



Finance Act 2015

2015 CHAPTER 11

PART 3 **U.K.**

DIVERTED PROFITS TAX

Interpretation

108 Provision supplementing section 107 **U.K.**

- (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,

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for the Finance Act 2015, Section 108. (See end of Document for details)*

- (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 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,

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- (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
- (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.

Changes to legislation:

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