



Finance Act 2015

2015 CHAPTER 11

PART 3

DIVERTED PROFITS TAX

Payment and recovery of tax

98 Payment of tax

- (1) This section applies where a charging notice is issued to a company.
- (2) Diverted profits tax charged by the notice must be paid within 30 days after the day the notice is issued.
- (3) The company is liable to pay the tax.
- (4) The payment of the tax may not be postponed on any grounds, and so the diverted profits tax charged by the charging notice remains due and payable despite any review being conducted under section 101 or any appeal in respect of the notice.
- (5) In Schedule 16—
 - (a) Part 1 contains provision treating a liability of a non-UK resident company to pay diverted profits tax as if it were also a liability of its UK representative;
 - (b) Part 2 contains provision enabling unpaid diverted profits tax due from a non-UK resident company to be recovered from a related company.

99 Diverted profits tax ignored for tax purposes

- (1) In calculating income, profits or losses for any tax purpose—
 - (a) no deduction, or other relief, is allowed in respect of diverted profits tax, and
 - (b) no account is to be taken of any amount which is paid (directly or indirectly) by a person for the purposes of meeting or reimbursing the cost of diverted profits tax.

Status: Point in time view as at 12/02/2019.

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- (2) An amount paid as mentioned in subsection (1)(b) is not to be regarded for the purposes of the Corporation Tax Acts as a distribution (within the meaning of CTA 2010).

100 [F¹Credits for tax on the same profits]

- (1) Subsection (2) applies where a company has paid—
- (a) corporation tax, or
 - (b) a tax under the law of a territory outside the United Kingdom which corresponds to corporation tax,
- which is calculated by reference to profits of the company (“the taxed profits”).
- (2) Such credit as is just and reasonable is allowed in respect of that tax against any liability which either—
- (a) that company has to diverted profits tax in respect of the taxed profits, or
 - (b) another company has to diverted profits tax in respect of taxable diverted profits arising to that other company which are calculated by reference to amounts which also constitute all or part of the taxed profits.

[F²(2A) Subsection (2)(b) does not allow a credit against a liability to diverted profits tax if or to the extent that the liability arises by virtue of section 88(5)(b) (payments of royalties etc).]

- (3) Subsection (4) applies where a company has paid—
- (a) the CFC charge within the meaning of Part 9A of TIOPA 2010 (controlled foreign companies) (see section 371VA), or
 - (b) a tax under the law of a territory outside the United Kingdom (by whatever name known) which is similar to the CFC charge,
- which is calculated by reference to profits of another company (“the CFC profits”).
- (4) Such credit as is just and reasonable is allowed in respect of that charge or tax against any liability which a company has to diverted profits tax in respect of taxable diverted profits arising to that other company which are calculated by reference to amounts which also constitute all or part of the CFC profits.

[F³(4A) Subsection (4B) applies where—

- (a) a company’s notional PE profits for an accounting period include an amount under section 88(5)(b) determined by reference to a royalty or other sum,
- (b) the company’s liability to diverted profits tax for the accounting period is determined by reference to taxable diverted profits calculated under section 91(4) or (5), and
- (c) those taxable diverted profits include an amount of relevant taxable income referred to in section 91(4)(b) or (5)(b) determined by reference to the same royalty or other sum.

(4B) A credit equal to the company’s liability to diverted profits tax for that accounting period which arises by virtue of section 88(5)(b) in respect of the royalty or other sum, to the extent that it is included in relevant taxable income for the purposes of section 91(4)(b) or (5)(b), is allowed against the company’s total liability to diverted profits tax for that period.

(4C) Subsection (4D) applies where—

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- (a) by reason of the payment of a royalty or other sum a company's liability to diverted profits tax for an accounting period includes liability arising by virtue of section 88(5)(b),
 - (b) the royalty or other sum is paid to a person who is resident in a country or territory outside the United Kingdom, and
 - (c) under any relevant provision relief would have been due to that person had the avoided PE been a permanent establishment in the United Kingdom through which the company carried on the trade mentioned in section 86(1)(b).
- (4D) Such credit as is just and reasonable having regard to the amount of the relief referred to in subsection (4C)(c) is allowed against the company's liability to diverted profits tax.
- (4E) In subsection (4C)(c) "relevant provision" means—
- (a) the provision of a double taxation arrangement (as defined by section 2(4) of TIOPA 2010), or
 - (b) section 758 of ITTOIA 2005 (exemption for certain interest and royalty payments).]
- (5) But nothing in this section allows a credit, against a liability to diverted profits tax, for an amount of tax or charge which was paid after the end of—
- (a) the review period in respect of the charging notice which imposed the charge to diverted profits tax, or
 - (b) where the charge to diverted profits tax was imposed by a supplementary charging notice, the review period within which that notice was issued.
- (6) For the purposes of subsection (1), any withholding tax paid on payments made to a person is (unless it is refunded) to be treated—
- (a) as tax within paragraph (a) or (b) of that subsection, and
 - (b) as paid by that person (and not the person making the payment).
- (7) For the purposes of subsection (6), an amount of withholding tax paid on payments made to a person 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 that withholding tax.

Textual Amendments

- F1** S. 100 heading substituted (with effect in accordance with s. 43(7) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 43\(4\)](#)
- F2** S. 100(2A) inserted (with effect in accordance with s. 43(7) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 43\(5\)](#)
- F3** S. 100(4A)-(4E) inserted (with effect in accordance with s. 43(7) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 43\(6\)](#)

[^{F4}100A Relief from corporation tax

- (1) This section applies where a charging notice or supplementary charging notice is issued to a company for an accounting period and any of the following events occurs—

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- (a) the period of 30 days mentioned in subsection (2) of section 102 ends without notice of an appeal against the notice being given in accordance with that subsection,
 - (b) an appeal against the notice is finally determined otherwise than by the notice being cancelled, or
 - (c) an appeal against the notice is withdrawn.
- (2) The company is not chargeable to corporation tax for the accounting period in respect of any amount within subsection (3).
- (3) An amount is within this subsection if—
- (a) the company failed before the end of the review period to take the amount into account in an assessment to corporation tax included in the company tax return for the accounting period, and
 - (b) that failure gave rise to, or to any of, the taxable diverted profits in respect of which the notice imposes a charge to diverted profits tax.]

Textual Amendments

- F4** S. 100A inserted (with effect in accordance with Sch. 6 para. 10(2) of the amending Act) by Finance Act 2019 (c. 1), Sch. 6 para. 10(1)

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