

Clause 1: Hybrid and other mismatches

Summary

1. This clause introduces amendments to the hybrid and other mismatch regime contained in Part 6A TIOPA 2010. The amendments make three minor technical changes to that legislation. The first change puts beyond doubt that the regime is intended to apply by reference to the relevant national rather than local tax by providing that local taxes are not treated as foreign taxes for the purposes of the regime. The second change removes the need for a formal claim in relation to permitted taxable periods for certain mismatches involving hybrid financial instruments (which are dealt with in Chapters 3 and 4 of Part 6A). The third change disregards deductions for amortisation in relation to certain Chapters of the hybrid mismatch regime (Chapters 5 to 8). The first change (local taxes) will have effect from 13 July 2017 while the second and third changes will have effect from the start of the hybrid mismatch regime, which came into force on 1 January 2017.

Details of the clause

2. Subsection 1 introduces the amendments to Part 6A TIOPA 2010. All references below are to Part 6A TIOPA 2010 unless otherwise stated.
3. Subsection 2 introduces the first amendment, which provides that the local taxes referred to in section 259B(3) are not treated as foreign taxes for the purposes of the hybrid and other mismatches regime.
4. The next two amendments relate to Chapters 3 and 4 of the Hybrid and other mismatches regime, which cover hybrid financial instruments and hybrid transfers.
5. Subsection 3 amends s259CC(2)(b) by removing the requirement for a claim to be made in respect of a permitted taxable period in relation to Chapter 3.
6. Subsection 4 amends s259DD(2)(b) by removing the requirement for a claim to be made in respect of a permitted taxable period in relation to Chapter 4.
7. Subsections 5 to 9 introduce amendments which relate to the treatment of deductions for amortisation. Each amendment inserts an additional subsection into the relevant chapter of Part 6A TIOPA 2010. In each case, the amendment has the effect to disregard deductions for amortisation when considering whether a mismatch arises.
8. For the purposes of these amendments, amortisation is defined as either a debit which is brought into account under section 729 or 731 CTA 2009, or a deduction amount under any equivalent rule in another jurisdiction.
9. Subsection 5 inserts new subsection 1A into section 259EB, which sets out that deductions in respect of amortisation are to be disregarded as relevant deductions for

the purposes of Chapter 5, which deals with hybrid payer deduction/non-inclusion mismatches.

10. Subsection 6 inserts new subsection 1A into section 259FA, which sets out that deductions in respect of amortisation are to be disregarded as relevant deductions for the purposes of Chapter 6, which deals with deduction/non-inclusion mismatches relating to transfers by permanent establishments.
11. Subsection 7 inserts new subsection 1A into section 259GB, which sets out that deductions in respect of amortisation are to be disregarded as relevant deductions for the purposes of Chapter 7, which deals with hybrid payee deduction/non-inclusion mismatches.
12. Subsection 8 inserts new subsection 1A into section 259HB, which sets out that deductions in respect of amortisation are to be disregarded as relevant deductions for the purposes of Chapter 8, which deals with multinational payee deduction/non-inclusion mismatches.
13. Subsection 9 inserts new subsection 3A into section 259KB, which sets out that deductions in respect of amortisation are to be disregarded as PE deductions for the purposes of Chapter 11, which deals with imported mismatches.
14. Subsection 10 provides commencement provisions in relation to the amendment in subsection 2 above (local taxes). This ensures that the amendment in relation to local taxes will have effect from 13 July 2017.
15. Subsection 11 deals with periods which fall either side of the 13 July 2017 commencement date for the local taxes amendment (straddling periods). It provides for apportionment either on a time basis, or, if more appropriate, on a just and reasonable basis.
16. Subsection 12 defines a straddling period for the purposes of the apportionment rules set out in subsection 11.
17. Subsection 13 provides that Part 6A TIOPA 2010 is deemed to always have effect in relation to the other amendments set out in this clause. This ensures that the commencement rules for Part 6A TIOPA 2010 also apply to the changes in relation to permitted periods and amortisation set out above.

Background note

18. The hybrid and other mismatch rules were introduced in Finance Act 2016. They are designed to deal with tax mismatches involving entities, financial instruments, permanent establishments and dual resident companies. A hybrid mismatch occurs because two or more jurisdictions apply a different tax treatment to a transaction, entity or arrangement. The UK regime was introduced following the 2015 OECD BEPS Action 2 Report on Hybrid Mismatches.
19. The government announced in a technical note, published at the Autumn Statement 2016, that it would introduce two minor changes to the hybrid and other mismatch

regime. This announcement was made following extensive discussions with stakeholders, and will ease the compliance burden in relation to certain claims, and ensure that amortisation deductions are not within scope of the regime. Those two changes were included when the clause was introduced in March 2017.

20. The government has decided to make the change in relation to the treatment of local taxes, following further discussion with stakeholders, to ensure that the original policy intention continued to be met. That change is now being introduced by subsection 2 of this clause, as set out in paragraph 3 above.
21. Comments in relation to these amendments should be submitted to the hybrids.mailbox@hmrc.gsi.gov.uk