



Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

[^{F1}PART 6A

HYBRID AND OTHER MISMATCHES

[^{F1}CHAPTER 9

HYBRID ENTITY DOUBLE DEDUCTION MISMATCHES

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](#)

Introduction

259I Overview of Chapter

- (1) 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.
- (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”.

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- (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

259IA Circumstances in which the Chapter applies

- (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
 - (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

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- (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

259IB Counteraction where the investor is within the charge to corporation tax

- (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”) 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

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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.]

259IC Counteraction where the hybrid entity is within the charge to corporation tax

- (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
 - (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—

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- (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 [F2 unless it is deducted from—
 - (c) dual inclusion income for that period, or
 - (d) section 259ID 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.
- (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.

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- (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.

Textual Amendments

F2 Words in s. 259IC(4) substituted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 7 paras. 13, 19\(4\)](#)

[^{F3}259ID] Section 259ID income for the purposes of section 259IC

- (1) This section applies where—
 - (a) section 259IC applies,
 - (b) the restricted deduction exceeds the dual inclusion income of the hybrid entity (if any) for the hybrid entity deduction period, and
 - (c) conditions A to D are met.
- (2) Condition A is that—
 - (a) the investor in the hybrid entity makes a payment to the hybrid entity, and
 - (b) no amount is deductible, under the law of the investor jurisdiction, from the income of the investor in respect of the payment.
- (3) Condition B is that, as a result of the payment, an amount of ordinary income arises to the hybrid entity for the hybrid entity deduction period.
- (4) Condition C is that the payment is made in direct consequence of a payment made to the investor by a person (“the unrelated party”) who is not related (see section 259NC) to the investor or the hybrid entity.
- (5) Condition D is that, as a result of the payment made by the unrelated party, an amount of ordinary income arises to the investor.
- (6) For the purposes of section 259IC “section 259ID income” is an amount of income of the hybrid entity equal to the lesser of—
 - (a) the amount of the payment made by the investor to the hybrid entity, and
 - (b) the amount of the payment made by the unrelated party to the investor.]

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Textual Amendments

F3 S. 259ID inserted (15.9.2016 retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 7 paras. 14, 19\(4\)](#)

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