

FINANCE ACT 2015

EXPLANATORY NOTES

INTRODUCTION

Section 88: Calculation of Taxable Diverted Profits in Section 86 Case: Introduction

Summary

1. This section introduces the rules for calculating taxable diverted profits for an accounting period where section 86 applies. It provides signposts to sections 89, 90 and 91 which determine the taxable diverted profits. The section also signposts sections 93, 95 and 97 which determine how an HM Revenue & Customs officer estimates these profits in a preliminary notice or a charging notice. Subsections (4) to (9) define key expressions used in sections 90 and 91.

Details of the Section

2. Subsection (1) sets out that if section applies, then sections 89, 90 and 91 determine the calculation of taxable diverted profits of the foreign company.
3. Subsection (2) signposts section 97, which explains how a designated HM Revenue & Customs officer estimates profits when issuing a preliminary notice under section 93 or a charging notice under section 95.
4. Subsection (3) refers to subsections (4) to (10), which define key expressions used in sections 89, 90 and 91.
5. Subsection (4) imports the meaning of “the foreign company” from section 86.
6. Subsection (5) defines “the notional PE profits”, in relation to an accounting period. These are the profits that would have been chargeable to UK corporation tax on the foreign company, being profits attributable to a trade carried on by that company through a permanent establishment in the UK had “the avoided PE” been a permanent establishment in the UK.
7. Subsection (6) defines “the material provision” which has the same meaning as stated in section 86.
8. Subsection (7) defines “the relevant alternative provision”. This is defined as the provision that would have been made between connected companies if tax had not been a relevant consideration.
9. Subsection (8) states that for the purposes of subsection (7) making or imposing no provision is treated as making or imposing an alternative provision to the material provision.
10. Subsection (9) explains the circumstances in which “the actual provision condition” is met.
11. Subsection (10) defines the “relevant taxable income” of a company.

*These notes refer to the Finance Act 2015 (c.11)
which received Royal Assent on 26 March 2015*

12. Subsection (11) defines a “connected company”.
13. Subsection (12) imports the meaning of “the mismatch condition” from section 86.

Background Note

14. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.