

FINANCE ACT 2015

EXPLANATORY NOTES

INTRODUCTION

Section 101: Hmrc Review of Charging Notice

Summary

1. This section sets out and governs the process under which a designated HM Revenue & Customs (HMRC) officer must review a charge to diverted profits tax and may amend a charging notice or issue a supplementary charging notice.

Details of the Section

2. Subsection (1) provides that, where a charging notice has been issued to a company, a designated HMRC officer must carry out a review of the total amount of taxable diverted profits included in that notice and may carry out more than one such review. The review(s) must be completed within the period defined in subsection (2).
3. Subsection (2) defines “the review period” as the 12 months starting after the period allowed for payment of the tax by subsection (2) of section 98. This is subject to subsection (13) which allows the review period to be terminated early in certain circumstances.
4. Subsection (3) sets out the circumstances in which subsection (4) applies. The company must have paid in full the diverted tax due under the charging notice, and the designated officer must be satisfied that the charge is excessive.
5. Subsection (4) permits (subject to subsection (3)) a designated HMRC officer to issue an amending notice to reduce the amount of diverted profits tax payable.
6. Subsections (5) and (6) set out that the designated HMRC officer may issue more than one amending notice and that where such a notice is issued any tax overpaid must be repaid.
7. Subsection (7) sets out that subsection (8) applies where a designated officer is satisfied that the diverted profits tax charge for the accounting period is insufficient.
8. Subsection (8) permits (subject to subsection (7)) the designated officer to issue a “supplementary charging notice” imposing an additional charge to diverted profits tax.
9. Subsection (9) prohibits more than one supplementary charging notice to be issued in respect of any existing charging notice.
10. Subsection (10) prevents the issuing of a supplementary charging notice during the last 30 days of the review period.
11. Subsection (11) allows amending notices to be issued in respect of a supplementary charging notice in the same way as they can for charging notices.

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

12. Subsection (12) extends the rules governing the contents and consequences of a charging notice to also apply to a supplementary charging notice.
13. Subsection (13) permits the review period to be terminated early in two circumstances. Firstly, where a supplementary charging notice has been issued, the company may unilaterally terminate the review period. Secondly, at any time, a designated officer and the company may terminate the review period by agreement.
14. Subsection (14) provides that, when carrying out a review under this section to determine if the taxable diverted profits charged on a company for an accounting period are too high or low, the designated HMRC officer must disregard the special provisions in sections 96 and 97. The subsection also makes clear that any representations that a designated HMRC officer may consider during the review are not limited by section 94.
15. Subsection (15) provides that where a supplementary charging notice or amending notice is issued to a company, a copy of the notice must be sent to “UKPE” where section 81 applies. “UKPE” is the United Kingdom permanent establishment as defined in section 81. A copy of the notice must be sent to “the avoided PE”, where section 86 applies. “The avoided PE” is the person defined as such in section 86.

Background Note

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