybrid entity.
- (2) The Chapter counteracts mismatches by—
- (a) altering the corporation tax treatment of the payer for the payment period,
  - (b) treating income chargeable to corporation tax as arising to an investor who is within the charge to corporation tax, or
  - (c) treating income chargeable to corporation tax as arising to a payee that is a hybrid entity and a limited liability partnership.
- (3) Section 259GA contains the conditions that must be met for this Chapter to apply.
- (4) Section 259GB defines “hybrid payee deduction/non-inclusion mismatch” and provides how the amount of the mismatch is to be calculated.
- (5) Section 259GC contains provision that counteracts the mismatch where the payer is within the charge to corporation tax for the payment period.
- (6) Section 259GD contains provision that counteracts the mismatch where an investor in the payee is within the charge to corporation tax and the mismatch is not fully counteracted by section 259GC or an equivalent provision under the law of a territory outside the United Kingdom.
- (7) Section 259GE contains provision that counteracts the mismatch where a payee is a hybrid entity and limited liability partnership and the mismatch is not otherwise fully counteracted.
- (8) See also—
- (a) section 259BB for the meaning of “payment”, “quasi-payment”, “payment period”, “relevant deduction”, “payer” and “payee”;
  - (b) section 259BE for the meaning of “hybrid entity”, “investor” and “investor jurisdiction”.

#### *Application of Chapter*

#### **Circumstances in which the Chapter applies**

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

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- (2) Condition A is that a payment or quasi-payment is made under, or in connection with, an arrangement.
- (3) Condition B is that a payee is a hybrid entity (a “hybrid payee”).
- (4) Condition C is that—
  - (a) the payer is within the charge to corporation tax for the payment period,
  - (b) an investor in a hybrid payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, or
  - (c) a hybrid payee is a limited liability partnership.
- (5) Condition D is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (6), there would be a hybrid payee deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259GB).
- (6) The provisions are—
  - (a) this Chapter and Chapters 8 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 payer is also a hybrid payee (see section 259BB(7)),
  - (b) the payer and a hybrid payee or an investor in a hybrid 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 payee 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 payee deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.
- (10) The following provisions contain provision for the counteraction of the hybrid payee deduction/non-inclusion mismatch—
  - (a) section 259GC (cases where the payer is within the charge to corporation tax for the payment period),
  - (b) section 259GD (cases where an investor in a hybrid payee is within the charge to corporation tax), and

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- (c) section 259GE (cases where a hybrid payee is a limited liability partnership).

### **Hybrid payee deduction/non-inclusion mismatches and their extent**

259GB(1) There is a “hybrid payee 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 one or more payees being hybrid entities.
- (2) The extent of the hybrid payee deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (1)(b).
- (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 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.
- (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—
- (a) the period begins before the end of 12 months after the end of the payment period, or

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- (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.

### *Counteraction*

#### **Counteraction where the payer is within the charge to corporation tax for the payment period**

- 259G(1) This section applies where the payer is within the charge to corporation tax for the payment period.
- (2) For corporation tax purposes, the relevant deduction that may be deducted from the payer's income for the payment period is reduced by an amount equal to the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5).

#### **Counteraction where the investor is within the charge to corporation tax**

- 259G(1) This section applies in relation to an investor in a hybrid payee where—
- (a) the investor is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, and
  - (b) it is reasonable to suppose that—
    - (i) neither section 259GC nor any equivalent provision under the law of a territory outside the United Kingdom applies, or
    - (ii) a provision of the law of a territory outside the United Kingdom that is equivalent to section 259GC applies, but does not fully counteract the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5).
- (2) A provision of the law of a territory outside the United Kingdom that is equivalent to section 259GC does not fully counteract that mismatch if (and only if)—
- (a) it does not reduce the relevant deduction by the full amount of the mismatch, and
  - (b) the payer is still able to deduct some of the relevant deduction from income in calculating taxable profits.
- (3) In this section “the relevant amount” is—
- (a) in a case where subsection (1)(b)(i) applies, an amount equal to the hybrid payee deduction/non-inclusion mismatch, or
  - (b) in a case where subsection (1)(b)(ii) applies, the lesser of—
    - (i) the amount by which that mismatch exceeds the amount by which it is reasonable to suppose the relevant deduction is reduced by a provision of the law of a territory outside the United Kingdom that is equivalent to section 259GC, and
    - (ii) the amount of the relevant deduction that may still be deducted as mentioned in subsection (2)(b).

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- (4) If the investor is the only investor in the hybrid payee, the appropriate proportion of the relevant amount is to be treated as income arising to the investor for the counteraction period.
- (5) If there is more than one investor in the hybrid payee, an amount equal to the investor's share of the appropriate proportion of the relevant amount is to be treated as income arising to the investor for the counteraction period.
- (6) For the purposes of subsections (4) and (5) the “appropriate proportion of the relevant amount”—
  - (a) if the hybrid payee is the only hybrid payee, is all of the relevant amount, or
  - (b) if there is more than one hybrid payee, is the proportion of the relevant amount apportioned to the hybrid payee upon an apportionment of that amount between all the hybrid payees on a just and reasonable basis having regard (in particular) to—
    - (i) any arrangements as to profit sharing that may exist between some or all of the payees, and
    - (ii) the extent to which it is reasonable to suppose that the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5) arises by reason of each hybrid payee being a hybrid entity.
- (7) The investor's share of the appropriate proportion of the relevant amount is to be determined by apportioning that proportion of that amount between all the investors in the hybrid payee on a just and reasonable basis, having regard (in particular) to any arrangements as to profit sharing that may exist between some or all of those investors.
- (8) An amount of income that is treated as arising under subsection (4) or (5) is chargeable under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(23) of that Act).
- (9) The “counteraction period” means—
  - (a) if an accounting period of the investor coincides with the payment period, that accounting period, or
  - (b) otherwise, the first accounting period of the investor that is wholly or partly within the payment period.

### **Counteraction where a hybrid payee is an LLP**

- 259GE) This section applies in relation to a hybrid payee where the hybrid payee is a limited liability partnership and it is reasonable to suppose that—
- (a) none of the following provisions applies—
    - (i) section 259GC;
    - (ii) section 259GD;
    - (iii) any provision under the law of a territory outside the United Kingdom that is equivalent to either of those sections, or
  - (b) one or more of those provisions apply, but the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5) is not fully counteracted.

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- (2) The mismatch is not fully counteracted if (and only if), after the application of such of those provisions as apply—
- (a) the relevant deduction is not reduced by the full amount of the mismatch,
  - (b) the payer is still able to deduct some of the relevant deduction from income in calculating taxable profits, and
  - (c) the lesser of—
    - (i) the difference between the amount of the mismatch and the amount by which it is reasonable to suppose the relevant deduction is reduced, and
    - (ii) the amount of the relevant deduction that may still be deducted,
 exceeds the sum of any amounts of income treated as arising under section 259GD or any equivalent provision under the law of a territory outside the United Kingdom.
- (3) In this section “the relevant amount” is—
- (a) in a case where subsection (1)(a) applies, an amount equal to the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5), or
  - (b) in a case where subsection (1)(b) applies, an amount equal to the excess mentioned in subsection (2)(c).
- (4) If the hybrid payee is the only hybrid payee, an amount equal to the relevant amount is to be treated as income arising to the hybrid payee on the last day of the payment period.
- (5) If there is more than one hybrid payee, an amount equal to the hybrid payee's share of the relevant amount is to be treated as income arising to the hybrid payee on the last day of the payment period.
- (6) The hybrid payee's share of the relevant amount is to be determined by apportioning that amount between all the hybrid payees on a just and reasonable basis, having regard (in particular) to—
- (a) any arrangements as to profit sharing that may exist between some or all of the payees, and
  - (b) the extent to which it is reasonable to suppose that the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5) arises by reason of each hybrid payee being a hybrid entity.
- (7) An amount of income that is treated as arising under subsection (4) or (5) is chargeable to corporation tax on the hybrid payee (as opposed to being chargeable to tax on any of its members) under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(2) of that Act).
- (8) Section 863 of ITTOIA 2005 (treatment of certain limited liability partnerships for income tax purposes) and section 1273 of CTA 2009 (treatment of certain limited liability partnerships for corporation tax purposes) are disapplied in relation to the hybrid payee to the extent necessary for the purposes of subsection (7).

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- (9) This section is to be disregarded for the purposes of determining whether the hybrid payee is within the charge to corporation tax for the purposes of any other provision of this Part, except section 259M (anti-avoidance).

## CHAPTER 8

### MULTINATIONAL PAYEE DEDUCTION/NON-INCLUSION MISMATCHES

#### *Introduction*

#### **Overview of Chapter**

- 259H(1) This Chapter contains provision that counteracts deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments, where the payer is within the charge to corporation tax, because a payee is multinational company.
- (2) The Chapter counteracts mismatches by altering the corporation tax treatment of the payer.
- (3) Section 259HA contains the conditions that must be met for this Chapter to apply.
- (4) Subsection (4) of that section defines “multinational company”, “parent jurisdiction” and “PE jurisdiction”.
- (5) Section 259HB defines “multinational payee deduction/non-inclusion mismatch” and provides how the amount of the mismatch is to be calculated.
- (6) Section 259HC contains provision that counteracts the mismatch.
- (7) See also—
- section 259BB for the meaning of “payment”, “quasi-payment”, “payment period”, “relevant deduction”, “payer” and “payee”;
  - section 259BF for the meaning of “permanent establishment”.

#### *Application of Chapter*

#### **Circumstances in which the Chapter applies**

- 259H(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 a payee is a multinational company.
- (4) For the purposes of this Chapter, a company is a “multinational company” if—
- it is resident in a territory (“the parent jurisdiction”) for tax purposes under the law of that territory, and

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- (b) it is regarded as carrying on a business in another territory (“the PE jurisdiction”) through a permanent establishment in that territory (whether it is so regarded under the law of the parent jurisdiction, the PE jurisdiction or any other territory).
- (5) Condition C is that the payer is within the charge to corporation tax for the payment period.
- (6) Condition D is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (7), there would be a multinational payee deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259HB).
- (7) The provisions are—
  - (a) this Chapter and Chapters 9 and 10, and
  - (b) any equivalent provision under the law of a territory outside the United Kingdom.
- (8) Condition E is that—
  - (a) it is a quasi-payment that is made as mentioned in subsection (2) and the payer is also a payee (see section 259BB(7)),
  - (b) the payer and the multinational company 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.
- (9) The arrangement is “structured” if it is reasonable to suppose that—
  - (a) the arrangement is designed to secure a multinational company 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.
- (10) The arrangement may be designed to secure a multinational payee deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.
- (11) Section 259HC contains provision for the counteraction of the multinational payee deduction/non-inclusion mismatch.

#### **Multinational payee deduction/non-inclusion mismatches and their extent**

- 259HB) There is a “multinational payee 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 one or more payees being multinational companies.

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- (2) The extent of the multinational payee deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (1)(b).
- (3) For the purposes of subsection (1)(b)—
  - (a) where the law of a PE jurisdiction in relation to a payee that is a multinational company makes no provision for charging tax on any companies, so much of the excess as arises as a result is to be taken not to arise by reason of that payee being a multinational company, but
  - (b) subject to that, it does not matter whether the excess or part arises for another reason as well as one or more payees being multinational companies (even if it would have arisen for that other reason regardless of whether any payees are multinational companies).
- (4) 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
    - (ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

### *Counteraction*

#### **Counteraction of the multinational payee deduction/non-inclusion mismatch**

259HC For corporation tax purposes, the relevant deduction that may be deducted from the payer's income for the payment period is reduced by an amount equal to the multinational payee deduction/non-inclusion mismatch mentioned in section 259HA(6).

## **CHAPTER 9**

### **HYBRID ENTITY DOUBLE DEDUCTION MISMATCHES**

#### *Introduction*

#### **Overview of Chapter**

- 259I) This Chapter contains provision that counteracts double deduction mismatches that it is reasonable to suppose would otherwise arise by reason of a person being a hybrid entity.
- (2) The Chapter counteracts mismatches where the hybrid entity, or an investor in the hybrid entity, is within the charge to corporation tax and does so by altering the corporation tax treatment of the entity or investor.

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- (3) Section 259IA contains the conditions that must be met for this Chapter to apply.
- (4) Subsection (4) of that section defines “hybrid entity double deduction amount”.
- (5) Section 259IB contains provision that counteracts the mismatch where an investor in the hybrid entity is within the charge to corporation tax.
- (6) Section 259IC contains provision that, in certain circumstances, counteracts the mismatch where the hybrid entity is within the charge to corporation tax and the mismatch is not fully counteracted by provision under the law of a territory outside the United Kingdom that is equivalent to section 259IB.
- (7) See also section 259BE for the meaning of “hybrid entity”, “investor” and “investor jurisdiction”.

### *Application of Chapter*

#### **Circumstances in which the Chapter applies**

259IA(1) This Chapter applies if conditions A to C are met.

- (2) Condition A is that there is an amount or part of an amount that, disregarding the provisions mentioned in subsection (3), it is reasonable to suppose—
  - (a) could be deducted from the income of a hybrid entity for the purposes of calculating the taxable profits of that entity for a taxable period (“the hybrid entity deduction period”), and
  - (b) could also be deducted, under the law of the investor jurisdiction, from the income of an investor in the hybrid entity for the purposes of calculating the taxable profits of that investor for a taxable period (“the investor deduction period”).
- (3) The provisions are—
  - (a) this Chapter and Chapter 10, and
  - (b) any equivalent provision under the law of a territory outside the United Kingdom.
- (4) In this Chapter the amount or part of an amount mentioned in subsection (2) is referred to as “the hybrid entity double deduction amount”.
- (5) Condition B is that—
  - (a) the investor is within the charge to corporation tax for the investor deduction period, or
  - (b) the hybrid entity is within the charge to corporation tax for the hybrid entity deduction period.
- (6) Condition C is that—
  - (a) the hybrid entity and any investor in it are related (see section 259NC) at any time—
    - (i) in the hybrid entity deduction period, or
    - (ii) in the investor deduction period, or

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- (b) an arrangement, to which the hybrid entity or any investor in it is party, is a structured arrangement.
- (7) An arrangement is “structured” if it is reasonable to suppose that—
  - (a) the arrangement is designed to secure the hybrid entity double deduction amount, or
  - (b) the terms of the arrangement share the economic benefit of that amount being deductible by both the hybrid entity and the investor between the parties to the arrangement or otherwise reflect the fact that the amount is expected to arise.
- (8) The arrangement may be designed to secure the hybrid entity double deduction amount despite also being designed to secure any commercial or other objective.
- (9) Sections 259IB (cases where the investor is within the charge to corporation tax for the investor deduction period) and 259IC (cases where the hybrid entity is within the charge to corporation tax for the hybrid entity deduction period) contain provision for the counteraction of the hybrid entity double deduction amount.

### *Counteraction*

#### **Counteraction where the investor is within the charge to corporation tax**

- 259IB(1) This section applies in relation to the investor in the hybrid entity where the investor is within the charge to corporation tax for the investor deduction period.
  - (2) For corporation tax purposes, the hybrid entity double deduction amount may not be deducted from the investor's income for the investor deduction period unless it is deducted from dual inclusion income of the investor for that period.
  - (3) So much of the hybrid entity double deduction amount (if any) as, by virtue of subsection (2), cannot be deducted from the investor's income for the investor deduction period—
    - (a) is carried forward to subsequent accounting periods of the investor, and
    - (b) for corporation tax purposes, may be deducted from dual inclusion income of the investor for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.
  - (4) If the Commissioners are satisfied that the investor will have no dual inclusion income—
    - (a) for an accounting period after the investor deduction period (“the relevant period”), nor
    - (b) for any accounting period after the relevant period,any of the hybrid entity double deduction amount that has not been deducted from dual inclusion income for an accounting period before the relevant period in accordance with subsection (2) or (3) (“the stranded deduction”)

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may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the investor's taxable total profits of the relevant period.

- (5) So much of the stranded deduction (if any) as cannot be deducted, in accordance with subsection (4), at step 2 in section 4(2) of CTA 2010 in calculating the investor's taxable total profits of the relevant period—
  - (a) is carried forward to subsequent accounting periods of the investor, and
  - (b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.
- (6) Subsection (7) applies if it is reasonable to suppose that all or part of the hybrid entity double deduction amount is (in substance) deducted (“the illegitimate overseas deduction”), under the law of a territory outside the United Kingdom, from income of any person, for a taxable period, that is not dual inclusion income of the investor for an accounting period.
- (7) For the purposes of determining how much of the hybrid entity double deduction amount may be deducted (if any) for the accounting period of the investor in which the taxable period mentioned in subsection (6) ends, and any subsequent accounting periods of the investor, an amount of it equal to the illegitimate overseas deduction is to be taken to have already been deducted for a previous accounting period of the investor.
- (8) In this section “dual inclusion income” of the investor for an accounting period means an amount that is both—
  - (a) ordinary income of the investor for that period for corporation tax purposes, and
  - (b) ordinary income of the hybrid entity for a permitted taxable period for the purposes of any tax under the law of a territory outside the United Kingdom.
- (9) A taxable period of the hybrid entity is “permitted” for the purposes of paragraph (b) of subsection (8) if—
  - (a) the period begins before the end of 12 months after the end of the accounting period of the investor mentioned in paragraph (a) of that subsection, 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.

### **Counteraction where the hybrid entity is within the charge to corporation tax**

259I(1) This section applies where—

- (a) the hybrid entity is within the charge to corporation tax for the hybrid entity deduction period,
- (b) it is reasonable to suppose that—
  - (i) no provision under the law of an investor jurisdiction that is equivalent to section 259IB applies, or

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- (ii) such a provision does apply, but the hybrid entity double deduction amount exceeds the amount that, under that provision, cannot be deducted from income, for the investor deduction period, other than dual inclusion income of the hybrid entity for the hybrid entity deduction period, and
  - (c) the secondary counteraction condition is met.
- (2) The secondary counteraction condition is met if—
  - (a) the hybrid entity and any investor in it are in the same control group (see section 259NB) at any time in—
    - (i) the hybrid entity deduction period, or
    - (ii) the investor deduction period, or
  - (b) there is an arrangement, to which the hybrid entity or any investor in it is party, that is a structured arrangement (within the meaning given by section 259IA(7) and (8)).
- (3) In this section “the restricted deduction” means—
  - (a) in a case where subsection (1)(b)(i) applies, the hybrid entity double deduction amount, or
  - (b) in a case where subsection (1)(b)(ii) applies, the hybrid entity double deduction amount so far as it exceeds the amount that it is reasonable to suppose, under a provision of the law of a territory outside the United Kingdom that is equivalent to section 259IB, cannot be deducted from income, for the investor deduction period, other than dual inclusion income of the hybrid entity for the hybrid entity deduction period.
- (4) For corporation tax purposes, the restricted deduction may not be deducted from the hybrid entity's income for the hybrid entity deduction period unless it is deducted from dual inclusion income for that period.
- (5) So much of the restricted deduction (if any) as, by virtue of subsection (4), cannot be deducted from the hybrid entity's income for the hybrid entity deduction period—
  - (a) is carried forward to subsequent accounting periods of the hybrid entity, and
  - (b) for corporation tax purposes, may be deducted from dual inclusion income of the hybrid entity for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.
- (6) If the Commissioners are satisfied that the hybrid entity will have no dual inclusion income—
  - (a) for an accounting period after the hybrid entity deduction period (“the relevant period”), nor
  - (b) for any accounting period after the relevant period,any of the restricted deduction that has not been deducted from dual inclusion income for an accounting period before the relevant period in accordance with subsection (4) or (5) (“the stranded deduction”) may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the hybrid entity's taxable total profits of the relevant period.

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- (7) So much of the stranded deduction (if any) as cannot be deducted, in accordance with subsection (6), at step 2 in section 4(2) of CTA 2010 in calculating the hybrid entity's taxable total profits of the relevant period—
- (a) is carried forward to subsequent accounting periods of the hybrid entity, and
  - (b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.
- (8) Subsection (9) applies if it is reasonable to suppose that all or part of the hybrid entity double deduction amount is (in substance) deducted (“the illegitimate overseas deduction”), under the law of a territory outside the United Kingdom, from income of any person, for a taxable period, that is not dual inclusion income of the hybrid entity for an accounting period.
- (9) For the purposes of determining how much of the hybrid entity double deduction amount may be deducted (if any) for the accounting period of the hybrid entity in which the taxable period mentioned in subsection (8) ends, and any subsequent accounting periods of the hybrid entity, an amount of it equal to the illegitimate overseas deduction is to be taken to have already been deducted for a previous accounting period of the hybrid entity.
- (10) In this section “dual inclusion income” of the hybrid entity for an accounting period means an amount that is both—
- (a) ordinary income of the hybrid entity for that period for corporation tax purposes, and
  - (b) 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.
- (11) A taxable period of an investor is “permitted” for the purposes of paragraph (b) of subsection (10) if—
- (a) the period begins before the end of 12 months after the end of the accounting period mentioned in paragraph (a) of that subsection, 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.

## CHAPTER 10

### DUAL TERRITORY DOUBLE DEDUCTION CASES

#### *Introduction*

#### **Overview of Chapter**

- 259(1) This Chapter contains provision that counteracts double deduction mismatches that it is reasonable to suppose would otherwise arise as a result of a company—

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- (a) being a dual resident company, or
  - (b) being a relevant multinational company.
- (2) The counteraction operates by altering the corporation tax treatment of the company.
- (3) Section 259JA contains the conditions that must be met for this Chapter to apply.
- (4) Subsection (3) of that section defines “dual resident company”.
- (5) Subsection (4) of that section defines “relevant multinational company”, “parent jurisdiction” and “PE jurisdiction”.
- (6) Subsection (5) of that section defines “dual territory double deduction amount”.
- (7) Section 259JB contains provision that counteracts the mismatch where the company is a dual resident company.
- (8) Section 259JC contains provision that counteracts the mismatch where the company is a multinational company and the United Kingdom is the parent jurisdiction.
- (9) Section 259JD contains provision that counteracts the mismatch where the company is a relevant multinational company, the United Kingdom is the PE jurisdiction and the mismatch is not counteracted under a provision of the law of a territory outside the United Kingdom that is equivalent to section 259JC.
- (10) See also section 259BF for the meaning of “permanent establishment”.

#### *Application of Chapter*

#### **Circumstances in which the Chapter applies**

259JA(1) This Chapter applies if conditions A and B are met.

- (2) Condition A is that a company is a—
- (a) dual resident company, or
  - (b) relevant multinational company.
- (3) For the purposes of this Chapter a company is a “dual resident company” if—
- (a) it is UK resident, and
  - (b) it is also within the charge to a tax under the law of a territory outside the United Kingdom because—
    - (i) it derives its status as a company from that law,
    - (ii) its place of management is in that territory, or
    - (iii) it is for some other reason treated under that law as resident in that territory for the purposes of that tax.
- (4) For the purposes of this Chapter a company is a “relevant multinational company” if—
- (a) it is within the charge to a tax, under the law of a territory (“the PE jurisdiction”) in which it is not resident for tax purposes,

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- because it carries on business in that territory through a permanent establishment in that territory, and
- (b) either—
- (i) the PE jurisdiction is the United Kingdom, or
  - (ii) the territory in which the company is resident for tax purposes (“the parent jurisdiction”) is the United Kingdom.
- (5) Condition B is that there is an amount (“the dual territory double deduction amount”) that, disregarding this Chapter and any equivalent provision under the law of a territory outside the United Kingdom, it is reasonable to suppose could, by reason of the company being a dual resident company or a relevant multinational company—
- (a) be deducted from the company's income for an accounting period (“the deduction period”) for corporation tax purposes, and
  - (b) also be deducted from the company's income for a taxable period (“the foreign deduction period”) for the purposes of a tax charged under the law of a territory outside the United Kingdom.
- (6) The following provisions provide for the counteraction of the dual territory double deduction amount—
- (a) section 259JB (cases where a company is dual resident),
  - (b) section 259JC (cases where a company is a relevant multinational and the United Kingdom is the parent jurisdiction), and
  - (c) section 259JD (cases where a company is a relevant multinational, the United Kingdom is the PE jurisdiction and the amount is not counteracted in the parent jurisdiction).

#### *Counteraction*

#### **Counteraction where mismatch arises because of a dual resident company**

259JB) This section applies where the dual territory double deduction amount arises by reason of the company being a dual resident company.

- (2) For corporation tax purposes, the dual territory double deduction amount may not be deducted from the company's income for the deduction period unless it is deducted from dual inclusion income of the company for that period.
- (3) So much of the dual territory double deduction amount (if any) as, by virtue of subsection (2), cannot be deducted from the company's income for the deduction period—
  - (a) is carried forward to subsequent accounting periods of the company, and
  - (b) for corporation tax purposes, may be deducted from dual inclusion income of the company for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.
- (4) If the Commissioners are satisfied that the company has ceased to be a dual resident company, any of the dual territory double deduction amount that has not been deducted from dual inclusion income in accordance with

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subsection (2) or (3) (“the stranded deduction”) may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the company's taxable total profits of the accounting period in which it ceased to be a dual resident company.

- (5) So much of the stranded deduction (if any) as cannot be deducted, in accordance with subsection (4), at step 2 in section 4(2) of CTA 2010 in calculating the company's taxable total profits of the accounting period in which the company ceased to be a dual resident company—
- (a) is carried forward to subsequent accounting periods of the company, and
  - (b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.
- (6) Subsection (7) applies if it is reasonable to suppose that all or part of the dual territory double deduction amount is (in substance) deducted (“the illegitimate overseas deduction”), under the law of a territory outside the United Kingdom, from income of any person, for a taxable period, that is not dual inclusion income of the company for an accounting period.
- (7) For the purposes of determining how much of the dual territory double deduction amount may be deducted (if any) for the accounting period of the company in which the taxable period mentioned in subsection (6) ends, and any subsequent accounting periods of the company, an amount of it equal to the illegitimate overseas deduction is to be taken to have already been deducted for a previous accounting period of the company.
- (8) In this section “dual inclusion income” of the company for an accounting period means an amount that is both—
- (a) ordinary income of the company for that period for corporation tax purposes, and
  - (b) 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.
- (9) A taxable period of the company is “permitted” for the purposes of paragraph (b) of subsection (8) if—
- (a) the period begins before the end of 12 months after the end of the accounting period mentioned in paragraph (a) of that subsection, 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.

### **Counteraction where mismatch arises because of a relevant multinational and the UK is the parent jurisdiction**

259J(1) This section applies where—

- (a) the dual territory double deduction amount arises by reason of the company being a relevant multinational company, and
- (b) the United Kingdom is the parent jurisdiction.

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- (2) If some or all of the dual territory double deduction amount is (in substance) deducted (“the impermissible overseas deduction”), for the purposes of a tax under the law of a territory outside the United Kingdom, from the income of any person, for any taxable period, that is not dual inclusion income of the company—
- (a) the dual territory double deduction amount that may be deducted, for corporation tax purposes, from the company's income for the deduction period is reduced by the amount of the impermissible overseas deduction, and
  - (b) such just and reasonable adjustments (if any) as are required to give effect to that reduction, for corporation tax purposes, are to be made.
- (3) Any adjustment required to be made under subsection (2) may be made (whether or not by an officer of Revenue and Customs)—
- (a) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise, and
  - (b) despite any time limit imposed by or under any enactment.
- (4) In this section “dual inclusion income” of the company means an amount that is both—
- (a) ordinary income of the company for an accounting period for corporation tax purposes, and
  - (b) 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.
- (5) A taxable period is “permitted” for the purposes of paragraph (b) of subsection (4) if—
- (a) the period begins before the end of 12 months after the end of the accounting period of the company mentioned in paragraph (a) of that subsection, 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.

**Counteraction where mismatch arises because of a relevant multinational and is not counteracted in the parent jurisdiction**

259JQ) This section applies where—

- (a) the dual territory double deduction amount arises as a result of the company being a relevant multinational company,
  - (b) the United Kingdom is the PE jurisdiction, and
  - (c) it is reasonable to suppose that no provision of the law of the parent jurisdiction that is equivalent to section 259JC applies.
- (2) For corporation tax purposes, the dual territory double deduction amount may not be deducted from the company's income for the deduction period unless it is deducted from dual inclusion income of the company for that period.

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- (3) So much of the dual territory double deduction amount (if any) as, by virtue of subsection (2), cannot be deducted from the company's income for the deduction period—
  - (a) is carried forward to subsequent accounting periods of the company, and
  - (b) for corporation tax purposes, may be deducted from dual inclusion income of the company for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.
- (4) If the Commissioners are satisfied that the company has ceased to be a relevant multinational company, any of the dual territory double deduction amount that has not been deducted from dual inclusion income in accordance with subsection (2) or (3) (“the stranded deduction”) may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the company's taxable total profits of the accounting period in which it ceased to be a relevant multinational company.
- (5) So much of the stranded deduction (if any) as cannot be deducted, in accordance with subsection (4), at step 2 in section 4(2) of CTA 2010 in calculating the company's taxable total profits of the accounting period in which the company ceased to be a relevant multinational company—
  - (a) is carried forward to subsequent accounting periods of the company, and
  - (b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.
- (6) Subsection (7) applies if it is reasonable to suppose that all or part of the dual territory double deduction amount is (in substance) deducted (“the illegitimate overseas deduction”), under the law of a territory outside the United Kingdom, from income of any person, for a taxable period, that is not dual inclusion income of the company for an accounting period.
- (7) For the purposes of determining how much of the dual territory double deduction amount may be deducted (if any) for the accounting period of the company in which the taxable period mentioned in subsection (6) ends, and any subsequent accounting periods of the company, an amount of it equal to the illegitimate overseas deduction is to be taken to have already been deducted for a previous accounting period of the company.
- (8) In this section “dual inclusion income” of the company for an accounting period means an amount that is both—
  - (a) ordinary income of the company for that period for corporation tax purposes, and
  - (b) 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.
- (9) A taxable period of the company is “permitted” for the purposes of paragraph (b) of subsection (8) if—
  - (a) the period begins before the end of 12 months after the end of the accounting period mentioned in paragraph (a) of that subsection, or
  - (b) where the period begins after that—

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- (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.

## CHAPTER 11

### IMPORTED MISMATCHES

#### *Introduction*

#### **Overview of Chapter**

- 259K~~I~~) This Chapter contains provision denying deductions in connection with payments or quasi-payments that are made under, or in connection with, imported mismatch arrangements where the payer is within the charge to corporation tax for the payment period.
- (2) Section 259KA contains the conditions that must be met for this Chapter to apply and defines “imported mismatch payment” and “imported mismatch arrangement”.
  - (3) Section 259KB defines “dual territory double deduction”, “excessive PE deduction” and “PE jurisdiction”.
  - (4) Section 259KC contains provision for denying some or all of a relevant deduction in relation to an imported mismatch payment.
  - (5) See also section 259BB for the meaning of “payment”, “quasi-payment”, “relevant deduction”, “payment period” and “payer”.

#### *Application of Chapter*

#### **Circumstances in which the Chapter applies**

- 259K~~A~~) This Chapter applies if conditions A to G are met.
- (2) Condition A is that a payment or quasi-payment (“the imported mismatch payment”) is made under, or in connection with, an arrangement (“the imported mismatch arrangement”).
  - (3) Condition B is that, in relation to the imported mismatch payment, the payer (“P”) is within the charge to corporation tax for the payment period.
  - (4) Condition C is that the imported mismatch arrangement is one of a series of arrangements.
  - (5) A “series of arrangements” means a number of arrangements that are each entered into (whether or not one after the other) in pursuance of, or in relation to, another arrangement (“the over-arching arrangement”).
  - (6) Condition D is that—

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- (a) under an arrangement in the series other than the imported mismatch arrangement, there is a payment or quasi-payment (“the mismatch payment”) in relation to which it is reasonable to suppose that there is or will be—
    - (i) a hybrid or otherwise impermissible deduction/non-inclusion mismatch (see section 259CB),
    - (ii) a hybrid transfer deduction/non-inclusion mismatch (see section 259DC),
    - (iii) a hybrid payer deduction/non-inclusion mismatch (see section 259EB),
    - (iv) a hybrid payee deduction/non-inclusion mismatch (see section 259GB),
    - (v) a multinational payee deduction/non-inclusion mismatch (see section 259HB),
    - (vi) a hybrid entity double deduction amount (see section 259IA(4)), or
    - (vii) a dual territory double deduction (see section 259KB), or
  - (b) as a consequence of an arrangement in the series other than the imported mismatch arrangement, there is or will be an excessive PE deduction (see section 259KB),
- and in this Chapter “the relevant mismatch” means the mismatch, amount or deduction concerned.
- (7) Condition E is that it is reasonable to suppose—
- (a) where subsection (6)(a) applies, that no provision of any of Chapters 3 to 5 or 7 to 10 nor any equivalent provision under the law of a territory outside the United Kingdom applies, or will apply, in relation to the tax treatment of any person in respect of the mismatch payment, or
  - (b) where subsection (6)(b) applies, that no provision of Chapter 6 nor any equivalent provision under the law of a territory outside the United Kingdom applies, or will apply, in relation to the tax treatment of the company in relation to which the excessive PE deduction arises.
- (8) Condition F is that—
- (a) subsection (6)(a) applies and it is reasonable to suppose that a provision of any of Chapters 3 to 5 or 7 to 10, or an equivalent provision under the law of a territory outside the United Kingdom, would apply in relation to the tax treatment of P if—
    - (i) P were the payer in relation to the mismatch payment,
    - (ii) P were a payee in relation to the mismatch payment, or
    - (iii) where the relevant mismatch is a hybrid payee deduction/non-inclusion mismatch or a hybrid entity double deduction amount, P were an investor in the hybrid entity concerned, or
  - (b) the relevant mismatch is an excessive PE deduction.
- (9) Condition G is that—

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- (a) subsection (6)(a) applies and P is in the same control group (see section 259NB) as the payer, or a payee, in relation to the mismatch payment, at any time in the period—
    - (i) beginning with the day the over-arching arrangement is made, and
    - (ii) ending with the last day of the payment period in relation to the imported mismatch payment,
  - (b) subsection (6)(b) applies and P is in the same control group as the company in relation to whom the excessive PE deduction arises at any time in that period, or
  - (c) the imported mismatch arrangement, or the over-arching arrangement, is a structured arrangement.
- (10) The imported mismatch arrangement, or the over-arching arrangement, is a “structured arrangement” if it is reasonable to suppose that—
- (a) the arrangement concerned is designed to secure the relevant mismatch, or
  - (b) the terms of the arrangement concerned share the economic benefit of the relevant mismatch between the parties to that arrangement or otherwise reflect the fact that the relevant mismatch is expected to arise.
- (11) An arrangement may be designed to secure the relevant mismatch despite also being designed to secure any commercial or other objective.
- (12) Section 259KC contains provision for denying all or part of the relevant deduction in relation to the imported mismatch payment by reference to the relevant mismatch.

**Meaning of “dual territory double deduction”, “excessive PE deduction” and “PE jurisdiction”**

259K~~B~~) This section has effect for the purposes of this Chapter.

- (2) A “dual territory double deduction” means an amount that can be deducted by a company both—
  - (a) from income for the purposes of a tax charged under the law of one territory, and
  - (b) from income for the purposes of a tax charged under the law of another territory.
- (3) A “PE deduction” is an amount that—
  - (a) may (in substance) be deducted from a company's income for the purposes of calculating the company's taxable profits, for a taxable period, for the purposes of a tax that is charged on the company, under the law of a territory (“the PE jurisdiction”), by virtue of the company having a permanent establishment in that territory, and
  - (b) is in respect of a transfer of money or money's worth, from the company in the PE jurisdiction to the company in another territory (“the parent jurisdiction”) in which it is resident for the purposes of a tax, that—
    - (i) is actually made, or

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- (ii) is (in substance) treated as being made for tax purposes.
- (4) A PE deduction is “excessive” so far as it exceeds the sum of—
  - (a) any increases, resulting from the circumstances giving rise to the PE deduction, in the taxable profits of the company, for a permitted 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 permitted taxable period, for the purposes of a tax charged under the law of the parent jurisdiction, is reduced as a result of the circumstances giving rise to the PE deduction.
- (5) A taxable period of the company is “permitted” for the purposes of subsection (4) if—
  - (a) the period begins before the end of 12 months after the end of the taxable period mentioned in subsection (3)(a), or
  - (b) where the period begins after that—
    - (i) a claim has been made for the period to be a permitted period for the purposes of subsection (4), and
    - (ii) it is just and reasonable for the circumstances giving rise to the PE deduction to affect the profits or loss made for that period rather than an earlier period.

#### *Counteraction*

#### **Denial of the relevant deduction in relation to the imported mismatch payment**

- 259K(1) If, in addition to the imported mismatch payment, there are, or will be, one or more relevant payments in relation to the relevant mismatch, subsection (3) applies.
- (2) Otherwise, for corporation tax purposes, in relation to the imported mismatch payment, the relevant deduction that may be deducted from P's income for the payment period is to be reduced by the amount of the relevant mismatch.
  - (3) For corporation tax purposes, where this subsection applies, in relation to the imported mismatch payment, the relevant deduction that may be deducted from P's income for the payment period is to be reduced by P's share of the relevant mismatch.
  - (4) P's share of the relevant mismatch is to be determined by apportioning the relevant mismatch between P and every payer in relation to a relevant payment on a just and reasonable basis—
    - (a) where subsection (6)(a) applies, having regard (in particular) to the extent to which the imported mismatch payment and each relevant payment funds (directly or indirectly) the mismatch payment, or
    - (b) where the relevant mismatch is an excessive PE deduction, having regard (in particular) to—
      - (i) if the transfer of money or money's worth mentioned in section 259KB(3)(b) is actually made, the extent to which

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- the imported mismatch payment and each relevant payment funds (directly or indirectly) the transfer, or
- (ii) if the transfer of money or money's worth mentioned in section 259KB(3)(b) is (in substance) treated as being made, the extent to which the imported mismatch payment and each relevant payment would have funded (directly or indirectly) the transfer if it had actually been made.
- (5) For the purposes of subsection (4)(a) and (b)(i), the imported mismatch payment is to be taken to fund the mismatch payment or transfer to the extent that the mismatch payment or transfer cannot be shown instead to be funded (directly or indirectly) by one or more relevant payments.
- (6) For the purposes of subsection (4)(b)(ii), it is to be assumed that the imported mismatch payment would have funded the transfer if it had actually been made to the extent that it cannot be shown by P that, if it had been made, the transfer would have instead been funded (directly or indirectly) by one or more relevant payments.
- (7) For the purposes of this section, a payment or quasi-payment, other than the imported mismatch payment or any mismatch payment, is a “relevant payment” in relation to the relevant mismatch if it is made under an arrangement in the series of arrangements mentioned in section 259KA(4) and—
- (a) where subsection (6)(a) applies, it funds (directly or indirectly) the mismatch payment,
  - (b) where the relevant mismatch is an excessive PE deduction and the transfer of money or money's worth mentioned in section 259KB(3)(b) is actually made, it funds (directly or indirectly) that transfer, or
  - (c) where the relevant mismatch is an excessive PE deduction and the transfer of money or money's worth mentioned in section 259KB(3)(b) is (in substance) treated as being made, it would have funded (directly or indirectly) that transfer had that transfer actually been made.
- (8) In proceedings before a court or tribunal in connection with this section—
- (a) in relation to subsection (1), it is for P to show that, in addition to the imported mismatch payment, there are one or more relevant payments in relation to the relevant mismatch, and
  - (b) in relation to subsection (5), it is for P to show that the mismatch payment or transfer is funded (directly or indirectly) by one or more relevant payments instead of by the imported mismatch payment.

## CHAPTER 12

### ADJUSTMENTS IN LIGHT OF SUBSEQUENT EVENTS ETC

#### **Adjustments where suppositions cease to be reasonable**

259(1) Where—

- (a) a reasonable supposition is made for the purposes of any provision of this Part, and

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- (b) the supposition turns out to be mistaken or otherwise ceases to be reasonable,  
such consequential adjustments as are just and reasonable may be made.
- (2) The adjustments may be made (whether or not by an officer of Revenue and Customs) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.
- (3) But the power to make adjustments by virtue of this section is subject to any time limit imposed by or under any enactment other than this Part.
- (4) No adjustment is to be made under this section on the basis that an amount of ordinary income arises, as a result of a payment or quasi-payment, to a payee after that payee's last permitted taxable period in relation to the payment or quasi-payment (see section 259LA, which makes provision about certain such cases).

#### **Deduction from taxable total profits where an amount of ordinary income arises late**

259LA(1) This section applies where—

- (a) a relevant deduction in respect of a payment or quasi-payment is reduced by section 259CD, 259DF, 259GC or 259HC or by more than one of those sections,
  - (b) no other provision of this Part, or any equivalent provision of the law of a territory outside the United Kingdom, applies or will apply to the tax treatment of any person in respect of the payment or quasi-payment,
  - (c) the section or sections had effect because it was reasonable to suppose that the relevant deduction exceeded, or would exceed, the sum of the amounts of ordinary income arising, by reason of the payment or quasi-payment, to each payee for a permitted taxable period, and
  - (d) an amount of ordinary income (“the late income”) arises—
    - (i) by reason of the payment or quasi-payment, but
    - (ii) not as a consequence of any provision of this Part or any equivalent provision of the law of a territory outside the United Kingdom,to a payee for a taxable period (“the late period”) that is not a permitted taxable period.
- (2) An amount equal to the late income may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the payer's taxable total profits of the accounting period in which the late period ends.
  - (3) So much of that amount (if any) as cannot be deducted, in accordance with subsection (2), at step 2 in section 4(2) of CTA 2010 in calculating the taxable total profits of the accounting period in which the late period ends—
    - (a) is carried forward to subsequent accounting periods of the payer, and
    - (b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.

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- (4) But the total amount deducted from taxable total profits under this section, in relation to a payment or quasi-payment, may not exceed the total amount by which the relevant deduction is reduced as mentioned in (1)(a).
- (5) In this section “permitted taxable period”—
- (a) where the relevant deduction was reduced under section 259CD, has the meaning given by section 259CC(2),
  - (b) where the relevant deduction was reduced under section 259DF, has the meaning given by section 259DD(2),
  - (c) where the relevant deduction was reduced under section 259GC, has the meaning given by section 259GB(6),
  - (d) where the relevant deduction was reduced under section 259HC, has the meaning given by section 259HB(4), or
  - (e) where the relevant deduction was reduced under two or more of the sections mentioned in the preceding paragraphs of this subsection, includes any taxable period that is a permitted period under a provision mentioned in the paragraphs concerned.

## CHAPTER 13

### ANTI-AVOIDANCE

#### Countering the effect of avoidance arrangements

259M) This section applies where—

- (a) relevant avoidance arrangements exist,
  - (b) as a result of those arrangements, any person (whether party to the arrangements or not) would, apart from this section, obtain a relevant tax advantage, and
  - (c) that person is—
    - (i) within the charge to corporation tax at the time the person would obtain the relevant tax advantage, or
    - (ii) would be within the charge to corporation tax at that time but for the relevant avoidance arrangements.
- (2) The relevant tax advantage is to be counteracted by making such adjustments to the person's treatment for corporation tax purposes as are just and reasonable.
- (3) Any adjustments required to be made under this section (whether or not by an officer of Revenue and Customs) may be made by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.
- (4) A person obtains a “relevant tax advantage” if—
- (a) the person avoids, to any extent, any provision of this Part, or any equivalent provision of the law of a territory outside the United Kingdom, restricting whether or how that person may make a deduction from income for the purposes of calculating taxable profits, or

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- (b) the person avoids, to any extent, an amount being treated as income of that person under any provision of this Part or any equivalent provision of the law of a territory outside the United Kingdom.
- (5) “Relevant avoidance arrangements” means arrangements the main purpose, or one of the main purposes, of which is to enable any person to obtain a relevant tax advantage.
- (6) But arrangements are not “relevant avoidance arrangements” if the obtaining of the relevant tax advantage can reasonably be regarded as consistent with the principles on which the provisions of this Part, or the equivalent provisions under the law of a territory outside the United Kingdom, that are relevant to the arrangements are based (whether express or implied) and the policy objectives of those provisions.
- (7) For the purposes of determining the principles and policy objectives mentioned in subsection (6), regard may, where appropriate, be had to the Final Report on Neutralising the Effects of Hybrid Mismatch Arrangements published by the Organisation for Economic Cooperation and Development (“OECD”) on 5 October 2015 or any replacement or supplementary publication.
- (8) In subsection (7) “replacement or supplementary publication” means any document that is approved and published by the OECD in place of, or to update or supplement, the report mentioned in that subsection (or any replacement of, or supplement to, it).

## CHAPTER 14

### INTERPRETATION

#### *Financial instruments*

#### **Meaning of “financial instrument”**

259N) A “financial instrument” means—

- (a) an arrangement profits or deficits arising from which would, on the assumption that the person to whom they arise is within the charge to corporation tax, fall to be brought into account for corporation tax purposes in accordance with Part 5 or 6 of CTA 2009 (loan relationships and relationships treated as loan relationships),
- (b) a contract profits or losses arising from which would, on the assumption that the person to whom they arise is within the charge to corporation tax, fall to be brought into account for corporation tax purposes in accordance with Part 7 of CTA 2009 (derivative contracts),
- (c) a type 1, type 2 or type 3 finance arrangement for the purposes of Chapter 2 of Part 16 of CTA 2010 (factoring of income etc: finance arrangements),
- (d) a share forming part of a company's issued share capital or any arrangement that provides a person with economic rights corresponding to those provided by holding such a share, or

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- (e) anything else that is a financial instrument.
- (2) In subsection (1)(e) “financial instrument” has the meaning that it has for the purposes of UK generally accepted accounting practice.
- (3) But “financial instrument” does not include—
  - (a) a hybrid transfer arrangement (within the meaning given by section 259DB), or
  - (b) anything that is a regulatory capital security for the purposes of the Taxation of Regulatory Capital Securities Regulations 2013 (S.I. 2013/3209) (as amended from time to time).
- (4) Subsection (3)(b) is subject to any provision to the contrary that may be made by regulations under section 221 of FA 2012 (tax consequences of financial sector regulation).

#### *Relevant investment funds*

#### **Meaning of “relevant investment fund”**

259N(1) “Relevant investment fund” means—

- (a) an open-ended investment company within the meaning of section 613 of CTA 2010,
- (b) an authorised unit trust within the meaning of section 616 of that Act, or
- (c) an offshore fund within the meaning of section 354 of this Act (see section 355),

which meets the genuine diversity of ownership condition (whether or not a clearance has been given to that effect).

- (2) “The genuine diversity of ownership condition” means—
  - (a) in the case of an offshore fund, the genuine diversity of ownership condition in regulation 75 of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001), and
  - (b) in the case of an open-ended investment company or an authorised unit trust, the genuine diversity of ownership condition in regulation 9A of the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964).

#### *Control groups and related persons*

#### **Control groups**

259N(1) A person (“A”) is in the same control group as another person (“B”)—

- (a) throughout any period for which they are consolidated for accounting purposes,
- (b) on any day on which the participation condition is met in relation to them, or
- (c) on any day on which the 50% investment condition is met in relation to them.

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- (2) A and B are consolidated for accounting purposes for a period if—
  - (a) their financial results for the period are required to be comprised in group accounts,
  - (b) their financial results for the period would be required to be comprised in group accounts but for the application of an exemption, or
  - (c) their financial results for the period are in fact comprised in group accounts.
- (3) In subsection (2), “group accounts” means accounts prepared under—
  - (a) section 399 of the Companies Act 2006, or
  - (b) any corresponding provision of the law of a territory outside the United Kingdom.
- (4) The participation condition is met in relation to A and B (“the relevant parties”) on a day if, within the period of 6 months beginning with the day—
  - (a) one of the relevant parties directly or indirectly participates in the management, control or capital of the other, or
  - (b) the same person or persons directly or indirectly participate in the management, control or capital of each of the relevant parties.
- (5) For the interpretation of subsection (4), see sections 157(1), 158(4), 159(1) and 160(1) (which have the effect that references in subsection (4) to direct or indirect participation are to be read in accordance with provisions of Chapter 2 of Part 4).
- (6) The 50% investment condition is met in relation to A and B if—
  - (a) A has a 50% investment in B, or
  - (b) a third person has a 50% investment in each of A and B.
- (7) Section 259ND applies for the purposes of determining whether a person has a “50% investment” in another person.

### **Related persons**

- 259N(C) Two persons are “related” on any day that—
- (a) they are in the same control group (see section 259NB), or
  - (b) the 25% investment condition is met in relation to them.
- (2) The 25% investment condition is met in relation to a person (“A”) and another person (“B”) if—
- (a) A has a 25% investment in B, or
  - (b) a third person has a 25% investment in each of A and B.
- (3) Section 259ND applies for the purposes of determining whether a person has a “25% investment” in another person.

### **Meaning of “50% investment” and “25% investment”**

- 259N(D) Where this section applies for the purposes of determining whether a person has a “50% investment” in another person for the purposes of

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section 259NB(6), references in this section to X% are to be read as references to 50%.

- (2) Where this section applies for the purposes of determining whether a person has a “25% investment” in another person for the purposes of section 259NC(2), references in this section to X% are to be read as references to 25%.
- (3) A person (“P”) has an X% investment in a company (“C”) if it is reasonable to suppose that—
  - (a) P possesses or is entitled to acquire X% or more of the share capital or issued share capital of C,
  - (b) P possesses or is entitled to acquire X% or more of the voting power in C, or
  - (c) if the whole of C's share capital were disposed of, P would receive (directly or indirectly and whether at the time of disposal or later) X% or more of the proceeds of the disposal.
- (4) A person (“P”) has an X% investment in another person (“Q”) if it is reasonable to suppose that—
  - (a) if the whole of Q's income were distributed, P would receive (directly or indirectly and whether at the time of the distribution or later) X% or more of the distributed amount, or
  - (b) in the event of a winding-up of Q or in any other circumstances, P would receive (directly or indirectly and whether or not at the time of the winding-up or other circumstances or later) X% or more of Q's assets which would then be available for distribution.
- (5) In this section, references to a person receiving any proceeds, amount or assets include references to the proceeds, amount or assets being applied (directly or indirectly) for that person's benefit.
- (6) For the purposes of subsections (3) and (4), in determining what percentage investment a person (“P”) has in another person (“U”), where P acts together with a third person (“T”) in relation to U, P is to be taken to have all of T's rights and interests in relation to U.
- (7) P is to be taken to “act together” with T in relation to U if (and only if)—
  - (a) P and T are connected (within the meaning given by section 163),
  - (b) for the purposes of influencing the conduct of U's affairs—
    - (i) P is able to secure that T acts in accordance with P's wishes,
    - (ii) T can reasonably be expected to act, or typically acts, in accordance with P's wishes,
    - (iii) T is able to secure that P acts in accordance with T's wishes, or
    - (iv) P can reasonably be expected to act, or typically acts, in accordance with T's wishes,
  - (c) P and T are party to any arrangement that—
    - (i) it is reasonable to suppose is designed to affect the value of any of T's rights or interests in relation to U, or
    - (ii) relates to the exercise of any of T's rights in relation to U, or
  - (d) the same person manages—

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- (i) some or all of P's rights or interests in relation to U, and
  - (ii) some or all of T's rights or interests in relation to U.
- (8) But P does not “act together” with T in relation to U under paragraph (d) of subsection (7) where—
- (a) the person who manages the rights or interests of P mentioned in sub-paragraph (i) of that paragraph, does so as the operator of a collective investment scheme,
  - (b) that person manages the rights or interests of T mentioned in sub-paragraph (ii) of that paragraph as the operator of a different collective investment scheme, and
  - (c) the Commissioners are satisfied that the management of the schemes is not coordinated for the purpose of influencing the conduct of U 's affairs.
- (9) In subsection (8) “collective investment scheme” and “operator” have the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see sections 235 and 237 of that Act).

### *Partnerships*

#### **Treatment of a person who is a member of a partnership**

259N(E) This section applies where a person is a member of a partnership.

- (2) Any reference in this Part to income, profits or an amount of the person includes a reference to the person's share of (as the case may be) income, profits or an amount of the partnership.
- (3) For this purpose “the person's share” of income, profits or an amount is determined by apportioning the income, profits or amount between the partners on a just and reasonable basis.
- (4) In this section—
  - (a) “partnership” includes an entity established under the law of a territory outside the United Kingdom of a similar character to a partnership, and
  - (b) “member” of a partnership is to be read accordingly.

### *Definitions*

#### **Definitions**

259NF In this Part—

“arrangement” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

“CFC” and “CFC charge” have the meaning given by section 259B(4);

“the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs;

“control group” has the meaning given by section 259NB;

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- “financial instrument” has the meaning given by section 259N;
- “foreign CFC” and “foreign CFC charge” have the meaning given by section 259B(4);
- “hybrid entity” has the meaning given by section 259BE;
- “investor”, in relation to a hybrid entity, has the meaning given by section 259BE(4);
- “investor jurisdiction” has the meaning given by section 259BE(4);
- “ordinary income” is to be read in accordance with sections 259BC and 259BD;
- “payee”—
- (a) in relation to a payment, has the meaning given by section 259BB(6)(a), and
  - (b) in relation to a quasi-payment, has the meaning given by section 259BB(6)(b);
- “payee jurisdiction” has the meaning given by 259BB(9);
- “payer”—
- (a) in relation to a payment, has the meaning given by section 259BB(1)(a), and
  - (b) in relation to a quasi-payment, has the meaning given by section 259BB(2);
- “payment” has the meaning given by section 259BB(1);
- “payment period”—
- (a) in relation to a payment, has the meaning given by section 259BB(1)(b), and
  - (b) in relation to a quasi-payment, has the meaning given by section 259BB(2);
- “permanent establishment” has the meaning given by section 259BF;
- “quasi-payment” has the meaning given by section 259BB(2) to (5);
- “related” has the meaning given by section 259NC;
- “relevant deduction”—
- (a) in relation to a payment, has the meaning given by section 259BB(1)(b), and
  - (b) in relation to a quasi-payment, has the meaning given by section 259BB(2)(a);
- “relevant investment fund” has the meaning given by section 259NA;
- “tax” has the meaning given by section 259B;
- “taxable period” means—
- (a) in relation to corporation tax, an accounting period,
  - (b) in relation to income tax, a tax year,
  - (c) in relation to the CFC charge, a relevant corporation tax accounting period (within the meaning given by section 371BC(3)),
  - (d) in relation to a foreign CFC charge, a period (by whatever name known) that corresponds to a relevant corporation tax accounting period, and

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(e) in relation to any other tax, a period for which the tax is charged; “taxable profits” is to be read in accordance with sections 259BC(2) and 259BD(5).”

## PART 2

### CONSEQUENTIAL AMENDMENTS

#### *FA 1998*

2 Schedule 18 to FA 1998 (company tax returns) is amended as follows.

3 In paragraph 25(3)—

- (a) insert “ or ” at the end of paragraph (b), and
- (b) omit paragraph (d) and the “or” preceding it.

4 In paragraph 42(4)—

- (a) insert “ or ” at the end of paragraph (a), and
- (b) omit paragraph (c) and the “or” preceding it.

#### *CTA 2009*

5 In section A1 of CTA 2009 (overview of the Corporation Tax Acts), in subsection (2)—

- (a) omit paragraph (h), and
- (b) after that paragraph insert—  
“(ha) Part 6A of that Act (hybrid and other mismatches);”.

#### *CTA 2010*

6 CTA 2010 is amended as follows.

7 In section 938N (group mismatch schemes: priority)—

- (a) omit paragraph (d), and
- (b) after that paragraph insert—  
“(da) Part 6A of that Act (hybrid and other mismatches);”.

8 In section 938V (tax mismatch schemes: priority)—

- (a) omit paragraph (c), and
- (b) after that paragraph insert—  
“(ca) Part 6A of TIOPA 2010 (hybrid and other mismatches);”.

#### *TIOPA 2010*

9 TIOPA 2010 is amended as follows.

10 In section 1 (overview of Act), in subsection (1)—

- (a) omit paragraph (c), and
- (b) after that paragraph insert—  
“(ca) Part 6A (hybrid and other mismatches);”.

11 In section 157 (direct participation), in subsection (1)—

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- (a) omit the “and” at the end of paragraph (b), and  
(b) after paragraph (c) insert “, and  
(d) in Part 6A, section 259NB(4).”
- 12 In section 158 (indirect participation: defined by sections 159 to 162), in subsection (4)—  
(a) omit the “and” at the end of paragraph (b), and  
(b) after paragraph (c) insert “, and  
(d) in Part 6A, section 259NB(4).”
- 13 In section 159 (indirect participation: potential direct participant), in subsection (1)  
—  
(a) omit the “and” at the end of paragraph (b), and  
(b) after paragraph (c) insert “, and  
(d) in Part 6A, section 259NB(4).”
- 14 In section 160 (indirect participation: one of several major participants), in subsection (1)—  
(a) omit the “and” at the end of paragraph (b), and  
(b) after paragraph (c) insert “, and  
(d) in Part 6A, section 259NB(4).”
- 15 Omit Part 6 (tax arbitrage).
- 16 Omit Part 4 of Schedule 11 (tax arbitrage: index of defined expressions used in Part 6).
- 17 After that Part of that Schedule insert—

#### “PART 4A

##### HYBRID AND OTHER MISMATCHES: INDEX OF DEFINED EXPRESSIONS USED IN PART 6A

arrangement (in Part 6A)	section 259NF
CFC and CFC charge (in Part 6A)	section 259B(4)
the Commissioners (in Part 6A)	section 259NF
control group (in Part 6A)	section 259NB
deduction period (in Chapter 10 of Part 6A)	section 259JA(5)(a)
dual resident company (in Chapter 10 of Part 6A)	section 259JA(3)
dual territory double deduction amount (in Chapter 10 of Part 6A)	section 259JA(5)
dual territory double deduction (in Chapter 11 of Part 6A)	section 259KB
excessive PE deduction (in Chapter 6 of Part 6A)	section 259FA(8)

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excessive PE deduction (in Chapter 11 of Part 6A)	section 259KB
financial instrument (in Part 6A)	section 259N
foreign CFC and foreign CFC charge (in Part 6A)	section 259B(4)
foreign deduction period (in Chapter 10 of Part 6A)	section 259JA(5)(b)
hybrid entity (in Part 6A)	section 259BE
hybrid entity deduction period (in Chapter 9 of Part 6A)	section 259IA(2)(a)
hybrid entity double deduction amount (in Chapter 9 of Part 6A)	section 259IA(4)
hybrid or otherwise impermissible deduction/non-inclusion mismatch (in Chapter 3 of Part 6A)	section 259CB
hybrid payee (in Chapter 7 of Part 6A)	section 259GA(3)
hybrid payee deduction/non-inclusion mismatch (in Chapter 7 of Part 6A)	section 259GB
hybrid payer (in Chapter 5 of Part 6A)	section 259EA(3)
hybrid payer deduction/non-inclusion mismatch (in Chapter 5 of Part 6A)	section 259EB
hybrid transfer arrangement (in Chapter 4 of Part 6A)	section 259DB
hybrid transfer deduction/non-inclusion mismatch (in Chapter 4 of Part 6A)	section 259DC
imported mismatch payment (in Chapter 11 of Part 6A)	section 259KA(2)
imported mismatch arrangement (in Chapter 11 of Part 6A)	section 259KA(2)
investor (in Part 6A)	section 259BE(4)
investor deduction period (in Chapter 9 of Part 6A)	section 259IA(2)(b)
investor jurisdiction (in Part 6A)	section 259BE(4)
mismatch payment (in Chapter 11 of Part 6A)	section 259KA(6)
multinational company (in Chapter 6 of Part 6A)	section 259FA(3)
multinational company (in Chapter 8 of Part 6A)	section 259HA(4)

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multinational payee deduction/non-inclusion mismatch (in Chapter 8 of Part 6A)	section 259HB
ordinary income (in Part 6A)	sections 259BC and 259BD
over-arching arrangement (in Chapter 11 of Part 6A)	section 259KA(5)
P (in Chapter 11 of Part 6A)	section 259KA(3)
parent jurisdiction (in Chapter 6 of Part 6A)	section 259FA(3)(a)
parent jurisdiction (in Chapter 8 of Part 6A)	section 259HA(4)(a)
parent jurisdiction (in Chapter 10 of Part 6A)	section 259JA(4)(b)(ii)
payee (in Part 6A)	section 259BB(6)
payee jurisdiction (in Part 6A)	section 259BB(9)
payer (in Part 6A)	section 259BB(1)(a) or (2)
payment (in Part 6A)	section 259BB(1)
payment period (in Part 6A)	section 259BB(1)(b) or (2)
PE jurisdiction (in Chapter 8 of Part 6A)	section 259HA(4)(b)
PE jurisdiction (in Chapter 10 of Part 6A)	section 259JA(4)(a)
PE jurisdiction (in Chapter 11 of Part 6A)	section 259KB(3)(a)
permanent establishment (in Part 6A)	section 259BF
quasi-payment (in Part 6A)	section 259BB(2) to (5)
related (in Part 6A)	section 259NC
relevant deduction (in Part 6A)	section 259BB(1)(b) or (2)(a)
relevant investment fund (in Part 6A)	section 259NA
relevant mismatch (in Chapter 11 of Part 6A)	section 259KA(6)
relevant multinational company (in Chapter 10 of Part 6A)	section 259JA(4)
relevant PE period (in Chapter 6 of Part 6A)	section 259FA(4)
series of arrangements (in Chapter 11 of Part 6A)	section 259KA(5)
substitute payment (in Chapter 4 of Part 6A)	section 259DB(5)
tax (in Part 6A)	section 259B
taxable period (in Part 6A)	section 259NF

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taxable profits (in Part 6A)	sections 259BC(2) and 259BD(5)
underlying instrument (in Chapter 4 of Part 6A)	section 259DB(3)
underlying return (in Chapter 4 of Part 6A)	section 259DB(5)(b)”

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### PART 3

#### COMMENCEMENT

- 18 Chapters 3 to 5 and 7 and 8 of Part 6A of TIOPA 2010 (counteraction of deduction/non-inclusion mismatches arising from payments and quasi-payments) have effect in relation to—
- (a) payments made on or after the commencement date, and
  - (b) quasi-payments in relation to which the payment period begins on or after the commencement date.
- 19 Chapter 6 of Part 6A of TIOPA 2010 (counteraction of deduction/non-inclusion mismatches relating to intra-company transfers from permanent establishments) has effect in relation to excessive PE deductions in relation to which the relevant PE period begins on or after the commencement date.
- 20 Chapters 9 and 10 of Part 6A of TIOPA 2010 (counteraction of double deduction mismatches) have effect for accounting periods beginning on or after the commencement date.
- 21 Chapter 11 of Part 6A of TIOPA 2010 (imported mismatch payments) has effect in relation to imported mismatch payments that are—
- (a) payments made on or after the commencement date, or
  - (b) quasi-payments in relation to which the payment period begins on or after the commencement date.
- 22 The following provisions of this Schedule have effect in relation to accounting periods beginning on or after the commencement date—
- (a) paragraphs 2 to 4, and
  - (b) paragraphs 5(a), 7(a), 8(a), 10(a), 15 and 16.
- 23 For the purposes of paragraph 18 and 21, where a payment period begins before the commencement date and ends on or after that date (“the straddling period”)—
- (a) so much of the straddling period as falls before the commencement date, and so much of that period as falls on or after that date, are to be treated as separate taxable periods, and
  - (b) where it is necessary to apportion an amount for the straddling period to the two separate taxable periods, it is to be apportioned—
    - (i) on a time basis according to the respective length of the separate taxable periods, or
    - (ii) if that method would produce a result that is unjust or unreasonable, on a just and reasonable basis.
- 24 For the purposes of paragraphs 19, 20 and 22(b), where a company has an accounting period beginning before the commencement date and ending on or after that date (“the straddling period”)—

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- (a) so much of the straddling period as falls before the commencement date, and so much of the straddling period as falls on or after that date, are to be treated as separate accounting periods, and
- (b) where it is necessary to apportion an amount for the straddling period to the two separate accounting periods, it is to be apportioned—
  - (i) in accordance with section 1172 of CTA 2010 (time basis), or
  - (ii) if that method would produce a result that is unjust or unreasonable, on a just and reasonable basis.

25 In this Part of this Schedule “the commencement date” means 1 January 2017.

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