



# Finance Act 2015

## 2015 CHAPTER 11

### PART 3

#### DIVERTED PROFITS TAX

##### *Payment and recovery of tax*

#### **100** [<sup>F1</sup>Credits 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.

[<sup>F2</sup>(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”).

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2015, Section 100. (See end of Document for details)*

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- (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.

[<sup>F3</sup>(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—

- (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 [<sup>F4</sup>double taxation arrangements (as defined by section 2(4) of TIOPA 2010)] 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.

[<sup>F5</sup>(4E) . . . . .]

- (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—

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- (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.

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**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** Words in s. 100(4C)(c) substituted (with effect in accordance with s. 34(8) of the amending Act) by [Finance Act 2021 \(c. 26\), s. 34\(5\)\(a\)](#)
- F5** S. 100(4E) omitted (with effect in accordance with s. 34(8) of the amending Act) by virtue of [Finance Act 2021 \(c. 26\), s. 34\(5\)\(b\)](#)

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