Finance Act 2015

2015 CHAPTER 11

PART 3

DIVERTED PROFITS TAX

Process for imposing charge

96 Section 80 or 81 cases: estimating profits for preliminary and charging notices

(1) Where taxable diverted profits arising to a company in an accounting period fall to be determined under section 84 or 85, for the purposes of issuing a preliminary notice under section 93 or a charging notice under section 95 the taxable diverted profits to be specified in the notice, in relation to the material provision in question, are determined in accordance with this section.

(2) The taxable diverted profits are such amount (if any) as the designated HMRC officer issuing the notice determines, on the basis of the best estimate that can reasonably be made at that time, to be the amount calculated in accordance with sections 84 or 85 (as the case may be).

But this is subject to subsections (4) to (6).

(3) For the purposes of this section, "the inflated expenses condition" is met if—

- (a) the material provision results in expenses of the company for which a deduction has been taken into account by the company 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,
- (b) the expenses result, or a part of the expenses results, in the effective tax mismatch outcome mentioned in section 80(1)(d), and
- (c) in consequence of paragraphs (a) and (b), the designated HMRC officer issuing the notice considers that the relevant expenses might be greater than

they would have been if they had resulted from provision made or imposed as between independent persons dealing at arm's length.

(4) Subsection (5) applies where the designated HMRC officer issuing the notice considers that—

(a) the inflated expenses condition is met, and

(b) it is reasonable to assume that section 84 or 85(4) applies.

(5) Where this subsection applies, the best estimate made by the officer in accordance with subsection (2) is to be made on the assumption that—

(a) so much of the deduction mentioned in subsection (3)(a) as relates to the relevant expenses is reduced by 30%, and

(b) in relation to the relevant expenses, Part 4 of TIOPA 2010 (transfer pricing) is ignored.

(6) But—

(a) if the deduction for the expenses taken into account by the company in computing its liability for corporation tax takes account of an adjustment required by Part 4 of TIOPA 2010 (transfer pricing) which is reflected in the company's company tax return prior to the issue of the charging notice, and

(b) as a result that deduction is less than it would otherwise have been,

the reduction required by subsection (5)(a) is reduced (but not below nil) to take account of that adjustment.

(7) For the purposes of this section, sections 83(3) and 84(2)(c) have effect as if (in each case) the words "before the end of the review period" were omitted.

(8) The Treasury may by regulations, made by statutory instrument, substitute a different percentage for the percentage for the time being specified in subsection (5)(a).

(9) Regulations under this section are subject to annulment in pursuance of a resolution of the House of Commons.

(10) In this section—

"the material provision" has the same meaning as in section 80;

"the relevant expenses" means so much of the expenses mentioned in subsection (3)(a) as result in the effective tax mismatch outcome as mentioned in subsection (3)(b).

Changes to legislation:
There are currently no known outstanding effects for the Finance Act 2015, Section 96.