



# Finance Act 2015

## 2015 CHAPTER 11

### PART 3

#### DIVERTED PROFITS TAX

##### *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.

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*Status: This is the original version (as it was originally enacted).*

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- (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).
- (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.