

SCHEDULES

SCHEDULE 6

Section 18

DIVERTED PROFITS TAX

Introduction

- 1 Part 3 of FA 2015 (diverted profits tax) is amended as follows.

Calculation of taxable diverted profits

- 2 (1) Section 82 (calculation of taxable diverted profits in section 80 or 81 case: introduction) is amended as follows.
- (2) In subsection (3) for “(9)” substitute “(10)”.
- (3) In subsection (7) (when the “actual provision condition” is met) in paragraph (a) omit “(ignoring Part 4 of TIOPA 2010 (transfer pricing))”.
- (4) After subsection (7) insert—
- “(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).”
- (5) After subsection (9) insert—
- “(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”.
- 3 In section 83 (section 80 or 81 cases where no taxable diverted profits arise) omit subsection (2).
- 4 In section 84 (section 80 or 81: calculation of profits by reference to the actual provision) in subsection (2) for the words from “the amount (if any)” to the end substitute “an amount equal to so much of the diverted profits of the company for the accounting period as are not taken into account in an assessment to corporation tax included before the end of the review period in the company’s company tax return for that accounting period.”
- 5 (1) Section 85 (section 80 or 81: calculation of profits by reference to the relevant alternative provision) is amended as follows.

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- (2) In subsection (4) for paragraph (a) (but not the “and” immediately after it) substitute—
 - “(a) so much of the diverted profits (if any) of the company for the accounting period as are not taken into account in an assessment to corporation tax included before the end of the review period in the company’s company tax return for that accounting period.”.
- (3) In subsection (6) (meaning of “the notional additional amount”)—
 - (a) in the words before paragraph (a) omit “the amount by which”,
 - (b) in paragraph (a) before “amount” insert “additional”,
 - (c) at the end of paragraph (a) for “exceeds” substitute “less”, and
 - (d) in paragraph (b)(i) for the words from “the application” to the end substitute “any adjustment required to be made to the results of the material provision (whether under Part 4 of TIOPA 2010 (transfer pricing) or otherwise).”.
- (4) After subsection (6) insert—

“(7) In calculating the additional amount mentioned in paragraph (a) of subsection (6) no account is to be taken of any adjustment required to be made to the results of the material provision under Part 4 of TIOPA 2010 or otherwise.”
- 6 (1) Section 88 (calculation of taxable diverted profits in section 86 case: introduction) is amended as follows.
 - (2) After subsection (5A) insert—

“(5B) In calculating the notional PE profits no account is to be taken of any adjustment within subsection (5C).

(5C) An adjustment is within this subsection if—

 - (a) it is an adjustment required to be made under Part 4 of TIOPA 2010 to the results of any provision made or imposed between the foreign company and the avoided PE,
 - (b) it is taken into account in an assessment to corporation tax included in a company tax return of the avoided PE, and
 - (c) the time when it is first taken into account as mentioned in paragraph (b) is after the end of the review period.”
 - (3) In subsection (9)(a) omit “(ignoring Part 4 of TIOPA 2010 (transfer pricing))”.
 - (4) After subsection (9) insert—

“(9A) For the purposes of subsection (9)(a) ignore any adjustment that would be required to be made to the results of the material provision under Part 4 of TIOPA 2010 in calculating what would have been the notional PE profits for the accounting period.”
- 7 After section 111 insert—

“111A Adjustment required to be made to the material provision

A reference in section 82 or 88 to an adjustment required to be made under Part 4 of TIOPA 2010 (transfer pricing) to the results of any provision includes a reference to an adjustment required to be made under any other

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enactment to the results of the provision if and to the extent that, but for that other enactment, the adjustment would have been required to be made under that Part.”

- 8 The amendments made by paragraphs 2 to 7 have effect in relation to accounting periods beginning on or after 29 October 2018.

Extension of period for issuing a preliminary notice

- 9 (1) Section 93 (preliminary notice) is amended as follows.
- (2) In subsection (5) (period for issuing a notice) for the words from “, a preliminary notice” to the end substitute “—
- (a) a preliminary notice may not be issued in respect of an accounting period on the basis that section 80 or 81 applies more than six months after the last day on which an amendment of the company tax return for the accounting period could be made, and
- (b) a preliminary notice may not be issued in respect of an accounting period on the basis that section 86 applies more than 24 months after the end of that accounting period.”
- (3) After subsection (5) insert—
- “(5A) For the purposes of subsection (5)(a) no account is to be taken of any exception to paragraph 15(4) of Schedule 18 to FA 1998 (period for amending a company tax return).”
- (4) The amendments made by this paragraph do not have effect in relation to a preliminary notice if the period during which it may be issued (but for the amendments) expires before this Act is passed.

Relief from corporation tax

- 10 (1) After section 100 insert—

“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—
- (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

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- (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.”
- (2) The amendment made by this paragraph has effect in relation to accounting periods beginning on or after 1 April 2015.

Extension of the review period

- 11 (1) In section 101 (HMRC review of charging notice)—
- (a) in subsection (2) (meaning of “review period”) for “12 months” substitute “15 months”, and
 - (b) in subsection (13) (events that bring the review period to an end early) for “12 months” substitute “15 months”.
- (2) The amendments made by this paragraph do not have effect in relation to a review period that, but for the amendments, expires before 29 October 2018.

Extension of period for amendment of company tax return

- 12 After section 101 insert—

“101A Amendment of CT return during review period: section 80 or 81 case

- (1) This section applies where a charging notice is issued to a company by reason of section 80 or 81 applying in relation to it for an accounting period.
- (2) At any time during the first 12 months of the review period, the company may amend its company tax return for the accounting period so as to reduce the taxable diverted profits arising to it in the accounting period.

101B Amendment of CT return during review period: section 86 case

- (1) This section applies where a charging notice is issued to a company (“the foreign company”) by reason of section 86 applying in relation to it for an accounting period.
- (2) At any time during the first 12 months of the review period, the avoided PE may amend a company tax return made by it so as to reduce the taxable diverted profits arising to the foreign company in the accounting period.”