



Finance Act 2015

2015 CHAPTER 11

PART 3

DIVERTED PROFITS TAX

Introduction and overview

77 Introduction to the tax

- (1) A tax (to be known as “diverted profits tax”) is charged in accordance with this Part on taxable diverted profits arising to a company in an accounting period.
- (2) Taxable diverted profits arise to a company in an accounting period only if one or more of sections 80, 81 and 86 applies or apply in relation to the company for that period.

78 Overview of Part 3

- (1) Sections 80 and 81 relate to cases involving entities or transactions which lack economic substance.
- (2) In these cases—
 - (a) sections 82 to 85 deal with the calculation of taxable diverted profits (and ensure appropriate account is taken of any transfer pricing adjustments already made), and
 - (b) section 96 deals with the estimation of those profits when initially imposing a charge.
- (3) Section 86 relates to cases where, despite activity being carried on in the United Kingdom, a company avoids carrying on its trade in the United Kingdom in circumstances where—
 - (a) provision is made or imposed which involves entities or transactions lacking economic substance, or
 - (b) there are tax avoidance arrangements.

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- (4) In these cases—
- (a) sections 88 to 91 deal with the calculation of taxable diverted profits, and
 - (b) section 97 deals with the estimation of those profits when initially imposing a charge.
- (5) There is an exception from section 86 for cases involving limited UK-related sales or expenses (see section 87).
- (6) Key terms used in this Part are defined in sections 106 to 114.
- (7) Other provisions in this Part—
- ensure HMRC are notified of companies potentially within the scope of the tax (see section 92);
 - deal with the process for imposing a charge to diverted profits tax (see sections 93 to 97);
 - deal with payment of the tax and make provision about credits given for other tax paid on the same profits (see sections 98 to 100); and
 - provide for reviews of, and appeals against, decisions to impose a charge to diverted profits tax (see sections 101 and 102).

Charge to tax

79 Charge to tax

- (1) A charge to diverted profits tax is imposed for an accounting period by a designated HMRC officer issuing to the company a charging notice in accordance with section 95 or a supplementary charging notice in accordance with section 101(8).
- (2) The amount of tax charged by a notice is the sum of—
- (a) 25% of the amount of taxable diverted profits specified in the notice, and
 - (b) the interest (if any) on the amount within paragraph (a) determined under subsection (4).
- (3) But if, and to the extent that, the taxable diverted profits are adjusted ring fence profits or notional adjusted ring fence profits, and determined under section 84 or 85, subsection (2)(a) has effect in relation to those profits as if the rate specified were 55% rather than 25%.
- (4) The interest mentioned in subsection (2)(b) is interest at the rate applicable under section 178 of FA 1989 for the period (if any) which—
- (a) begins 6 months after the end of the accounting period to which the charge relates, and
 - (b) ends with the day the notice imposing the charge to tax is issued.
- (5) In this section—
- “adjusted ring fence profits” has the same meaning as in section 330 of CTA 2010 (supplementary charge in respect of ring fence trades);
 - “notional adjusted ring fence profits”, in relation to the company, means the total of—
- (a) profits within section 85(5)(a), to the extent that (assuming they were profits of the company chargeable to corporation tax) they would have been adjusted ring fence profits, and

- (b) any amounts of relevant taxable income of a company (“CC”) within section 85(4)(b) or (5)(b), to the extent that (assuming those amounts were profits of CC chargeable to corporation tax) they would have been adjusted ring fence profits of CC.

Involvement of entities or transactions lacking economic substance

80 UK company: involvement of entities or transactions lacking economic substance

- (1) This section applies in relation to a company (“C”) for an accounting period if—
 - (a) C is UK resident in that period,
 - (b) provision has been made or imposed as between C and another person (“P”) (whether or not P is UK resident) by means of a transaction or series of transactions (“the material provision”),
 - (c) the participation condition is met in relation to C and P (see section 106),
 - (d) the material provision results in an effective tax mismatch outcome, for the accounting period, as between C and P (see sections 107 and 108),
 - (e) the effective tax mismatch outcome is not an excepted loan relationship outcome (see section 109),
 - (f) the insufficient economic substance condition is met (see section 110), and
 - (g) C and P are not both small or medium-sized enterprises for that period.
- (2) For the purposes of subsection (1)(b) provision made or imposed as between a partnership of which C is a member and another person is to be regarded as provision made or imposed as between C and that person.

81 Non-UK company: involvement of entities or transactions lacking economic substance

- (1) This section applies in relation to a company (“the foreign company”) for an accounting period if—
 - (a) it is non-UK resident in that period,
 - (b) by reason of the foreign company carrying on a trade in the United Kingdom through a permanent establishment in the United Kingdom (“UKPE”), Chapter 4 of Part 2 of CTA 2009 (non-UK resident companies: chargeable profits) applies to determine the chargeable profits of the foreign company for that period, and
 - (c) section 80 would apply to UKPE for that period were it treated for the purposes of section 80 and sections 106 to 110—
 - (i) as a distinct and separate person from the foreign company (whether or not it would otherwise be so treated),
 - (ii) as a UK resident company under the same control as the foreign company, and
 - (iii) as having entered into any transaction or series of transactions entered into by the foreign company to the extent that the transaction or series is relevant to UKPE.
- (2) For the purposes of subsection (1)(c)(iii) a transaction or series of transactions is “relevant” to UKPE only if, and to the extent that, it is relevant, for corporation tax

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purposes, when determining the chargeable profits of the foreign company attributable (in accordance with sections 20 to 32 of CTA 2009) to UKPE.

- (3) Where section 1313(2) of CTA 2009 (UK sector of the continental shelf: profits of foreign company deemed to be profits of trade carried on by the company in the UK through a permanent establishment in the UK) applies to treat profits arising to a company as profits of a trade carried on by the company in the United Kingdom through a permanent establishment in the United Kingdom, this Part applies as if the company actually carried on that trade in the United Kingdom through that permanent establishment.
- (4) In this section “control” is to be construed in accordance with section 1124 of CTA 2010.

Calculation of taxable diverted profits: section 80 or 81 cases

82 Calculation of taxable diverted profits in section 80 or 81 case: introduction

- (1) If section 80 or 81 applies in relation to a company (“the relevant company”) for an accounting period—
 - (a) no taxable diverted profits arise, in relation to the material provision in question, if section 83 applies, and
 - (b) in other cases, section 84 or 85 applies to determine the taxable diverted profits in relation to that material provision.
- (2) But see also section 96 for how a designated HMRC officer estimates those profits when issuing a preliminary notice under section 93 or a charging notice under section 95.
- (3) Subsections (4) to (9) define some key expressions used in sections 83 to 85 and this section.
- (4) “The material provision” has the same meaning as in section 80.
- (5) “The relevant alternative provision” means the alternative provision which it is just and reasonable to assume would have been made or imposed as between the relevant company and one or more companies connected with that company, instead of the material provision, had tax (including any non-UK tax) on income not been a relevant consideration for any person at any time.
- (6) For the purposes of subsection (5), making or imposing no provision is to be treated as making or imposing an alternative provision to the material provision.
- (7) “The actual provision condition” is met if—
 - (a) the material provision results in expenses of the relevant company for which (ignoring Part 4 of TIOPA 2010 (transfer pricing)) a deduction for allowable expenses would be allowed in computing—
 - (i) in a case where section 80 applies, its liability for corporation tax for the accounting period, and
 - (ii) in a case where section 81 applies, its chargeable profits attributable (in accordance with sections 20 to 32 of CTA 2009) to UKPE, and
 - (b) the relevant alternative provision—
 - (i) would also have resulted in allowable expenses of the relevant company of the same type and for the same purposes (whether or not

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- payable to the same person) as so much of the expenses mentioned in paragraph (a) as results in the effective tax mismatch outcome mentioned in section 80(1)(d), but
- (ii) would not have resulted in relevant taxable income of a connected company for that company's corresponding accounting period.
- (8) "Relevant taxable income" of a company for a period is—
- (a) income of the company, for the period, which would have resulted from the relevant alternative provision and in relation to which the company would have been within the charge to corporation tax had that period been an accounting period of the company, less
 - (b) the total amount of expenses which it is just and reasonable to assume would have been incurred in earning that income and would have been allowable expenses of the company for that period.
- (9) "Connected company" means a company which is or, if the relevant alternative provision had been made, would have been connected with the relevant company.

83 Section 80 or 81 cases where no taxable diverted profits arise

- (1) Where section 80 or 81 applies in relation to a company for an accounting period, no taxable diverted profits arise to the company in that period in relation to the material provision in question if—
- (a) the actual provision condition is met, and
 - (b) either—
 - (i) there are no diverted profits of that company for the accounting period, or
 - (ii) the full transfer pricing adjustment has been made.
- (2) "Diverted profits" of the company for the accounting period means an amount—
- (a) in respect of which the company is chargeable to corporation tax for that period by reason of the application of Part 4 of TIOPA 2010 (transfer pricing) to the results of the material provision, and
 - (b) which, in a case where section 81 applies, is attributable (in accordance with sections 20 to 32 of CTA 2009) to UKPE.
- (3) "The full transfer pricing adjustment" is made if all of the company's diverted profits for the accounting period are taken into account in an assessment to corporation tax included, before the end of the review period, in the company's company tax return for the accounting period.

84 Section 80 or 81: calculation of profits by reference to the actual provision

- (1) This section applies where—
- (a) section 80 or 81 applies in relation to a company for an accounting period,
 - (b) the actual provision condition is met, and
 - (c) section 83 (cases where no taxable diverted profits arise) does not apply for that period.
- (2) In relation to the material provision in question, the taxable diverted profits that arise to the company in the accounting period are the amount (if any)—

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- (a) in respect of which the company is chargeable to corporation tax for that period by reason of the application of Part 4 of TIOPA 2010 (transfer pricing) to the results of the material provision,
- (b) which, in a case where section 81 applies, is attributable (in accordance with sections 20 to 32 of CTA 2009) to UKPE, and
- (c) which is not taken into account in an assessment to corporation tax which is included before the end of the review period in the company's company tax return for that accounting period.

85 Section 80 or 81: calculation of profits by reference to the relevant alternative provision

- (1) This section applies where—
 - (a) section 80 or 81 applies in relation to a company (“the relevant company”) for an accounting period, and
 - (b) the actual provision condition is not met.
- (2) The taxable diverted profits that arise to the relevant company in the accounting period in relation to the material provision in question are determined in accordance with subsections (3) to (5).
- (3) Subsection (4) applies if the actual provision condition would have been met but for the fact that the relevant alternative provision would have resulted in relevant taxable income of a company for that company's corresponding accounting period.
- (4) The taxable diverted profits that arise to the relevant company in the accounting period are an amount equal to the sum of—
 - (a) the amount described in section 84(2), and
 - (b) the total amount of any relevant taxable income of a connected company, for that company's corresponding accounting period, which would have resulted from the relevant alternative provision.
- (5) If subsection (4) does not apply, the taxable diverted profits that arise to the relevant company in the accounting period are the sum of—
 - (a) the notional additional amount (if any) arising from the relevant alternative provision, and
 - (b) the total amount (if any) of any relevant taxable income of a connected company, for that company's corresponding accounting period, which would have resulted from the relevant alternative provision,
- (6) In subsection (5) “the notional additional amount” means the amount by which—
 - (a) the amount in respect of which the company would have been chargeable to corporation tax for that period had the relevant alternative provision been made or imposed instead of the material provision, exceeds
 - (b) the amount—
 - (i) in respect of which the company is chargeable to corporation tax for that period by reason of the application of Part 4 of TIOPA 2010 (transfer pricing) to the results of the material provision,
 - (ii) which, in a case where section 81 applies, is attributable (in accordance with sections 20 to 32 of CTA 2009) to UKPE, and

- (iii) which is taken into account in an assessment to corporation tax which is included before the end of the review period in the company's company tax return for that accounting period.

Avoidance of a UK taxable presence

86 Non-UK company avoiding a UK taxable presence

- (1) This section applies in relation to a company (“the foreign company”) for an accounting period if—
 - (a) the company is non-UK resident in that period,
 - (b) it carries on a trade during that period (or part of it),
 - (c) a person (“the avoided PE”), whether or not UK resident, is carrying on activity in the United Kingdom in that period in connection with supplies of services, goods or other property made by the foreign company in the course of that trade,
 - (d) section 87 (exception for companies with limited UK-related sales or expenses) does not operate to prevent this section applying in relation to the foreign company for the accounting period,
 - (e) it is reasonable to assume that any of the activity of the avoided PE or the foreign company (or both) is designed so as to ensure that the foreign company does not, as a result of the avoided PE's activity, carry on that trade in the United Kingdom for the purposes of corporation tax (whether or not it is also designed to secure any commercial or other objective),
 - (f) the mismatch condition (see subsection (2)) or the tax avoidance condition (see subsection (3)) is met or both those conditions are met,
 - (g) the avoided PE is not excepted by subsection (5), and
 - (h) the avoided PE and the foreign company are not both small or medium-sized enterprises for that period.
- (2) “The mismatch condition” is that—
 - (a) in connection with the supplies of services, goods or other property mentioned in subsection (1)(c) (or in connection with those supplies and other supplies), arrangements are in place as a result of which provision is made or imposed as between the foreign company and another person (“A”) by means of a transaction or series of transactions (“the material provision”),
 - (b) the participation condition is met in relation to the foreign company and A (see section 106),
 - (c) the material provision results in an effective tax mismatch outcome, for the accounting period, as between the foreign company and A (see sections 107 and 108),
 - (d) the effective tax mismatch outcome is not an excepted loan relationship outcome (see section 109),
 - (e) the insufficient economic substance condition is met (see section 110), and
 - (f) the foreign company and A are not both small or medium-sized enterprises for the accounting period.
- (3) “The tax avoidance condition” is that, in connection with the supplies of services, goods or other property mentioned in subsection (1)(c) (or in connection with those

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supplies and other supplies), arrangements are in place the main purpose or one of the main purposes of which is to avoid or reduce a charge to corporation tax.

- (4) In subsection (1)(e) the reference to activity of the avoided PE or the foreign company includes any limitation which has been imposed or agreed in respect of that activity.
- (5) The avoided PE is “excepted” if—
- (a) activity of the avoided PE is such that, as a result of section 1142 or 1144 of CTA 2010, the foreign company would not be treated as carrying on a trade in the United Kingdom in the accounting period through a permanent establishment in the United Kingdom by reason of that activity, and
 - (b) in a case where—
 - (i) section 1142(1) of that Act applies, but
 - (ii) the avoided PE is not regarded for the purposes of section 1142(1) of that Act as an agent of independent status by virtue of section 1145, 1146 or 1151 of that Act,
 the foreign company and the avoided PE are not connected at any time in the accounting period.
- (6) Where the foreign company is a member of a partnership—
- (a) for the purposes of subsection (1)—
 - (i) a trade carried on by the partnership is to be regarded as a trade carried on by the foreign company, and
 - (ii) supplies made by the partnership in the course of that trade are to be regarded as supplies made by the foreign company in the course of that trade, and
 - (b) for the purposes of subsection (2)(a) provision made or imposed as between the partnership and another person is to be regarded as made between the foreign company and that person.
- (7) In this section “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

87 Exception for companies with limited UK-related sales or expenses

- (1) Section 86 does not apply to the foreign company for an accounting period if one or both of the following conditions is or are met.
- (2) The first condition is that, for the accounting period, the total of—
- (a) the UK-related sales revenues of the foreign company, and
 - (b) the UK-related sales revenues of companies connected with the foreign company,
- does not exceed £10,000,000.
- (3) The second condition is that the total of—
- (a) the UK-related expenses of the foreign company incurred in the accounting period, and
 - (b) the UK-related expenses of companies connected with the foreign company incurred in that period,
- does not exceed £1,000,000.

- (4) But if the accounting period is a period of less than 12 months, the amounts specified in subsections (2) and (3) are to be reduced proportionally.
- (5) In this section—
- “the foreign company” has the same meaning as in section 86;
 - “UK activity” means activity carried on in the United Kingdom in connection with supplies of services, goods or other property made by the foreign company in the course of the trade mentioned in section 86(1)(b);
 - “UK-related expenses”, of a company, means the expenses of that company which relate to UK activity;
 - “UK-related sales revenues” means—
 - (a) in the case of the foreign company, the sales revenues of that company from UK-related supplies, and
 - (b) in the case of a company connected with the foreign company, the sales revenues of the first mentioned company to the extent that they—
 - (i) are from UK-related supplies, and
 - (ii) are trading receipts which are not taken into account in calculating the profits of that company which are chargeable to corporation tax;
 - “UK-related supplies” means supplies of services, goods or other property which are made—
 - (a) by the foreign company or a company connected with the foreign company, and
 - (b) relate to UK activity.
- (6) For the purposes of this section “revenues” or “expenses” of a company, in the relevant accounting period, are amounts which, in accordance with generally accepted accounting practice (“GAAP”), are recognised as revenue or (as the case may be) expenses in the company’s profit and loss account or income statement for that period.
- (7) Where a company does not draw up accounts for the relevant accounting period in accordance with GAAP, the reference in subsection (6) to any amounts which in accordance with GAAP are recognised as revenue or expenses in the company’s profit and loss account or income statement for the relevant accounting period is to be read as a reference to any amounts which would be so recognised if the company had drawn up such accounts for the relevant accounting period.
- (8) “Generally accepted accounting practice” is to be construed in accordance with section 1127 of CTA 2010.
- (9) The Treasury may by regulations, made by statutory instrument, substitute a different figure for the figure for the time being specified in subsection (2) or (3).
- (10) Regulations under this section are subject to annulment in pursuance of a resolution of the House of Commons.

Calculation of taxable diverted profits: section 86 cases

88 Calculation of taxable diverted profits in section 86 case: introduction

- (1) If section 86 applies for an accounting period, section 89, 90 or 91 applies to determine the taxable diverted profits of the foreign company.

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- (2) But see also section 97 for how a designated HMRC officer estimates those profits when issuing a preliminary notice under section 93 or a charging notice under section 95.
- (3) Subsections (4) to (12) define some key expressions used in sections 89 to 91 and this section.
- (4) “The foreign company” has the same meaning as in section 86.
- (5) “The notional PE profits”, in relation to an accounting period, means the profits which would have been the chargeable profits of the foreign company for that period, attributable (in accordance with sections 20 to 32 of CTA 2009) to the avoided PE, had the avoided PE been a permanent establishment in the United Kingdom through which the foreign company carried on the trade mentioned in section 86(1)(b).
- (6) “The material provision” has the same meaning as in section 86.
- (7) “The relevant alternative provision” means the alternative provision which it is just and reasonable to assume would have been made or imposed as between the foreign company and one or more companies connected with that company, instead of the material provision, had tax (including any non-UK tax) on income not been a relevant consideration for any person at any time.
- (8) For the purposes of subsection (7), making or imposing no provision is to be treated as making or imposing an alternative provision to the material provision.
- (9) “The actual provision condition” is met if—
 - (a) the material provision results in expenses of the foreign company for which (ignoring Part 4 of TIOPA 2010 (transfer pricing)) a deduction for allowable expenses would be allowed in computing what would have been the notional PE profits for the accounting period, and
 - (b) the relevant alternative provision—
 - (i) would also have resulted in allowable expenses of the foreign company of the same type and for the same purposes (whether or not payable to the same person) as so much of the expenses mentioned in paragraph (a) as results in the effective tax mismatch outcome mentioned in section 86(2)(c), but
 - (ii) would not have resulted in relevant taxable income of a connected company for that company’s corresponding accounting period.
- (10) “Relevant taxable income” of a company for a period is—
 - (a) income of the company, for the period, which would have resulted from the relevant alternative provision and in relation to which the company would have been within the charge to corporation tax had that period been an accounting period of the company, less
 - (b) the total amount of expenses which it is just and reasonable to assume would have been incurred in earning that income and would have been allowable expenses of the company for that period.
- (11) “Connected company” means a company which is or, if the relevant alternative provision had been made, would have been connected with the foreign company.
- (12) “The mismatch condition” has the same meaning as in section 86.

89 Section 86: calculation of profits where only tax avoidance condition is met

- (1) This section applies where—
 - (a) section 86 applies for an accounting period, and
 - (b) the mismatch condition is not met.
- (2) The taxable diverted profits that arise to the foreign company in the accounting period by reason of that section applying are an amount equal to the notional PE profits for that period.

90 Section 86: mismatch condition is met: calculation of profits by reference to the actual provision

- (1) This section applies where—
 - (a) section 86 applies for an accounting period,
 - (b) the mismatch condition is met, and
 - (c) the actual provision condition is met.
- (2) The taxable diverted profits that arise to the foreign company in the accounting period, in relation to the material provision in question, are an amount equal to the notional PE profits for that period.

91 Section 86: mismatch condition is met: calculation of profits by reference to the relevant alternative provision

- (1) This section applies where —
 - (a) section 86 applies for an accounting period,
 - (b) the mismatch condition is met, and
 - (c) the actual provision condition is not met.
- (2) The taxable diverted profits that arise to the foreign company in the accounting period, in relation to the material provision in question, are determined in accordance with subsections (3) to (5).
- (3) Subsection (4) applies if the actual provision condition would have been met but for the fact that the relevant alternative provision would have resulted in relevant taxable income of a company for that company's corresponding accounting period.
- (4) The taxable diverted profits that arise to the foreign company in the accounting period are an amount equal to the sum of—
 - (a) the notional PE profits for the accounting period, and
 - (b) the total amount of any relevant taxable income of a connected company, for that company's corresponding accounting period, which would have resulted from the relevant alternative provision.
- (5) If subsection (4) does not apply, the taxable diverted profits that arise to the foreign company in the accounting period are the sum of—
 - (a) what would have been the notional PE profits of the foreign company for that period had the relevant alternative provision been made or imposed instead of the material provision, and
 - (b) the total amount of any relevant taxable income of a connected company, for that company's corresponding accounting period, which would have resulted from the relevant alternative provision.

*Duty to notify if within scope***92 Duty to notify if potentially within scope of tax**

- (1) Where a company meets the requirements in subsection (3) or (4) in relation to an accounting period of the company, the company must notify an officer of Revenue and Customs to that effect.

This is subject to subsections (7) and (8).

- (2) A notification under subsection (1) must be made—
- (a) in writing, and
 - (b) within the period of 3 months beginning at the end of the accounting period to which it relates (“the notification period”).

See also subsection (9) for provision about the content of notifications.

- (3) A company meets the requirements of this subsection if—
- (a) section 80 or 81 applies in relation to the company for the accounting period, and
 - (b) in that period, the financial benefit of the tax reduction is significant relative to the non-tax benefits of the material provision.
- (4) A company meets the requirements of this subsection if—
- (a) section 86 applies in relation to the company for the accounting period, and
 - (b) where that section applies by reason of the mismatch condition being met, in that period the financial benefit of the tax reduction is significant relative to the non-tax benefits of the material provision.
- (5) For the purposes of subsections (3) and (4), this Part has effect subject to the following modifications—
- (a) in section 80, ignore subsection (1)(f),
 - (b) in section 86, for subsection (1)(e) substitute—
 - “(e) the foreign company is not, as a result of the avoided PE’s activity, within the charge to corporation tax by reason of the foreign company carrying on a trade in the United Kingdom,”
 - (c) in subsection (2) of that section, ignore paragraph (e), and
 - (d) in subsection (3) of that section, for “the main purpose or one of the main purposes of which is to avoid or reduce a charge to corporation tax” substitute “that result in the reduction of a charge to corporation tax in consequence of which there is an overall reduction in the amount of tax (including foreign tax) that would otherwise have been payable in respect of the activity mentioned in subsection (1)(c)”.
- (6) In subsections (3)(b) and (4)(b), “non-tax benefits” means financial benefits other than—
- (a) the financial benefit of the tax reduction, and
 - (b) any financial benefits which derive (directly or indirectly) from any reduction, elimination or delay of any liability of any person to pay any tax (including any non-UK tax).

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- (7) The duty under subsection (1) does not apply in relation to an accounting period of the company (“the current period”)—
- (a) if, at the end of the notification period, it is reasonable (ignoring the possibility of future adjustments being made in accordance with Part 4 of TIOPA 2010 (transfer pricing)) for the company to conclude that no charge to diverted profits tax will arise to the company for the current period,
 - (b) if, before the end of the notification period, an officer of Revenue and Customs has confirmed that the company does not have to notify an officer in relation to the current period because—
 - (i) the company, or a company which is connected with it, has provided HMRC with sufficient information to enable a designated HMRC officer to determine whether or not to give a preliminary notice under section 93 to the first mentioned company in respect of the accounting period, and
 - (ii) HMRC has examined that information (whether in the course of an enquiry made into a return or otherwise and whether in relation to diverted profits tax or otherwise),
 - (c) if, at the end of the notification period, it is reasonable for the company to conclude that sub-paragraphs (i) and (ii) of paragraph (b) apply, or
 - (d) if—
 - (i) the immediately preceding accounting period of the company is a period in respect of which notification was given under subsection (1), or not required to be given by virtue of paragraph (b) or (c) or this paragraph, and
 - (ii) at the end of the notification period for the current period, it is reasonable for the company to conclude that there has been no change in circumstances which is material to whether a charge to diverted profits tax may be imposed for the current period.
- (8) The Commissioners for Her Majesty’s Revenue and Customs may also direct that the duty under subsection (1) does not apply in relation to an accounting period in other circumstances specified in the direction.
- (9) A notification under subsection (1) must—
- (a) state whether the obligation to notify arises by reason of section 80, 81 or 86 (as modified by subsection (5)) applying in relation to the company for the accounting period;
 - (b) if it states that section 86 applies, state the name of the avoided PE;
 - (c) if it states that section 80 or 81 applies, contain a description of the material provision in question and the parties between whom it has been made or imposed;
 - (d) if it states that section 86 applies—
 - (i) state whether or not the mismatch condition is met, and
 - (ii) if it is met, contain a description of the material provision in question and the parties between whom it has been made or imposed.

Process for imposing charge

93 Preliminary notice

- (1) If a designated HMRC officer has reason to believe that—
- (a) one or more of sections 80, 81 and 86 applies or apply in relation to a company for an accounting period, and
 - (b) as a result, taxable diverted profits arise to the company in the accounting period,
- the officer must give the company a notice (a “preliminary notice”) in respect of that period.
- (2) See sections 96 and 97 for provision about the calculation of taxable diverted profits for the purposes of a preliminary notice.
- (3) A preliminary notice must—
- (a) state the accounting period of the company to which the notice applies;
 - (b) set out the basis on which the officer has reason to believe that one or more of sections 80, 81 and 86 applies or apply in relation to the company for that accounting period;
 - (c) explain the basis on which the proposed charge is calculated, including—
 - (i) how the taxable diverted profits to which the proposed charge would relate have been determined,
 - (ii) where relevant, details of the relevant alternative provision (see section 82(5) or 88(7)) by reference to which those profits have been determined, and
 - (iii) how the amount of interest comprised in that charge in accordance with section 79(2)(b) would be calculated,
 - (d) state who would be liable to pay the diverted profits tax;
 - (e) explain how interest is applied in accordance with section 101 of FA 2009 (late payment interest on sums due to HMRC) if the diverted profits tax is not paid, the period for which interest is charged and the rate at which it is charged.
- (4) Where the designated HMRC officer has insufficient information to determine or identify any of the matters set out in subsection (3), it is sufficient if the preliminary notice sets out those matters determined to the best of the officer’s information and belief.
- (5) Subject to subsection (6), a preliminary notice may not be issued more than 24 months after the end of the accounting period to which it relates.
- (6) Where—
- (a) notification under section 92 has not been received by an officer of Revenue and Customs in respect of an accounting period of a company within the period specified in subsection (2)(b) of that section, and
 - (b) a designated HMRC officer believes, in relation to that accounting period, that an amount of diverted profits tax that ought to have been charged under this Part has not been charged,

a designated HMRC officer may issue to the company a preliminary notice in respect of that tax within the period of 4 years after the end of the accounting period.

- (7) Where a preliminary notice is issued to a company, the officer must give a copy of the notice—
- (a) if the notice is issued on the basis that section 81 applies, to UKPE, and
 - (b) if the notice is issued on the basis that section 86 applies, to the avoided PE.

94 Representations

- (1) This section applies where a designated HMRC officer gives a preliminary notice, in respect of an accounting period, to a company under section 93 (and that notice is not withdrawn).
- (2) The company has 30 days beginning with the day the notice is issued to send written representations to the officer in respect of the notice.
- (3) Representations made in accordance with subsection (2) are to be considered by the officer only if they are made on the following grounds—
- (a) that there is an arithmetical error in the calculation of the amount of the diverted profits tax or the taxable diverted profits or an error in a figure on which an assumption in the notice is based;
 - (b) that the small or medium-sized enterprise requirement is not met;
 - (c) that in a case where the preliminary notice states that section 80 or 81 applies—
 - (i) the participation condition is not met,
 - (ii) the 80% payment test is met, or
 - (iii) the effective tax mismatch outcome is an excepted loan relationship outcome;
 - (d) that in a case where the preliminary notice states that section 86 applies—
 - (i) section 87 (exception for companies with limited UK-related sales or expenses) operates to prevent section 86 from applying for the accounting period, or
 - (ii) the avoided PE is “excepted” within the meaning of section 86(5);
 - (e) that in a case where the preliminary notice states that section 86 applies and that the mismatch condition (within the meaning of section 86(2)) is met, the condition is not met because—
 - (i) the participation condition is not met,
 - (ii) the 80% payment test is met, or
 - (iii) the effective tax mismatch outcome is an excepted loan relationship outcome (within the meaning of section 109(2)).
- (4) But, unless they are representations under subsection (3)(a) in respect of arithmetical errors, nothing in subsection (3) requires the officer to consider any representations if, and to the extent that, they relate to—
- (a) any provision of Part 4 of TIOPA 2010 (transfer pricing), or
 - (b) the attribution of profits of a company to a permanent establishment in the United Kingdom through which the company carries on a trade (including any notional attribution made for the purposes of section 89, 90 or 91).
- (5) “The small or medium-sized enterprise requirement” is—
- (a) where the notice was issued on the basis that section 80 or 81 applies, the requirement in section 80(1)(g), and

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- (b) where the notice was issued on the basis that section 86 applies to the company, the requirement in subsection (1)(h) or (2)(f) of that section.
- (6) “The participation condition” means—
- (a) where the notice was issued on the basis that section 80 or 81 applies, the condition in section 80(1)(c), and
 - (b) where the notice was issued on the basis that section 86 applies to the company, the condition in subsection (2)(b) of that section.
- (7) “The 80% payment test” means the requirement in section 107(3)(d).

95 Charging notice

- (1) This section applies where a designated HMRC officer has given a company a preliminary notice under section 93 in relation to an accounting period.
- (2) Having considered any representations in accordance with section 94, the officer must determine whether to—
- (a) issue a notice under this section (a “charging notice”) to the company for that accounting period, or
 - (b) notify the company that no charging notice will be issued for that accounting period pursuant to that preliminary notice,
- and must take that action before the end of the period of 30 days immediately following the period of 30 days mentioned in section 94(2).
- (3) A notification under subsection (2)(b) does not prevent a charging notice being issued for the same accounting period pursuant to any other preliminary notice the person may be given in respect of that period.
- (4) See sections 96 and 97 for provision about the calculation of taxable diverted profits for the purposes of a charging notice.
- (5) A charging notice must—
- (a) state the amount of the charge to diverted profits tax imposed by the notice;
 - (b) set out the basis on which the officer considers that section 80, 81 or 86 applies;
 - (c) state the accounting period of the company to which the notice applies;
 - (d) set out an explanation of the basis on which the charge is calculated, including —
 - (i) how the taxable diverted profits to which the charge relates have been determined,
 - (ii) where relevant, details of the relevant alternative provision (see section 82(5) or 88(7)) by reference to which those profits have been determined, and
 - (iii) how the amount of interest comprised in the charge under section 79(2)(b) has been calculated;
 - (e) state who is liable to pay the diverted profits tax;
 - (f) state when the tax is due and payable;
 - (g) explain how interest is applied in accordance with section 101 of FA 2009 (late payment interest on sums due to HMRC) if the diverted profits tax is not paid, the period for which interest is charged and the rate at which it is charged.

- (6) Where a charging notice is issued to a company, the officer must give a copy of the notice—
- (a) if the notice is issued by reason of section 81 applying, to UKPE, and
 - (b) if the notice is issued by reason of section 86 applying, to the avoided PE.

96 Section 80 or 81 cases: estimating profits for preliminary and charging notices

- (1) Where taxable diverted profits arising to a company in an accounting period fall to be determined under section 84 or 85, for the purposes of issuing a preliminary notice under section 93 or a charging notice under section 95 the taxable diverted profits to be specified in the notice, in relation to the material provision in question, are determined in accordance with this section.
- (2) The taxable diverted profits are such amount (if any) as the designated HMRC officer issuing the notice determines, on the basis of the best estimate that can reasonably be made at that time, to be the amount calculated in accordance with sections 84 or 85 (as the case may be).

But this is subject to subsections (4) to (6).

- (3) For the purposes of this section, “the inflated expenses condition” is met if—
- (a) the material provision results in expenses of the company for which a deduction has been taken into account by the company in computing—
 - (i) in a case where section 80 applies, its liability for corporation tax for the accounting period, and
 - (ii) in a case where section 81 applies, its chargeable profits attributable (in accordance with sections 20 to 32 of CTA 2009) to UKPE,
 - (b) the expenses result, or a part of the expenses results, in the effective tax mismatch outcome mentioned in section 80(1)(d), and
 - (c) in consequence of paragraphs (a) and (b), the designated HMRC officer issuing the notice considers that the relevant expenses might be greater than they would have been if they had resulted from provision made or imposed as between independent persons dealing at arm’s length.
- (4) Subsection (5) applies where the designated HMRC officer issuing the notice considers that—
- (a) the inflated expenses condition is met, and
 - (b) it is reasonable to assume that section 84 or 85(4) applies.
- (5) Where this subsection applies, the best estimate made by the officer in accordance with subsection (2) is to be made on the assumption that—
- (a) so much of the deduction mentioned in subsection (3)(a) as relates to the relevant expenses is reduced by 30%, and
 - (b) in relation to the relevant expenses, Part 4 of TIOPA 2010 (transfer pricing) is ignored.
- (6) But—
- (a) if the deduction for the expenses taken into account by the company in computing its liability for corporation tax takes account of an adjustment required by Part 4 of TIOPA 2010 (transfer pricing) which is reflected in the company’s company tax return prior to the issue of the charging notice, and
 - (b) as a result that deduction is less than it would otherwise have been,

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the reduction required by subsection (5)(a) is reduced (but not below nil) to take account of that adjustment.

- (7) For the purposes of this section, sections 83(3) and 84(2)(c) have effect as if (in each case) the words “before the end of the review period” were omitted.
- (8) The Treasury may by regulations, made by statutory instrument, substitute a different percentage for the percentage for the time being specified in subsection (5)(a).
- (9) Regulations under this section are subject to annulment in pursuance of a resolution of the House of Commons.
- (10) In this section—
 - “the material provision” has the same meaning as in section 80;
 - “the relevant expenses” means so much of the expenses mentioned in subsection (3)(a) as result in the effective tax mismatch outcome as mentioned in subsection (3)(b).

97 Section 86 cases: estimating profits for preliminary and charging notices

- (1) Where taxable diverted profits arising to the foreign company in an accounting period fall to be determined under section 89, 90 or 91, for the purposes of issuing a preliminary notice under section 93 or a charging notice under section 95 the taxable diverted profits to be specified in the notice are determined instead in accordance with this section.
- (2) The taxable diverted profits are such amount as the designated HMRC officer issuing the notice determines, on the basis of the best estimate that can reasonably be made at that time, to be the amount calculated in accordance with section 89, 90 or 91 (as the case may be).

But this is subject to subsections (4) and (5).
- (3) For the purposes of subsection (4), “the inflated expenses condition” is met if—
 - (a) the mismatch condition is met,
 - (b) the material provision results in expenses of the foreign company for which (ignoring Part 4 of TIOPA 2010 (transfer pricing)) a deduction for allowable expenses would be allowed in computing the notional PE profits of the foreign company for the accounting period,
 - (c) the expenses result, or a part of the expenses results, in the effective tax mismatch outcome mentioned in section 86(2)(c), and
 - (d) in consequence of paragraphs (a) to (c), the designated HMRC officer issuing the notice considers that the relevant expenses might be greater than they would have been if they had resulted from provision made or imposed as between independent persons dealing at arm’s length.
- (4) Subsection (5) applies where the designated HMRC officer issuing the notice considers that—
 - (a) the inflated expenses condition is met, and
 - (b) it is reasonable to assume that section 90 or 91(4) applies.
- (5) Where this subsection applies, the best estimate made by the officer in accordance with subsection (2) is to be made on the assumption that—

- (a) so much of the deduction mentioned in subsection (3)(b) as relates to the relevant expenses is reduced by 30%, and
 - (b) in relation to the relevant expenses, Part 4 of TIOPA 2010 (transfer pricing) is ignored.
- (6) The Treasury may by regulations, made by statutory instrument, substitute a different percentage for the percentage for the time being specified in subsection (5)(a).
- (7) Regulations under this section are subject to annulment in pursuance of a resolution of the House of Commons.
- (8) In this section—
 - (a) “the relevant expenses” means so much of the expenses mentioned in subsection (3)(b) as result in the effective tax mismatch outcome as mentioned in section 86(2)(c), and
 - (b) “the foreign company”, “the material provision” and “the mismatch condition” have the same meaning as in section 86.

Payment and recovery of tax

98 Payment of tax

- (1) This section applies where a charging notice is issued to a company.
- (2) Diverted profits tax charged by the notice must be paid within 30 days after the day the notice is issued.
- (3) The company is liable to pay the tax.
- (4) The payment of the tax may not be postponed on any grounds, and so the diverted profits tax charged by the charging notice remains due and payable despite any review being conducted under section 101 or any appeal in respect of the notice.
- (5) In Schedule 16—
 - (a) Part 1 contains provision treating a liability of a non-UK resident company to pay diverted profits tax as if it were also a liability of its UK representative;
 - (b) Part 2 contains provision enabling unpaid diverted profits tax due from a non-UK resident company to be recovered from a related company.

99 Diverted profits tax ignored for tax purposes

- (1) In calculating income, profits or losses for any tax purpose—
 - (a) no deduction, or other relief, is allowed in respect of diverted profits tax, and
 - (b) no account is to be taken of any amount which is paid (directly or indirectly) by a person for the purposes of meeting or reimbursing the cost of diverted profits tax.
- (2) An amount paid as mentioned in subsection (1)(b) is not to be regarded for the purposes of the Corporation Tax Acts as a distribution (within the meaning of CTA 2010).

100 Credit for UK or foreign tax on same profits

- (1) Subsection (2) applies where a company has paid—

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- (a) corporation tax, or
 - (b) a tax under the law of a territory outside the United Kingdom which corresponds to corporation tax,which is calculated by reference to profits of the company (“the taxed profits”).
- (2) Such credit as is just and reasonable is allowed in respect of that tax against any liability which either—
 - (a) that company has to diverted profits tax in respect of the taxed profits, or
 - (b) another company has to diverted profits tax in respect of taxable diverted profits arising to that other company which are calculated by reference to amounts which also constitute all or part of the taxed profits.
- (3) Subsection (4) applies where a company has paid—
 - (a) the CFC charge within the meaning of Part 9A of TIOPA 2010 (controlled foreign companies) (see section 371VA), or
 - (b) a tax under the law of a territory outside the United Kingdom (by whatever name known) which is similar to the CFC charge,which is calculated by reference to profits of another company (“the CFC profits”).
- (4) Such credit as is just and reasonable is allowed in respect of that charge or tax against any liability which a company has to diverted profits tax in respect of taxable diverted profits arising to that other company which are calculated by reference to amounts which also constitute all or part of the CFC profits.
- (5) But nothing in this section allows a credit, against a liability to diverted profits tax, for an amount of tax or charge which was paid after the end of—
 - (a) the review period in respect of the charging notice which imposed the charge to diverted profits tax, or
 - (b) where the charge to diverted profits tax was imposed by a supplementary charging notice, the review period within which that notice was issued.
- (6) For the purposes of subsection (1), any withholding tax paid on payments made to a person is (unless it is refunded) to be treated—
 - (a) as tax within paragraph (a) or (b) of that subsection, and
 - (b) as paid by that person (and not the person making the payment).
- (7) For the purposes of subsection (6), an amount of withholding tax paid on payments made to a person is refunded if and to the extent that—
 - (a) any repayment of tax, or any payment in respect of a credit for tax, is made to any person, and
 - (b) that repayment or payment is directly or indirectly in respect of the whole or part of the amount of that withholding tax.

Review and appeals

101 HMRC review of charging notice

- (1) Where a charging notice is issued to a company for an accounting period, a designated HMRC officer, within the review period—
 - (a) must carry out a review of the amount of diverted profits tax charged on the company for the accounting period, and

- (b) may carry out more than one such review.
- (2) Subject to subsection (13), “the review period” means the period of 12 months beginning immediately after the period of 30 days mentioned in section 98(2).
 - (3) Subsection (4) applies if—
 - (a) the company has paid (in full) the amount of diverted profits tax charged by the charging notice, and
 - (b) the officer is satisfied that the total amount of diverted profits tax charged on the company for that period is excessive having regard to sections 83, 84, 85, 89, 90 and 91 (calculation of taxable diverted profits).
 - (4) The officer may, during the review period, issue to the company an amending notice which amends the charging notice so as to—
 - (a) reduce the amount of taxable diverted profits to which the notice relates, and
 - (b) accordingly, reduce the charge to diverted profits tax imposed on the company in respect of the accounting period.
 - (5) More than one amending notice may be issued to the company in respect of the charging notice.
 - (6) Where an amending notice is issued, any tax overpaid must be repaid.
 - (7) Subsection (8) applies if a designated HMRC officer is satisfied that the total amount of diverted profits tax charged on the company for the accounting period is insufficient having regard to sections 83, 84, 85, 89, 90 and 91 (calculation of taxable diverted profits).
 - (8) The officer may, during the review period, issue a notice (a “supplementary charging notice”) to the company imposing an additional charge to diverted profits tax on the company in respect of the accounting period on taxable diverted profits which—
 - (a) arise to the company for that period, and
 - (b) are not already the subject of a charge to diverted profits tax.
 - (9) Only one supplementary charging notice may be issued to the company in respect of a charging notice.
 - (10) No supplementary charging notice may be issued during the last 30 days of the review period.
 - (11) Subsections (3) to (6) (amending notices) apply in relation to a supplementary charging notice as they apply to the charging notice.
 - (12) Section 95(5) (content of charging notice) and section 98 (payment of tax) apply in relation to a supplementary charging notice as they apply in relation to a charging notice.
 - (13) If either of the following events occurs before the end of the period of 12 months referred to in subsection (2), the review period ends at the time of that event.
The events are—
 - (a) that following the issuing of a supplementary charging notice, the company notifies HMRC that it is terminating the review period;
 - (b) that a designated HMRC officer and the company agree (in writing) that the review period is to terminate.

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- (14) When determining on a review whether the total amount of taxable diverted profits charged on the company for an accounting period is excessive or insufficient—
- (a) the designated HMRC officer must not take any account of section 96 or (as the case may be) section 97 (which apply only for the purposes of the officer estimating the taxable diverted profits for the purposes of issuing a preliminary notice or charging notice), and
 - (b) nothing in section 94 applies to restrict the representations which the officer may consider.
- (15) Where a supplementary charging notice or an amending notice is issued to a company, the officer must give a copy of the notice—
- (a) if the charging notice was issued by reason of section 81 applying, to UKPE, and
 - (b) if the charging notice was issued by reason of section 86 applying, to the avoided PE.

102 Appeal against charging notice or supplementary charging notice

- (1) A company to which a charging notice or a supplementary charging notice is issued may appeal against the notice.
- (2) Notice of an appeal must be given to HMRC, in writing, within 30 days after the end of the review period (see section 101(2) and (13)).
- (3) The notice of appeal must specify the grounds of appeal.
- (4) For the purposes of an appeal, sections 96 and 97 (which apply only for the purposes of the officer estimating the taxable diverted profits for the purposes of issuing a preliminary notice or charging notice) are to be ignored when determining whether the taxable diverted profits in respect of which a charge is imposed have been correctly calculated.
- (5) On an appeal under this section the Tribunal may—
 - (a) confirm the charging notice or supplementary charging notice to which the appeal relates,
 - (b) amend that charging notice or supplementary charging notice, or
 - (c) cancel that charging notice or supplementary charging notice.
- (6) For the purposes of Part 5 of TMA 1970 (appeals etc), an appeal under this section is to be treated as if it were an appeal under the Taxes Acts (within the meaning of that Act), and for that purpose references in that Part to an assessment include a charging notice or supplementary charging notice under this Part.
- (7) Subsection (6) is subject to section 98(4) (no postponement of payment of tax pending appeal etc).

Administration of tax

103 Responsibility for collection and management

The Commissioners for Her Majesty's Revenue and Customs are responsible for the collection and management of diverted profits tax.

104 Penalties etc

(1) Schedule 56 to FA 2009 (penalty for failure to make payments on time) is amended as follows.

(2) In the Table at the end of paragraph 1, after item 6ZA insert—

“6ZB	Diverted profits tax	Amount of diverted profits tax payable under Part 3 of FA 2015	The date when, in accordance with section 98(2) of FA 2015, the amount must be paid”
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(3) In paragraph 3 (amount of penalty: occasional amounts and amounts in respect of periods of 6 months or more), after sub-paragraph (1)(a) insert—

“(aa) a payment of tax falling within item 6ZB in the Table.”.

(4) Schedule 41 to FA 2008 (penalties: failure to notify etc) is amended as follows.

(5) In the Table in paragraph 1, after the entry for corporation tax insert—

“Diverted profits tax	Obligation under section 92 of FA 2015 (duty to notify if within scope of diverted profits tax).”
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(6) In paragraph 7 (meaning of “potential lost revenue”), after sub-paragraph (4) insert—

“(4A) In the case of a relevant obligation relating to diverted profits tax, the potential lost revenue is the amount of diverted profits tax for which P would be liable at the end of the period of 6 months beginning immediately after the accounting period assuming—

- (a) a charge to diverted profits tax had been imposed on P on the taxable diverted profits arising to P for the accounting period, and
- (b) that tax was required to be paid before the end of that period of 6 months.”

105 Information and inspection powers etc

(1) In Schedule 23 to FA 2011 (data-gathering powers), in paragraph 45(1) (taxes to which powers apply), after paragraph (c) insert—

“(ca) diverted profits tax.”.

(2) In Schedule 36 to FA 2008 (information and inspection powers), in paragraph 63(1) (taxes to which powers apply), after paragraph (c) insert—

“(ca) diverted profits tax.”.

Interpretation

106 “The participation condition”

(1) This section applies for the purposes of sections 80 and 86(2).

(2) In this section “the first party” and “the second party” mean—

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- (a) where this section applies for the purposes of section 80, C and P (within the meaning of section 80) respectively, and
 - (b) where this section applies for the purposes of section 86(2), the foreign company and A (within the meaning of section 86) respectively.
- (3) The participation condition is met in relation to the first party and the second party (“the relevant parties”) if—
- (a) condition A is met in relation to the material provision so far as the material provision is provision relating to financing arrangements, and
 - (b) condition B is met in relation to the material provision so far as the material provision is not provision relating to financing arrangements.
- (4) Condition A is that, at the time of the making or imposition of the material provision or within the period of 6 months beginning with the day on which the material provision was made or imposed—
- (a) one of the relevant parties was directly or indirectly participating in the management, control or capital of the other, or
 - (b) the same person or persons was or were directly or indirectly participating in the management, control or capital of each of the relevant parties.
- (5) Condition B is that, at the time of the making or imposition of the material provision—
- (a) one of the relevant parties was directly or indirectly participating in the management, control or capital of the other, or
 - (b) the same person or persons was or were directly or indirectly participating in the management, control or capital of each of the relevant parties.
- (6) In this section “financing arrangements” means arrangements made for providing or guaranteeing, or otherwise in connection with, any debt, capital or other form of finance.
- (7) For the purposes of this section—
- (a) section 157(2) of TIOPA 2010 (“direct participation”) applies, and
 - (b) sections 158 to 163 of that Act (“indirect participation” in management, control or capital of a person) apply as if in those sections—
 - (i) references to section 148(2) of that Act included references to subsection (4) of this section,
 - (ii) references to paragraph (a) or (b) of section 148(2) of that Act included (respectively) references to paragraph (a) or (b) of subsection (4) of this section,
 - (iii) references to section 148(3) of that Act included references to subsection (5) of this section, and
 - (iv) references to paragraph (a) or (b) of section 148(3) of that Act included (respectively) references to paragraph (a) or (b) of subsection (5) of this section.

107 “Effective tax mismatch outcome”

- (1) This section applies for the purposes of sections 80 and 86(2).
- (2) In this section “the first party” and “the second party” mean—
- (a) where this section applies for the purposes of section 80, C and P (within the meaning of section 80) respectively, and

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- (b) where this section applies for the purposes of section 86(2), the foreign company and A (within the meaning of section 86) respectively.
- (3) The material provision results in an effective tax mismatch outcome as between the first party and the second party for an accounting period of the first party if—
- (a) in that accounting period, in relation to a relevant tax, it results in one or both of—
 - (i) expenses of the first party for which a deduction has been taken into account in computing the amount of the relevant tax payable by the first party, or
 - (ii) a reduction in the income of the first party which would otherwise have been taken into account in computing the amount of a relevant tax payable by the first party,
 - (b) the resulting reduction in the amount of the relevant tax which is payable by the first party exceeds the resulting increase in relevant taxes payable by the second party for the corresponding accounting period of the second party,
 - (c) the results described in paragraphs (a) and (b) are not exempted by subsection (6), and
 - (d) the second party does not meet the 80% payment test.
- (4) In this Part, references to “the tax reduction” are to the amount of the excess mentioned in subsection (3)(b).
- (5) It does not matter whether the tax reduction results from the application of different rates of tax, the operation of a relief, the exclusion of any amount from a charge to tax, or otherwise.
- (6) The results described in subsection (3)(a) and (b) are exempted if they arise solely by reason of—
- (a) contributions paid by an employer under a registered pension scheme, or overseas pension scheme, in respect of any individual,
 - (b) a payment to a charity,
 - (c) a payment to a person who, on the ground of sovereign immunity, cannot be liable for any relevant tax, or
 - (d) a payment to an offshore fund or authorised investment fund—
 - (i) which meets the genuine diversity of ownership condition (whether or not a clearance has been given to that effect), or
 - (ii) at least 75% of the investors in which are, throughout the accounting period, registered pension schemes, overseas pension schemes, charities or persons who cannot be liable for any relevant tax on the ground of sovereign immunity.
- (7) “The 80% payment test” is met by the second party if the resulting increase in relevant taxes payable by the second party as mentioned in subsection (3)(b) is at least 80% of the amount of the resulting reduction in the amount of the relevant tax payable by the first party as mentioned in subsection (3)(b).
- (8) In this section—
- “authorised investment fund” means—
 - (a) an open-ended investment company within the meaning of section 613 of CTA 2010, or
 - (b) an authorised unit trust within the meaning of section 616 of that Act;

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“employer” has the same meaning as in Part 4 of FA 2004 (see section 279(1) of that Act);

“genuine diversity of ownership condition” means—

- (a) in the case of an offshore fund, the genuine diversity of ownership condition in regulation 75 of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001), and
- (b) in the case of an authorised investment fund, the genuine diversity of ownership condition in regulation 9A of the Authorised Investment Fund (Tax) Regulations 2006 (S.I. 2006/964);

“offshore fund” has the same meaning as in section 354 of TIOPA 2010 (see section 355 of that Act);

“overseas pension scheme” has the same meaning as in Part 4 of FA 2004 (see section 150(7) of that Act);

“registered pension scheme” has the same meaning as in that Part (see section 150(2) of that Act);

“relevant tax” means—

- (a) corporation tax on income,
- (b) a sum chargeable under section 330(1) of CTA 2010 (supplementary charge in respect of ring fence trades) as if it were an amount of corporation tax,
- (c) income tax, or
- (d) any non-UK tax on income.

- (9) See section 108 for further provision about the determination of the tax reduction and the 80% payment test.

108 Provision supplementing section 107

- (1) For the purposes of section 107(3)(b) and (7), the resulting reduction in the first party’s liability to a relevant tax for an accounting period is—

$$A \times TR$$

where—

A is the sum of—

- (a) if there are expenses within section 107(3)(a)(i), the lower of the amount of the expenses and the amount of the deduction mentioned in that provision, and
- (b) any reduction in income mentioned in section 107(3)(a)(ii), and

TR is the rate at which, assuming the first party has profits equal to A chargeable to the relevant tax for the accounting period, those profits would be chargeable to that tax.

- (2) For the purposes of section 107(3)(b) and (7), the resulting increase in relevant taxes payable by the second party for the corresponding accounting period is any increase in the total amount of relevant taxes that would fall to be paid by the second party (and not refunded) assuming that—

- (a) the second party’s income for that period, in consequence of the material provision were an amount equal to A,
- (b) account were taken of any deduction or relief (other than any qualifying deduction or qualifying loss relief) taken into account by the second party

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in determining its actual liability to any relevant tax in consequence of the material provision, and

- (c) all further reasonable steps were taken—
- (i) under the law of any part of the United Kingdom or any country or territory outside the United Kingdom, and
 - (ii) under double taxation arrangements made in relation to any country or territory,

to minimise the amount of tax which would fall to be paid by the second party in the country or territory in question (other than steps to secure the benefit of any qualifying deduction or qualifying loss relief).

- (3) The steps mentioned in subsection (2)(c) include—
- (a) claiming, or otherwise securing the benefit of, reliefs, deductions, reductions or allowances, and
 - (b) making elections for tax purposes.
- (4) For the purposes of this section, any withholding tax which falls to be paid on payments made to the second party is (unless it is refunded) to be treated as tax which falls to be paid by the second party (and not the person making the payment).
- (5) For the purposes of this section, an amount of tax payable by the second party is refunded if and to the extent that—
- (a) any repayment of tax, or any payment in respect of a credit for tax, is made to any person, and
 - (b) that repayment or payment is directly or indirectly in respect of the whole or part of the amount of tax payable by the second party,

but an amount refunded is to be ignored if and to the extent that it results from qualifying loss relief obtained by the second party.

- (6) Where the second party is a partnership, in section 107 and this section—
- (a) references to the second party's liability to any tax (however expressed) include a reference to the liabilities of all members of the partnership to the tax,
 - (b) references to any tax being payable by the second party (however expressed) include a reference to tax being payable by any member of the partnership, and
 - (c) references to loss relief obtained by the second party include a reference to loss relief obtained by any member of the partnership,

and subsection (4) applies to any member of the partnership as it applies to the second party.

- (7) In this section—
- “the first party” and “the second party” have the same meaning as in section 107;
 - “qualifying deduction” means a deduction which—
- (a) is made in respect of actual expenditure of the second party,
 - (b) does not arise directly from the making or imposition of the material provision,
 - (c) is of a kind for which the first party would have obtained a deduction in calculating its liability to any relevant tax had it incurred the expenditure in respect of which the deduction is given, and

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- (d) does not exceed the amount of the deduction that the first party would have so obtained;
- “qualifying loss relief” means—
 - (a) any means by which a loss might be used for corporation tax purposes to reduce the amount in respect of which the second party is liable to tax, and
 - (b) in the case of a non-UK resident company, any corresponding means by which a loss corresponding to a relevant CT loss might be used for the purposes of a non-UK tax corresponding to corporation tax to reduce the amount in respect of which the second party is liable to tax,
 (and in paragraph (b) “relevant CT loss” means a loss which might be used as mentioned in paragraph (a));
- “relevant tax” has the same meaning as in section 107.

109 “Excepted loan relationship outcome”

- (1) This section applies for the purposes of sections 80 and 86(2).
- (2) The effective tax mismatch outcome is an “excepted loan relationship outcome” if the result described in section 107(3)(a) arises wholly from—
 - (a) anything that, if a company within the charge to corporation tax were party to it, would produce debits or credits under Part 5 of CTA 2009 (loan relationships and deemed loan relationships) (“a loan relationship”), or
 - (b) a loan relationship and a relevant contract (within the meaning of Part 7 of that Act (derivative contracts)) taken together, where the relevant contract is entered into entirely as a hedge of risk in connection with the loan relationship.

110 “The insufficient economic substance condition”

- (1) This section applies for the purposes of sections 80 and 86(2).
- (2) In this section “the first party” and “the second party” mean—
 - (a) where this section applies for the purposes of section 80, C and P (within the meaning of section 80) respectively, and
 - (b) where this section applies for the purposes of section 86(2), the foreign company and A (within the meaning of section 86) respectively.
- (3) The insufficient economic substance condition is met if one or more of subsections (4), (5) and (6) apply.
- (4) This subsection applies where—
 - (a) the effective tax mismatch outcome is referable to a single transaction, and
 - (b) it is reasonable to assume that the transaction was designed to secure the tax reduction,
 unless, at the time of the making or imposition of the material provision, it was reasonable to assume that, for the first party and the second party (taken together) and taking account of all accounting periods for which the transaction was to have effect, the non-tax benefits referable to the transaction would exceed the financial benefit of the tax reduction.
- (5) This subsection applies where—

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- (a) the effective tax mismatch outcome is referable to any one or more of the transactions in a series of transactions, and
- (b) it is reasonable to assume that the transaction was, or the transactions were, designed to secure the tax reduction,

unless, at the time of the making or imposition of the material provision, it was reasonable to assume that, for the first party and the second party (taken together) and taking account of all accounting periods for which the transaction or series was to have effect, the non-tax benefits referable to the transaction or transactions would exceed the financial benefits of the tax reduction.

(6) This subsection applies where—

- (a) a person is a party to the transaction, or to any one or more of the transactions in the series of transactions, to which section 80(1)(b) or section 86(2)(a) refers, and
- (b) it is reasonable to assume that the person's involvement in the transaction or transactions was designed to secure the tax reduction,

unless one or both of the conditions in subsection (7) is or are met.

(7) Those conditions are—

- (a) that, at the time of the making or imposition of the material provision, it was reasonable to assume that, for the first party and the second party (taken together) and taking account of all accounting periods for which the transaction or series was to have effect, the non-tax benefits referable to the contribution made to the transaction or series by that person, in terms of the functions or activities that that person's staff perform, would exceed the financial benefit of the tax reduction;
- (b) that, in the accounting period—
 - (i) the income attributable to the ongoing functions or activities of that person's staff in terms of their contribution to the transaction or transactions (ignoring functions or activities relating to the holding, maintaining or protecting of any asset from which income attributable to the transaction or transactions derives), exceeds
 - (ii) the other income attributable to the transaction or transactions.

(8) For the purposes of subsection (7) a person's staff include—

- (a) any director or other officer of the person,
- (b) if the person is a partnership, any individual who is a member of the partnership, and
- (c) externally provided workers in relation to the person.

(9) For the purposes of subsections (4)(b), (5)(b) and (6)(b)—

- (a) when determining whether it is reasonable to assume—
 - (i) that a transaction was, or transactions were, designed to secure the tax reduction, or
 - (ii) that a person's involvement in a transaction or transactions was designed to secure the tax reduction,

regard must be had to all the circumstances, including any liability for any additional tax that arises directly or indirectly as a consequence of the transaction or transactions, and

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- (b) a transaction or transactions, or a person's involvement in a transaction or transactions, may be designed to secure the tax reduction despite it or them also being designed to secure any commercial or other objective.

(10) In this section—

“externally provided worker” has the meaning given by section 1128 of CTA 2009, but as if in that section for “company” (in each place) there were substituted “person”;

“non-tax benefits” means financial benefits other than—

- (a) the financial benefit of the tax reduction, and
 (b) any other financial benefits which derive (directly or indirectly) from the reduction, elimination, or delay of any liability of any person to pay any tax;

“tax” includes non-UK tax.

111 “Transaction” and “series of transactions”

- (1) In this Part “transaction” includes arrangements, understandings and mutual practices (whether or not they are, or are intended to be, legally enforceable).
- (2) References in this Part to a series of transactions include references to a number of transactions each entered into (whether or not one after the other) in pursuance of, or in relation to, the same arrangement.
- (3) A series of transactions is not prevented by reason only of one or more of the matters mentioned in subsection (4) from being regarded for the purposes of this Part as a series of transactions by means of which provision has been made or imposed as between any two persons.
- (4) Those matters are—
- (a) that there is no transaction in the series to which both those persons are parties,
 (b) that the parties to any arrangement in pursuance of which the transactions in the series are entered into do not include one or both of those persons, and
 (c) that there is one or more transactions in the series to which neither of those persons is a party.
- (5) In this section “arrangement” means any scheme or arrangement of any kind (whether or not it is, or is intended to be, legally enforceable).

112 Treatment of a person who is a member of a partnership

- (1) This section applies where a person is a member of a partnership.
- (2) Any references in this Part to the expenses, income or revenue of, or a reduction in the income of, the person includes a reference to the person's share of (as the case may be) the expenses, income or revenue of, or a reduction in the income of, the partnership.
- (3) For this purpose “the person's share” of an amount is determined by apportioning the amount between the partners on a just and reasonable basis.

113 “Accounting period” and “corresponding accounting period”

- (1) In this Part references to an accounting period of a company are to an accounting period of the company for the purposes of corporation tax.
- (2) Subsection (3) applies where—
 - (a) a non-UK resident company (“FC”) is not within the charge to corporation tax,
 - (b) a person, whether or not UK resident, is carrying on activity in the United Kingdom in connection with supplies of services, goods or other property made by FC in the course of a trade carried on by FC, and
 - (c) it is reasonable to assume that any of the activity of that person or FC (or both) is designed so as to ensure that FC does not, as a result of that person’s activity, carry on that trade in the United Kingdom for the purposes of corporation tax (whether or not it is also designed to secure any commercial or other objective).
- (3) For the purposes of this Part, FC is assumed to have such accounting periods for the purposes of corporation tax as it would have had if it had carried on a trade in the United Kingdom through a permanent establishment in the United Kingdom by reason of the activity of the person mentioned in subsection (2)(b).
- (4) For the purposes of subsection (2)—
 - (a) the reference in that subsection to activity of the person includes any limitation which has been imposed or agreed in respect of that activity;
 - (b) where FC is a member of a partnership—
 - (i) a trade carried on by the partnership is to be regarded as a trade carried on by FC, and
 - (ii) supplies made by the partnership in the course of that trade are to be regarded as supplies made by FC in the course of that trade.
- (5) Where the designated HMRC officer has insufficient information to identify, in accordance with subsection (3), the accounting periods of FC, for the purposes of this Part the officer is to determine those accounting periods to the best of the officer’s information and belief.
- (6) Where a company (“C1”) does not have an actual accounting period which coincides with the accounting period of another company (“the relevant accounting period”) (whether by reason of having no accounting periods or otherwise), in this Part—
 - (a) references to the corresponding accounting period of C1 in relation to the relevant accounting period are to the notional accounting period of C1 that would coincide with the relevant accounting period, and
 - (b) such apportionments as are just and reasonable are to be made to determine the income or tax liability of C1 for that corresponding accounting period.

114 Other defined terms in Part 3

- (1) In this Part—
 - “allowable expenses” means expenses of a kind in respect of which a deduction would be allowed for corporation tax purposes;
 - “the avoided PE” has the same meaning as in section 86;
 - “company” has the same meaning as in the Corporation Tax Acts (see section 1121 of CTA 2010);

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“connected” is to be read in accordance with sections 1122 and 1123 of CTA 2010;

“designated HMRC officer” means an officer of Revenue and Customs who has been designated by the Commissioners for Her Majesty’s Revenue and Customs for the purposes of diverted profits tax;

“HMRC” means Her Majesty’s Revenue and Customs;

“non-UK resident” has the same meaning as in the Corporation Tax Acts (see section 1119 of CTA 2010);

“non-UK tax” has the meaning given by section 187 of CTA 2010;

“the notional PE profits” has the meaning given by section 88(5);

“partnership” includes—

(a) a limited liability partnership to which section 1273 of CTA 2009 applies, and

(b) an entity established under the law of a territory outside the United Kingdom of a similar character to a partnership,

and “member” of a partnership is to be read accordingly;

“permanent establishment”, in relation to a company, has the meaning given by Chapter 2 of Part 24 of CTA 2010 (and accordingly section 1141(1) of that Act has effect, for the purposes of this Part, as if the reference to the Corporation Tax Acts included a reference to this Part);

“small or medium-sized enterprise” means a small enterprise, or a medium-sized enterprise, within the meaning of section 172 of TIOPA 2010;

“the review period” has the meaning given by section 101;

“the tax reduction” has the meaning given by section 107(4);

“UK resident” has the same meaning as in the Corporation Tax Acts (see section 1119 of CTA 2010);

“UKPE” has the same meaning as in section 81.

- (2) For the purposes of this Part a tax may correspond to corporation tax even though—
- (a) it is chargeable under the law of a province, state or other part of a country, or
 - (b) it is levied by or on behalf of a municipality or other local body.

Final provisions

115 Application of other enactments to diverted profits tax

- (1) In section 206(3) of FA 2013 (taxes to which the general anti-abuse rule applies), after paragraph (d) insert—
 - “(da) diverted profits tax.”
- (2) In paragraph 7 of Schedule 6 to FA 2010 (enactments to which definition of “charity” in Part 1 of that Schedule applies) omit the “and” after paragraph (h) and after paragraph (i) insert “, and
 - (j) diverted profits tax.”
- (3) In section 1139 of CTA 2010 (definition of “tax advantage” for the purposes of provisions of the Corporation Tax Acts which apply this section), in subsection (2), omit the “or” at the end of paragraph (da) and after paragraph (e) insert “, or
 - (f) the avoidance or reduction of a charge to diverted profits tax.”

- (4) In section 178 of FA 1989 (setting rates of interest), in subsection (2), omit the “and” before paragraph (u) and after that paragraph insert “, and
(v) section 79 of FA 2015.”
- (5) In section 1 of the Provisional Collection of Taxes Act 1968 (temporary statutory effect of House of Commons resolutions affecting income tax, purchase tax or customs or excise duties), in subsection (1), after “the bank levy,” insert “diverted profits tax,”.

116 Commencement and transitional provision

- (1) This Part has effect in relation to accounting periods beginning on or after 1 April 2015.
- (2) For the purposes of this Part, if an accounting period of a company begins before and ends on or after 1 April 2015 (“the straddling period”)—
 - (a) so much of that accounting period as falls before 1 April 2015 and so much of it as falls on or after that date are treated as separate accounting periods, and
 - (b) where it is necessary to apportion amounts for the straddling period to the different parts of that period, that apportionment is to be made on a just and reasonable basis.
- (3) For the purposes of any accounting period which ends on or before 31 March 2016, section 92 has effect as if in subsection (2)(b) of that section the reference to 3 months were a reference to 6 months.
- (4) This Part does not apply in relation to any profits arising to a Lloyd’s corporate member which are—
 - (a) mentioned in section 220(2) of FA 1994 (Lloyd’s underwriters: accounting period in which certain profits or losses arise), and
 - (b) declared in the calendar year 2015 or a later calendar year,to the extent that those profits are referable, on a just and reasonable basis, to times before 1 April 2015.
- (5) In subsection (4) “Lloyd’s corporate member” means a body corporate which is a member of Lloyd’s and is or has been an underwriting member.