Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

[F1PART 6A

HYBRID AND OTHER MISMATCHES

CHAPTER 10

DUAL TERRITORY DOUBLE DEDUCTION CASES

[F1Counteraction

Textual Amendments

F1 Pt. 6A inserted (with effect in accordance with Sch. 10 paras. 18-21 of the amending Act) by Finance Act 2016 (c. 24), **Sch. 10 para. 1**

259JB Counteraction where mismatch arises because of a dual resident company

(1) 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

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

(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 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 **[**[F2]other than the company**]**, 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.

Textual Amendments

F2 Words in s. 259JB(6) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 18(3)**

259JC Counteraction where mismatch arises because of a relevant multinational and the UK is the parent jurisdiction

(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.

(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.

259JD Counteraction where mismatch arises because of a relevant multinational and is not counteracted in the parent jurisdiction

(1) This section applies where—

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

(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.

(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 **[**[F3]other than the company**]**, 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.

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

(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.

[F4(10) [For the purposes of subsection (8)(b) the reference to ordinary income of the company for a permitted taxable period for the purposes of a tax charged under the law of a territory outside the United Kingdom is taken to include a reference to excessive PE inclusion income of the company.

(11) Section 259JE defines "excessive PE inclusion income" of the company for this purpose.]

Textual Amendments

F3 Words in s. 259JD(6) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 18(4)**

F4 S. 259JD(10)(11) inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 13(2)**

[F5 259JE Meaning of excessive PE inclusion income

("1) In section 259JD(10), "excessive PE inclusion income" of the company means—

(a) where paragraph (a) of subsection (4) applies, the PE inclusion income of the company, or

(b) where paragraph (b) of that subsection applies, the PE inclusion income of the company so far as it is reasonable to suppose that it exceeds the aggregate effect on taxable profits.

(2) For this purpose, "PE inclusion income" of a company for an accounting period means an amount in respect of which conditions A and B are met.

(3) Condition A is that the amount is in respect of a transfer of money or money's worth from the company in the parent jurisdiction to the company in the United Kingdom that—

(a) is actually made, or

(b) is (in substance) treated as being made for corporation tax purposes.

(4) Condition B is that it is reasonable to suppose that—

(a) the circumstances giving rise to the amount will not result in—

(i) a reduction in the taxable profits of the company for a relevant taxable period, or

(ii) an increase in a loss made by the company for a relevant taxable period,

for the purposes of a tax charged under the law of the parent jurisdiction, or

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

(b) those circumstances will result in such a reduction or increase for one or more relevant taxable periods, but the amount exceeds the aggregate effect on taxable profits.

(5) "The aggregate effect on taxable profits" is the sum of—

(a) any reductions, resulting from the circumstances giving rise to the amount, in the taxable profits of the company, for a relevant taxable period, for the purposes of a tax charged under the law of the parent jurisdiction, and

(b) any amounts by which a loss made by the company, for a relevant taxable period, for the purposes of a tax charged under the law of the parent jurisdiction, is increased as a result of the circumstances giving rise to the amount.

(6) For the purposes of subsections (4) and (5), any reduction in taxable profits or increase of losses is to be ignored in any case where tax is charged at a nil rate under the law of the parent jurisdiction.

(7) A taxable period of the company is "relevant" for the purposes of subsections (4) and (5) if—

(a) the period begins before the end of 12 months after the end of the accounting period mentioned in section 259JD(8)(a), or

(b) where the period begins after that, it is just and reasonable for the question of whether the circumstances giving rise to the amount will result in a reduction in taxable profits or an increase in a loss to be determined by reference to that taxable period rather than an earlier period.**]]**

Textual Amendments

F5 S. 259JE inserted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by Finance Act 2021 (c. 26), **Sch. 7 para. 13(3)**

Changes to legislation:
There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Cross Heading: Counteraction.