These notes refer to the Finance Act 2015 (c.11)
which received Royal Assent on 26 March 2015

FINANCE ACT 2015

EXPLANATORY NOTES

INTRODUCTION

Section 97: Section 86 Cases: Estimating Profits for Preliminary and Charging Notices

Summary

1. Section 97 explains how the taxable diverted profits specified in a preliminary notice or charging notice are to be estimated where section 86 applies. For cases within sections 80 and 81 see section 96.

Details of the Section

2. Subsection (1) prescribes the circumstances in which the taxable diverted profits specified in a preliminary notice or charging notice must be determined in accordance with this section. The circumstances are where the taxable diverted profits fall to be determined under section 89, 90 or 91.

3. Subsection (2) provides that the taxable diverted profits are the amount calculated in accordance with sections 89, 90 or 91, on the basis of the best estimate that the designated officer can reasonably make at the time the notice is to be issued. This is subject to subsections (4) and (5).

4. Subsection (3) sets out "the inflated expenses condition". This condition applies where the mismatch condition is met, expenses would be allowed in computing notional PE profits (ignoring transfer pricing adjustments), those expenses contribute to an "effective tax mismatch outcome", and the designated HMRC officer considers that those expenses are greater than they would have been in a transaction between independent persons at arm's length.

5. Subsection (4) sets out the conditions under which subsection (5) applies. It applies when the inflated expenses condition is met and it is reasonable to assume that section 89 or section 91(4) applies.

6. Subsection (5) requires that, where the conditions under subsection (4) are met, the best estimate made in accordance with subsection (2) is to be made by reducing by 30% the relevant expenses included in the deduction mentioned in subsection (3)(b) and ignoring the transfer pricing rules at Part 4 Taxation (International and Other Provision) Act 2010.

7. Subsection (6) permits HM Treasury to make regulations amending the percentage for the purpose of subsection (5).

8. Subsection (8) provides definitions.

Background Note

9. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.