

SCHEDULES

SCHEDULE 7

HYBRID AND OTHER MISMATCHES

PART 11

EXEMPT INVESTORS IN HYBRID ENTITIES

- 25 Part 6A of TIOPA 2010 is amended as follows.
- 26 In section 259BC (the basic rules), after subsection (8) insert—
- “(8A) Income is to be treated as “ordinary income” if it would fall to be brought into account for the purpose of calculating taxable profits of a person but for the fact that the person is a qualifying institutional investor (and, if the person is based in a territory under the law of which there is no relevant tax on income of the kind in question, if the territory had such a tax).
- For the meaning of “qualifying institutional investor” see section 259NDA.”
- 27 (1) Section 259EB (hybrid payer deduction/non-inclusion mismatches and their extent) is amended in accordance with sub-paragraphs (2) and (3).
- (2) In subsection (3), at the beginning insert “Subject to subsections (4A) to (4C)”.
- (3) After subsection (4), insert—
- “(4A) No excess is to be taken to arise by reason of a hybrid payer being a hybrid entity for the purposes of subsection (1)(b) so far as it is attributable to a qualifying institutional investor based in a territory under the law of which—
- (a) the income or profits of the hybrid entity are treated as income and profits of the investor, or
- (b) the hybrid entity is not regarded as a distinct and separate person to the investor.
- (4B) Excess is attributable to such a qualifying institutional investor to the extent that ordinary income (arising by reason of the payment or quasi-payment) would fall to be brought into account by the investor if—
- (a) where subsection (4A)(a) applies, under the law of the territory the income or profits of the hybrid entity were not treated as income and profits of the investor, and
- (b) where subsection (4A)(b) applies, under the law of the territory the hybrid entity were regarded as a distinct and separate person to the investor.
- (4C) To determine if a “qualifying institutional investor” is “based” in a particular territory for the purposes of subsections (4A) and (4B) see section 259NDA.”

Status: This is the original version (as it was originally enacted).

28 In section 259GB (hybrid payee deduction/non-inclusion mismatches and their extent), after subsection (2) insert—

“(2A) No excess is to be taken to arise by reason of a hybrid payee being a hybrid entity for the purposes of subsection (1)(b) so far as it is attributable to a qualifying institutional investor based in a territory under the law of which—

- (a) the income or profits of the hybrid entity are not treated as income or profits of the investor, or
- (b) the hybrid entity is regarded as a distinct and separate person to the investor.

(2B) Excess is attributable to such a qualifying institutional investor to the extent that ordinary income (arising by reason of the payment or quasi-payment) would fall to be brought into account by the investor if—

- (a) where subsection (2A)(a) applies, under the law of the territory the income or profits of the hybrid entity were treated as income or profits of the investor, and
- (b) where subsection (2A)(b) applies, under the law of the territory the hybrid entity were not regarded as a distinct and separate person to the investor.

(2C) To determine if a “qualifying institutional investor” is “based” in a particular territory for the purposes of subsections (2A) and (2B) see section 259NDA.”

29 After section 259ND insert—

“Qualifying institutional investors etc

259NDA Meaning of “qualifying institutional investor” etc

- (1) This section has effect for the purposes of this Part.
- (2) References to “qualifying institutional investor” have the meaning given by paragraph 30A of Schedule 7AC to TCGA 1992.
- (3) A qualifying institutional investor is “based” in a territory—
 - (a) if it is resident for tax purposes in the territory, or
 - (b) where it is not resident anywhere for tax purposes, if it is established in the territory.”