



Finance Act 2015

2015 CHAPTER 11

PART 3

DIVERTED PROFITS TAX

Calculation of taxable diverted profits: section 80 or 81 cases

82 Calculation of taxable diverted profits in section 80 or 81 case: introduction

- (1) If section 80 or 81 applies in relation to a company (“the relevant company”) for an accounting period—
 - (a) no taxable diverted profits arise, in relation to the material provision in question, if section 83 applies, and
 - (b) in other cases, section 84 or 85 applies to determine the taxable diverted profits in relation to that material provision.
- (2) But see also section 96 for how a designated HMRC officer estimates those profits when issuing a preliminary notice under section 93 or a charging notice under section 95.
- (3) Subsections (4) to [F1(10)] define some key expressions used in sections 83 to 85 and this section.
- (4) “The material provision” has the same meaning as in section 80.
- (5) “The relevant alternative provision” means the alternative provision which it is just and reasonable to assume would have been made or imposed as between the relevant company and one or more companies connected with that company, instead of the material provision, had tax (including any non-UK tax) on income not been a relevant consideration for any person at any time.
- (6) For the purposes of subsection (5), making or imposing no provision is to be treated as making or imposing an alternative provision to the material provision.
- (7) “The actual provision condition” is met if—

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2015, Section 82. (See end of Document for details)

- (a) the material provision results in expenses of the relevant company for which^{F2} ... a deduction for allowable expenses would be allowed in computing—
 - (i) in a case where section 80 applies, its liability for corporation tax for the accounting period, and
 - (ii) in a case where section 81 applies, its chargeable profits attributable (in accordance with sections 20 to 32 of CTA 2009) to UKPE, and
- (b) the relevant alternative provision—
 - (i) would also have resulted in allowable expenses of the relevant company of the same type and for the same purposes (whether or not payable to the same person) as so much of the expenses mentioned in paragraph (a) as results in the effective tax mismatch outcome mentioned in section 80(1)(d), but
 - (ii) would not have resulted in relevant taxable income of a connected company for that company's corresponding accounting period.

[^{F3}(7A) For the purposes of subsection (7)(a) ignore any adjustment that is required to be made to the results of the material provision under Part 4 of TIOPA 2010 (transfer pricing).]

- (8) “Relevant taxable income” of a company for a period is—
 - (a) income of the company, for the period, which would have resulted from the relevant alternative provision and in relation to which the company would have been within the charge to corporation tax had that period been an accounting period of the company, less
 - (b) the total amount of expenses which it is just and reasonable to assume would have been incurred in earning that income and would have been allowable expenses of the company for that period.

(9) “Connected company” means a company which is or, if the relevant alternative provision had been made, would have been connected with the relevant company.

- [^{F4}(10) “Diverted profits” of the relevant company for the accounting period means an amount—
 - (a) in respect of which the company is chargeable to corporation tax for that period by reason of any adjustment required to be made to the results of the material provision under Part 4 of TIOPA 2010 (transfer pricing), and
 - (b) which, in a case where section 81 applies, is attributable (in accordance with sections 20 to 32 of CTA 2009) to UKPE”.]

Textual Amendments

- F1** Word in s. 82(3) substituted (with effect in accordance with Sch. 6 para. 8 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 6 para. 2(2)**
- F2** Words in s. 82(7)(a) omitted (with effect in accordance with Sch. 6 para. 8 of the amending Act) by virtue of Finance Act 2019 (c. 1), **Sch. 6 para. 2(3)**
- F3** S. 82(7A) inserted (with effect in accordance with Sch. 6 para. 8 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 6 para. 2(4)**
- F4** S. 82(10) inserted (with effect in accordance with Sch. 6 para. 8 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 6 para. 2(5)**

Changes to legislation:

There are currently no known outstanding effects for the Finance Act 2015, Section 82.