



# Taxation (International and Other Provisions) Act 2010

## 2010 CHAPTER 8

### [<sup>F1</sup>PART 6A

#### HYBRID AND OTHER MISMATCHES

#### CHAPTER 5

#### HYBRID PAYER DEDUCTION/NON-INCLUSION MISMATCHES

#### *Counteraction*

#### [<sup>F1</sup>259ED] **Counteraction where a payee is within the charge to corporation tax**

- (1) 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

*Status: Point in time view as at 10/06/2021.*

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

- (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.
- (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 <sup>F2</sup>... 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.]

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**Textual Amendments**

- F1** Pt. 6A inserted (with effect in accordance with Sch. 10 paras. 18-21 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 10 para. 1](#)
- F2** Words in s. 259ED(9) omitted (with effect in accordance with Sch. 7 paras. 37-39 of the amending Act) by virtue of [Finance Act 2021 \(c. 26\)](#), [Sch. 7 para. 10\(4\)](#)

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