# INTM558210: Hybrids: Dual Territory Double Deduction (Chapter 10): Examples: Multinational company double deduction

•A Co is resident in Country X, and has a permanent establishment in Country Y (‘B Branch’).

•Both Country X and Y treat B Branch as giving rise to a permanent establishment in Country Y.

•A Co borrows money from an unrelated third party (Bank) and uses the loan to fund income-earning assets in Country Y. 

•Country X allows A Co a deduction for the full amount of this interest expense. 

•Country Y allows B Branch a deduction for a portion of the interest expense (‘%interest’) on the same loan. 

•B Branch does not have any income and surrenders the loss arising from the interest deduction to B Co (a group company resident in Country Y) under a group relief provision of Country Y.


**Background**

* A Co is resident in Country X, and has a permanent establishment in Country Y (‘B Branch’).
* Both Country X and Y treat B Branch as giving rise to a permanent establishment in Country Y.
* A Co borrows money from an unrelated third party (Bank) and uses the loan to fund income-earning assets in Country Y.
* Country X allows A Co a deduction for the full amount of this interest expense.
* Country Y allows B Branch a deduction for a portion of the interest expense (‘%interest’) on the same loan.
* B Branch does not have any income and surrenders the loss arising from the interest deduction to B Co (a group company resident in Country Y) under a group relief provision of Country Y.

**Analysis - Applying the tests in s259JA TIOPA 2010**

Do the interest payment by A Co and the interest deduction allowed to B Branch satisfy the relevant conditions to fall within the scope of the dual territory double deduction rules?

**Condition A: Is there a relevant multinational or dual resident company?**

The definition of relevant multinational company is given at s259JA(4).

S259JA(4)(a) is satisfied as A Co is within the charge to tax in a country in which it is not resident because it carries on business in Country Y (‘the PE jurisdiction’) through a permanent establishment (B Branch).

If the UK is either Country X (the parent jurisdiction) or Country Y (the PE jurisdiction), the requirements at s259JA(4)(b) are met and A Co is a relevant multinational company.

Condition A is satisfied.

If the UK is neither Country X nor Country Y then the condition is not satisfied. If this is the case then the imported mismatch rules within s259K TIOPA 2010 should be considered.

**Condition B: Is it reasonable to suppose that there is a dual territory double deduction amount that arises because the company is a multinational or dual resident company?**

Given the facts above, it is reasonable to suppose that Country X will permit A Co a full deduction for the interest expense under the loan in the payment period.

It is also reasonable to suppose that Country Y will also permit a proportion of the interest expense (% interest) to be deducted in calculating the taxable income of Branch B, which is merely a part of A Co.

This double deduction arises because A Co is a relevant multinational company.

Condition B is satisfied.

The extent of the dual territory double deduction amount is %interest, being the amount of the interest deduction allowed to Branch B in Country Y.

### Conclusion

As both conditions are satisfied, the relevant counteraction must be considered in respect of amounts identified as dual territory double deductions.

**Counteraction**

The counteraction applicable will depend upon whether the UK is in the position of Country X or Country Y.

**Counteraction where the UK is in the position of Country X (parent jurisdiction)**

Where the UK is in the position of Country X (the parent jurisdiction) then s259JC will apply.

There is no dual inclusion income arising in relation to A Co/B Branch. The deduction in B Branch creates a loss which is surrendered as group relief to B Co. The dual territory double deduction amount is in substance deducted from the income of B Co. Consequently, the amount surrendered is an impermissible overseas deduction.

The interest deduction available to A Co is reduced by this impermissible overseas deduction.

If B Branch did not surrender its loss, there would be no impermissible overseas deduction and there would be no need to restrict the deduction available to A Co.

**Counteraction where the UK is in the position of Country Y (the PE jurisdiction)**

Where the UK is in the position of Country Y (the PE jurisdiction), and it is reasonable to suppose that the dual territory double deduction amount has not been fully counteracted by any other country under a counteraction equivalent to s259JC, then s259JD will apply.

The UK will deny B Branch a deduction for the dual territory double deduction amount to the extent that it is not set against dual inclusion income. In this example, as B Branch has no income there can be no dual inclusion income and so the full dual territory double deduction (% interest) will be denied. As the UK has denied the deduction, B Branch no longer has a loss to surrender under group relief provisions. If there had been dual inclusion income, the dual territory double deduction could be allowed as a deduction in B Branch to the extent that;

- it did not exceed the dual inclusion income

- the measure of dual inclusion income was restricted by the amount of any illegitimate overseas deduction in Country X.

Any dual territory double deduction amount that cannot be deducted from B Branch’s dual inclusion income for the deduction period is carried forward and deducted from dual inclusion income of subsequent accounting periods.

If the Commissioners are satisfied that –

* the company has ceased to be a relevant multinational company, and
* B Branch has not been able to deduct the dual territory double deduction from dual inclusion income of subsequent periods,

then those stranded deductions may be deducted from B Branch’s taxable total profits in its final accounting period (i.e. the period in which the company ceased to be a relevant multinational company).

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