



# Finance Act 2015

## 2015 CHAPTER 11

### PART 3

#### 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—
  - (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—

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- (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
  - (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.

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- (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;
  - “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,

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- (aa) [<sup>F1</sup> a sum chargeable under section 269DA of CTA 2010 (surcharge on banking companies) as if it were an amount of corporation tax, ]
  - (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.

#### Textual Amendments

- F1** Words in s. 107(8) inserted (with effect in accordance with Sch. 3 Pt. 3 of the commencing Act) by Finance (No. 2) Act 2015 (c. 33), **Sch. 3 para. 13**

### 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 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,

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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
    - (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

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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—
  - (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

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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
  - (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—

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- (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).

### [<sup>F2</sup>111A Adjustment required to be made to the material provision

A reference in section 82 or 88 to an adjustment required to be made under Part 4 of TIOPA 2010 (transfer pricing) to the results of any provision includes a reference to an adjustment required to be made under any other enactment to the results of the provision if and to the extent that, but for that other enactment, the adjustment would have been required to be made under that Part.]

#### Textual Amendments

- F2** S. 111A inserted (with effect in accordance with Sch. 6 para. 8 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 6 para. 7](#)

## 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.



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- (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.

**Modifications etc. (not altering text)**

C1 S. 113(1)-(5) modified (18.11.2015) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 3 para. 17\(3\)](#)

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## 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);

“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.

### [<sup>F3</sup>114A Application of section 124 of TIOPA 2010 in relation to diverted profits tax

A solution or mutual agreement mentioned in subsection (1)(b) of section 124 of TIOPA 2010 (giving effect to solutions to cases and mutual agreements resolving cases) may include provision related to diverted profits tax (and, accordingly, the duty in subsection (2) of that section includes a duty to make any such adjustment as is appropriate in relation to diverted profits tax.)]

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**Textual Amendments**

**F3** S. 114A inserted (with application in accordance with s. 27(3) of the amending Act) by [Finance Act 2022 \(c. 3\), s. 27\(1\)](#)

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