



# Finance Act 2015

## 2015 CHAPTER 11

### PART 3

#### DIVERTED PROFITS TAX

##### *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—

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- (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 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).

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 21 para. 2(e) and word inserted by [2021 c. 26 Sch. 27 para. 44\(3\)\(b\)](#)
- Sch. 21 para. 5(6) inserted by [2021 c. 26 Sch. 27 para. 44\(4\)\(b\)](#)