

# Consultation draft

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**PART 1**

## DIVERTED PROFITS TAX

*Scope of the tax***1 Charge to tax**

- (1) A tax (to be known as “diverted profits tax”) is charged in accordance with this Part on taxable diverted profits arising to a company.
- (2) Taxable diverted profits arise to a company only if section 2 or section 3 applies in relation to the company.
- (3) A charge to diverted profits tax is imposed for an accounting period by a designated HMRC officer issuing to the company a charging notice in accordance with section 16 or a supplementary charging notice in accordance with section 20(8).
- (4) The amount of tax charged by a notice is the sum of—
  - (a) 25% of the amount of taxable diverted profits specified in the notice, and
  - (b) the interest (if any) on the amount within paragraph (a) determined under subsection (5).
- (5) The interest mentioned in subsection (4)(b) is interest at the rate applicable under section 178 of FA 1989 for the period (if any) which—
  - (a) begins 6 months after the end of the accounting period to which the charge relates, and
  - (b) ends with the day the notice imposing the charge to tax is issued.

**2 Avoidance of a UK taxable presence**

- (1) This section applies in relation to a company (“the foreign company”) if—
  - (a) the company is non-UK resident,
  - (b) a person (“the avoided PE”), whether or not UK resident, is carrying on activity in the United Kingdom in connection with supplies of goods or services made by the foreign company to customers in the United Kingdom,
  - (c) it is reasonable to assume that any of the activity of the avoided PE or the foreign company (or both) is designed so as to ensure that the foreign company is not carrying on a trade in the United Kingdom through a permanent establishment in the United Kingdom by reason of the avoided PE’s activity (whether or not it is also designed to secure any commercial or other objective),

- (d) it is also reasonable to assume that the mismatch condition (see subsection (3)) or the tax avoidance condition (see subsection (4)) is met or both those conditions are met, and
  - (e) the avoided PE and the foreign company are not both small or medium-sized enterprises.
- (2) But this section does not apply in relation to the foreign company if –
- (a) activity of the avoided PE is such that, as a result of section 1142 or 1144 of CTA 2010, the foreign company would not be treated as carrying on a trade in the United Kingdom through a permanent establishment in the United Kingdom by reason of that activity, and
  - (b) in a case where –
    - (i) section 1142(1) of that Act applies, but
    - (ii) the avoided PE is not regarded for the purposes of section 1142(1) of that Act as an agent of independent status by virtue of section 1145, 1146 or 1151 of that Act,the foreign company and the avoided PE are not connected (within the meaning of section 1122 of that Act).
- (3) “The mismatch condition” is that –
- (a) in connection with the supplies of goods or services mentioned in subsection (1)(b) (or in connection with those supplies and other supplies), arrangements are in place as a result of which provision is made or imposed as between the foreign company and another person (“A”) by means of a transaction or series of transactions (“the material provision”),
  - (b) the participation condition is met in relation to the foreign company and A (see section 5),
  - (c) the material provision results in an effective tax mismatch outcome as between the foreign company and A (see section 6),
  - (d) the insufficient economic substance condition is met (see section 7),
  - (e) the foreign company and A are not both small or medium-sized enterprises, and
  - (f) the material provision is not an excluded loan relationship (see subsection (6)).
- (4) “The tax avoidance condition” is that, in connection with the supplies of goods or services mentioned in subsection (1)(b) (or in connection with those supplies and other supplies), arrangements are in place the main purpose or one of the main purposes of which is to avoid a charge to corporation tax.
- (5) In subsection (1)(c) the reference to activity of the avoided PE or the foreign company includes any limitation which has been imposed or agreed in respect of activity of the avoided PE or the foreign company.
- (6) For the purposes of subsection (3)(f), the material provision is an “excluded loan relationship” if it is made, or imposed, by means of a transaction or series of transactions that only give rise to one or more loan relationships, within the meaning of section 302 of CTA 2009, or are treated as only giving rise to such relationships by Part 6 of that Act.
- (7) In subsections (3) and (4) “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

- (8) In a case where this section applies –
  - (a) taxable diverted profits are calculated in accordance with section 8, but
  - (b) for the purposes of issuing a preliminary notice under section 14 or a charging notice under section 16, the designated HMRC officer issuing the notice estimates those profits in accordance with section 9.
- (9) See section 12 (exemption for companies with limited UK sales) for circumstances in which, although this section applies, there is no diverted profits tax.

### **3 Involvement of entities or transactions lacking economic substance**

- (1) This section applies in relation to a company (“C”) if –
  - (a) C is UK resident,
  - (b) provision has been made or imposed as between C and another person (“P”) (whether or not P is UK resident) by means of a transaction or series of transactions (“the material provision”),
  - (c) the participation condition is met in relation to C and P (see section 5),
  - (d) the material provision results in an effective tax mismatch outcome as between C and P (see section 6),
  - (e) the insufficient economic substance condition is met (see section 7),
  - (f) C and P are not both small or medium-sized enterprises, and
  - (g) the material provision is not an excluded loan relationship (within the meaning of section 2(6)).
- (2) In a case where this section applies –
  - (a) taxable diverted profits are calculated in accordance with section 10, but
  - (b) for the purposes of issuing a preliminary notice under section 14 or a charging notice under section 16, the designated HMRC officer issuing the notice estimates those profits in accordance with section 11.
- (3) See section 4 for circumstances in which this section applies in relation to a company which is non-UK resident but which has a permanent establishment in the United Kingdom.

### **4 Extension of section 3 to foreign companies with UKPE**

- (1) Section 3 also applies in relation to a company that is non-UK resident (“the foreign company”) if the following conditions are met.
- (2) The first condition is that by reason of the foreign company carrying on a trade in the United Kingdom through a permanent establishment in the United Kingdom (“UKPE”), Chapter 4 of Part 2 of CTA 2009 (non-UK resident companies: chargeable profits) applies to determine the chargeable profits of the foreign company.
- (3) The second condition is that section 3 would apply to UKPE were it treated for the purposes of section 3 and sections 5 to 7 –
  - (a) as a distinct and separate person from the foreign company (whether or not it would otherwise be so treated),
  - (b) as a UK resident company under the same control as the foreign company, and

- (c) as having entered into any transaction or series of transactions entered into by the foreign company to the extent that the transaction or series is relevant to UKPE.
- (4) A transaction or series of transactions is “relevant” to UKPE only if, and to the extent that, it is relevant, for corporation tax purposes, when determining the chargeable profits of the foreign company attributable (in accordance with sections 20 to 32 of CTA 2009) to UKPE.

## 5 The participation condition

- (1) This section makes provision for the purposes of sections 2(3) and 3(1).
- (2) In this section “the first party” and “the second party” means –
  - (a) where this section applies for the purposes of section 2(3), the foreign company and A (within the meaning of section 2) respectively, and
  - (b) where this section applies for the purposes of section 3(1), C and P (within the meaning of section 3) respectively.
- (3) The participation condition is met in relation to the first party and the second party (“the relevant parties”) if –
  - (a) condition A is met in relation to the material provision so far as the material provision is provision relating to financing arrangements, and
  - (b) condition B is met in relation to the material provision so far as the material provision is not provision relating to financing arrangements.
- (4) Condition A is that, at the time of the making or imposition of the material provision or within the period of 6 months beginning with the day on which the material provision was made or imposed –
  - (a) one of the relevant parties was directly or indirectly participating in the management, control or capital of the other, or
  - (b) the same person or persons was or were directly or indirectly participating in the management, control or capital of each of the relevant parties.
- (5) Condition B is that, at the time of the making or imposition of the material provision –
  - (a) one of the relevant parties was directly or indirectly participating in the management, control or capital of the other, or
  - (b) the same person or persons was or were directly or indirectly participating in the management, control or capital of each of the relevant parties.
- (6) In this section “financing arrangements” means arrangements made for providing or guaranteeing, or otherwise in connection with, any debt, capital or other form of finance.
- (7) For the purposes of this section –
  - (a) section 157(2) of TIOPA 2010 (“direct participation”) applies, and
  - (b) sections 158 to 163 of that Act (“indirect participation” in management, control or capital of a person) apply as if in those sections –
    - (i) references to section 148(2) of that Act included references to subsection (4) of this section,

- (ii) references to paragraph (a) or (b) of section 148(2) of that Act included (respectively) references to paragraph (a) or (b) of subsection (4) of this section,
- (iii) references to section 148(3) of that Act included references to subsection (5) of this section, and
- (iv) references to paragraph (a) or (b) of section 148(3) of that Act included (respectively) references to paragraph (a) or (b) of subsection (5) of this section.

## 6 Effective tax mismatch outcome

- (1) This section makes provision for the purposes of sections 2(3) and 3(1).
- (2) In this section “the first party” and “the second party” have the meaning given by section 5(2) (with references in that provision to section 5 read as references to this section).
- (3) The material provision results in an effective tax mismatch outcome as between the first party and the second party if –
  - (a) it results in one or both of –
    - (i) an increase in the expenses of the first party for which a deduction has been taken into account by the first party in computing its liability for a relevant tax, or
    - (ii) a reduction in the income of the first party which would otherwise have been taken into account in computing its liability for a relevant tax,
  - (b) the amount of the resulting reduction in the first party’s liability to the relevant tax exceeds the amount of any resulting increase in the second party’s total liability to non-UK tax, corporation tax and income tax, and
  - (c) the second party does not meet the 80% payment test.
- (4) In this Part, references to “the tax reduction” are to the amount of the excess mentioned in subsection (3)(b).
- (5) It does not matter whether the tax reduction results from the application of different rates of tax, the operation of a relief, the exclusion of any amount from a charge to tax, or otherwise.
- (6) For the purposes of subsection (3)(b), the resulting reduction in the first party’s liability to a relevant tax is –

$$A \times TR$$

where –

“A” is the amount of the increase in expenses or reduction in income mentioned in subsection (3)(a), and

“TR” is the rate at which, assuming the first party has profits equal to A chargeable to the relevant tax for the accounting period, those profits would be chargeable to that tax.

- (7) For the purposes of subsection (3)(b), the resulting increase in the second party’s total liability to non-UK tax, corporation tax and income tax is the lower of –
  - (a) the total amount of non-UK tax, corporation tax and income tax which falls to be paid by the second party in consequence of the material provision (and is not refunded), and

- (b) the total amount of non-UK tax, corporation tax and income tax that, on the assumption in subsection (8)(b), would be payable by the second party in consequence of the material provision.
- (8) For the purposes of subsection (7) –
- (a) any withholding tax which falls to be paid on payments made to the second party is (unless it is refunded) to be treated as tax which falls to be paid by the second party (and not the person making the payment);
- (b) the assumption mentioned in paragraph (b) of that subsection is that all reasonable steps have been taken –
- (i) under the law of any part of the United Kingdom or any country or territory outside the United Kingdom, and
- (ii) under double taxation arrangements made in relation to any country or territory,
- to minimise the amount of tax for which the second party is liable in the country or territory in question;
- (c) the effect of any loss relief obtained by the second party is to be ignored.
- (9) The steps mentioned in subsection (8)(b) include –
- (a) claiming, or otherwise securing the benefit of, reliefs, deductions, reductions or allowances, and
- (b) making elections for tax purposes.
- (10) “The 80% payment test” is met by the second party if –
- (a) there is a resulting increase in the second party’s liability to tax (including any non-UK tax) as mentioned in subsection (3)(b),
- (b) the whole or part of that increase is paid by the second party, and
- (c) the amount paid by the second party (and not refunded) is at least 80% of the amount of the resulting reduction in the first party’s liability to a relevant tax as mentioned in subsection (3)(b).
- (11) For the purposes of subsection (10) an amount of tax is treated as paid if, and to the extent that, the liability for that tax has been reduced by means of loss relief obtained by the second party.
- (12) For the purposes of subsections (7) and (10), an amount of tax paid by the second party is refunded if and to the extent that –
- (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 tax paid by the second party,
- but an amount refunded is to be ignored if and to the extent that it results from loss relief obtained by the second party.
- (13) In this section –
- “loss relief” means –
- (a) any means by which a loss might be used for corporation tax purposes to reduce the amount in respect of which the company is liable to tax, and
- (b) in the case of a non-UK resident company, any corresponding means by which a loss might be used for the purposes of a non-UK tax corresponding to corporation tax to reduce the amount in respect of which the company is liable to tax;
- “relevant tax” means corporation tax, income tax or any non-UK tax.



## 7 Insufficient economic substance condition

- (1) This section makes provision for the purposes of sections 2(3) and 3(1).
- (2) In this section “the first party” and “the second party” have the meaning given by section 5(2) (with references in that provision to section 5 read as references to this section).
- (3) The insufficient economic substance condition is that one or more of subsections (4) to (6) apply.
- (4) This subsection applies where—
  - (a) the effective tax mismatch outcome is referable to a single transaction,
  - (b) for the first party and the second party (taken together), the financial benefit of the tax reduction is greater than any other financial benefit referable to the transaction, and
  - (c) it is reasonable to assume that the transaction was designed to secure the tax reduction.
- (5) This subsection applies where—
  - (a) the effective tax mismatch outcome is referable to one or more of the transactions in a series of transactions,
  - (b) for the first party and the second party (taken together), the financial benefit of the tax reduction is greater than any other financial benefit referable to the transaction or transactions, and
  - (c) it is reasonable to assume that the transaction was, or the transactions were, designed to secure the tax reduction.
- (6) This subsection applies where—
  - (a) a person is a party to the transaction, or to any one or more of the transactions in the series of transactions, to which section 2(3)(a) or section 3(1)(b) refers,
  - (b) the contribution of economic value to the transaction or series by that person, in terms of the functions or activities that the staff of that person perform, is less than the value of the financial benefit of the tax reduction, and
  - (c) it is reasonable to assume that the person’s involvement in the transaction or transactions was designed to secure the tax reduction.
- (7) For the purposes of subsection (6)—
  - (a) a person’s staff include any director or other officer of the person, and
  - (b) the functions or activities of a person’s staff include those performed in engaging and directing externally provided workers in relation to that person, unless that person, the staff provider and (if different) the staff controller are all connected.
- (8) For the purposes of this section a transaction is, or transactions are, designed to secure the tax reduction whether or not it or they are also designed to secure any commercial or other objective.
- (9) In this section—

“connected” is to be construed in accordance with section 1122 of CTA 2010;

“economic value” does not include any value which derives (directly or indirectly) from the reduction or elimination of any liability of any person to tax;

- “externally provided worker” has the meaning given by section 1128 of CTA 2009, but as if in that section for “company” (in each place) there were substituted “person”;
- “staff controller” is to be construed in accordance with section 1128(7) of that Act;
- “staff provider” is to be construed in accordance with section 1127(1) of that Act;
- “tax” includes non-UK tax.

### *Taxable diverted profits*

## **8 Taxable diverted profits in a section 2 case**

- (1) Where section 2 applies, this section applies to determine the taxable diverted profits that arise to the foreign company in an accounting period.  
But see section 9 for how the taxable diverted profits are to be estimated for the purposes of issuing a preliminary notice under section 14 or a charging notice under section 16.
- (2) In this section –
  - (a) references to “the foreign company” and “the avoided PE” are to be construed in accordance with section 2, and
  - (b) references to “the material provision” are to be construed in accordance with subsection (3)(a) of that section.
- (3) The taxable diverted profits arising in an accounting period to the foreign company are an amount equal to the profits which it is just and reasonable to assume would have been the chargeable profits of the foreign company for that period, attributable (in accordance with sections 20 to 32 of CTA 2009) to the avoided PE, had the avoided PE been a permanent establishment in the United Kingdom through which the foreign company carried on the relevant trade.
- (4) Subsection (3) is subject to subsections (5) to (8).
- (5) Subsection (6) applies if –
  - (a) the mismatch condition in section 2(3) is met, and
  - (b) it is reasonable to assume that the material provision would not have been made or imposed in the absence of the effective tax mismatch outcome mentioned in section 2(3)(c).
- (6) Where this subsection applies, when determining for the purposes of subsection (3) what would have been the chargeable profits of the foreign company, it is to be assumed that instead of the material provision such alternative provision was made or imposed as –
  - (a) it is just and reasonable to assume would have been made or imposed had the avoided PE been a permanent establishment in the United Kingdom through which the foreign company carried on the relevant trade, and
  - (b) would not itself have resulted in an effective tax mismatch outcome.
 This is subject to subsections (7) and (8).
- (7) Subsection (6) does not apply if –
  - (a) the material provision results in expenses of the foreign company for which (ignoring Part 4 of TIOPA 2010 (transfer pricing)) a deduction for

allowable expenses would be allowed in computing what would have been the chargeable profits of the foreign company as mentioned in subsection (3) for the accounting period, and

- (b) it is reasonable to assume that the alternative provision would have resulted in allowable expenses of the foreign company of the same type and for the same purposes as so much of the expenses mentioned in paragraph (a) as results in the effective mismatch outcome mentioned in section 2(3)(c).

But where paragraphs (a) and (b) apply subsection (8) also applies.

- (8) If the alternative provision would have resulted in income of a company, and the company would have been within the charge to corporation tax in relation to the income, the amount of the foreign company's taxable diverted profits for the accounting period under subsection (3) includes an amount equal to the amount of that income.
- (9) For the purposes of this section, making or imposing no provision is to be treated as an alternative provision to the material provision.
- (10) For the purposes of subsection (6)(b), section 6 applies as if—
  - (a) references in that section to the first party and the second party were to any two persons, and
  - (b) any reference in that section to the material provision were to the alternative provision.
- (11) In this section “the relevant trade” means the trade carried on by the foreign company in connection with which the avoided PE carries on the activity mentioned in section 2(1)(b).

## **9 Estimating profits for preliminary and charging notices: section 2 case**

- (1) Where taxable diverted profits of the foreign company for an accounting period fall to be determined under section 8, for the purposes of issuing a preliminary notice or a charging notice—
  - (a) the chargeable profits of the foreign company mentioned in subsection (3) of that section are to be determined in accordance with this section, and
  - (b) the taxable diverted profits specified in the notice are to be calculated accordingly.
- (2) The taxable diverted profits are such amount 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 section 8.  
But this is subject to subsections (4) and (5).
- (3) For the purposes of subsection (4), “the inflated expenses condition” is met if—
  - (a) the mismatch condition in section 2(3) is met,
  - (b) the material provision results in expenses of the foreign company for which (ignoring Part 4 of TIOPA 2010 (transfer pricing)) a deduction for allowable expenses would be allowed in computing what would have been the chargeable profits of the foreign company as mentioned in section 8(3) for the accounting period,
  - (c) the expenses result, or a part of the expenses results, in the effective tax mismatch outcome mentioned in section 2(3)(c), and

- (d) in consequence of paragraphs (a) to (c), 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 the inflated expenses condition is met and that it is reasonable to assume –
- (a) that –
    - (i) the material provision would not have been made or imposed in the absence of that effective tax mismatch outcome, but
    - (ii) the notional alternative provision would have resulted in allowable expenses of the foreign company of the same type and for the same purposes as the relevant expenses, or
  - (b) that the material provision would still have been made or imposed in the absence of the effective tax mismatch outcome mentioned in section 2(3)(c).
- (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)(b) 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) 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).
- (7) Regulations under this section are subject to annulment in pursuance of a resolution of the House of Commons.
- (8) In this section –
- “allowable expenses” means expenses of a kind in respect of which a deduction would be allowed for corporation tax purposes;
  - “the foreign company” and “the avoided PE” are to be construed in accordance with section 2;
  - “the material provision” is to be construed in accordance with section 2(3)(a);
  - “the notional alternative provision” means the alternative provision which meets the requirements of paragraphs (a) and (b) of section 8(6);
  - “the relevant expenses” means so much of the expenses mentioned in subsection (3)(b) as result in the effective tax mismatch outcome as mentioned in section 2(3)(c).

## 10 Taxable diverted profits in a section 3 case

- (1) Where section 3 applies, this section applies to determine the taxable diverted profits that arise to C in an accounting period.  
But see section 11 for how the taxable diverted profits are to be estimated for the purposes of issuing a preliminary notice under section 14 or a charging notice under section 9.
- (2) In this section references to “C” are to be construed in accordance with section 3.

- (3) The taxable diverted profits arising to C in an accounting period are an amount equal to the additional profits of C chargeable to corporation tax in that period (if any) which –
- (a) are not included in an assessment to corporation tax included, before the end of the review period (within the meaning of section 20), in C's company tax return for that period, and
  - (b) are chargeable to corporation tax for that period by reason of the application of Part 4 of TIOPA 2010 (transfer pricing) to the results of the material provision.
- (4) Subsection (3) is subject to subsections (5) to (7).
- (5) If it is reasonable to assume that the material provision would not have been made or imposed in the absence of the effective tax mismatch outcome mentioned in section 3(1)(d), taxable diverted profits arising to C in an accounting period are to be determined under subsection (3) on the assumption that instead of the material provision such alternative provision had been made or imposed as –
- (a) it is just and reasonable to assume would have been made or imposed in the absence of the effective tax mismatch outcome mentioned in section 3(1)(d), and
  - (b) does not itself result in an effective tax mismatch outcome.
- This is subject to subsections (6) and (7).
- (6) Subsection (5) does not apply if –
- (a) the material provision results in expenses of C for which (ignoring Part 4 of TIOPA 2010 (transfer pricing)) a deduction for allowable expenses would be allowed in computing what would have been the additional profits of C chargeable to corporation tax for the accounting period, and
  - (b) it is reasonable to assume that the alternative provision would have resulted in allowable expenses of C of the same type and for the same purposes as so much of the expenses mentioned in paragraph (a) as results in the effective mismatch outcome mentioned in section 3(1)(d).
- But where paragraphs (a) and (b) apply subsection (7) also applies.
- (7) If the alternative provision would have resulted in income of a company, and the company would have been within the charge to corporation tax in relation to the income, the amount of C's taxable diverted profits for the accounting period under subsection (3) includes an amount equal to the amount of that income.
- (8) For the purposes of this section making or imposing no provision is to be treated as an alternative provision to the material provision.
- (9) In a case to which section 3 applies by virtue of section 4 –
- (a) any reference in this section to C is to be read as a reference to the foreign company (within the meaning of section 4),
  - (b) in subsections (3) and (6) a reference to additional profits chargeable to corporation tax are to additional profits chargeable to corporation tax which are attributable (in accordance with sections 20 to 32 of CTA 2009) to UKPE (within the meaning of section 4), and
  - (c) in subsection (5)(a) and (6)(b) a reference to section 3(1)(d) is to that provision as it operates in relation to UKPE by reason of section 4.
- (10) For the purposes of subsection (5)(b), section 6 applies as if –

- (a) references to the first party and the second party were to any two persons, and
- (b) any reference in that section to the material provision were to the alternative provision.

## 11 Estimating profits for preliminary and charging notices: section 3 case

- (1) Where taxable diverted profits of C for an accounting period fall to be determined under section 10, for the purposes of issuing a preliminary notice or a charging notice the taxable diverted profits specified in the notice are to be determined in accordance with this section.
- (2) The taxable diverted profits are such amount 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 section 10.  
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 C for which a deduction has been taken into account by C in computing its liability for corporation tax for the accounting period,
  - (b) the expenses result, or a part of the expenses results, in the effective tax mismatch outcome mentioned in section 3(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 the inflated expenses condition is met and that it is reasonable to assume—
  - (a) that—
    - (i) the material provision would not have been made or imposed in the absence of that effective tax mismatch outcome, but
    - (ii) the notional alternative provision would have resulted in allowable expenses of C for the same purpose as the relevant expenses, or
  - (b) that the material provision would still have been made or imposed in the absence of the effective tax mismatch outcome mentioned in section 3(1)(d).
- (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 C 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 C’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) Section 10(3)(a) has effect for the purposes of this section as if in that provision the words “, before the end of the review period (within the meaning of section 20),” were omitted.
- (8) In a case to which section 3 applies by virtue of section 4 –
- (a) references in this section to C are to be read as references to the foreign company (within the meaning of section 4),
  - (b) subsection (3)(a) has effect as if it refers to the material provision resulting in expenses of the foreign company for which a deduction has been taken into account by the foreign company in calculating, for corporation tax purposes, its chargeable profits attributable (in accordance with sections 20 to 32 of CTA 2009) to UKPE, and
  - (c) a reference in subsection (3)(b) and (4)(a) to the effective tax mismatch outcome mentioned in section 3(1)(d) is to that effective tax mismatch outcome as it operates by reason of section 4(3).
- (9) 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).
- (10) Regulations under this section are subject to annulment in pursuance of a resolution of the House of Commons.
- (11) In this section –
- “allowable expenses” means expenses of a kind in respect of which a deduction would be allowed for corporation tax purposes;
  - “C” is to be construed in accordance with section 3;
  - “the notional alternative provision” means the alternative provision which meets the requirements of paragraphs (a) and (b) of section 10(5);
  - “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);
  - “UKPE” is to be construed in accordance with section 4.

#### *Sales threshold exemption*

### **12 Exemption for companies with limited UK sales**

- (1) No charge to diverted profits tax may be imposed on a company for an accounting period by reason of section 2 applying to the company if the UK sales threshold condition is met for that accounting period.
- (2) “The UK sales threshold condition” is that the total sales revenues from all supplies of goods and services made by the company, or a company connected with that company, to customers in the United Kingdom in the accounting period does not exceed £10,000,000.
- (3) But if the accounting period is a period of less than 12 months, the amount specified in subsection (2) is to be reduced proportionally.
- (4) Section 1122 of CTA 2010 (“connected” persons) applies for the purposes of this section.

- (5) The Treasury may by regulations, made by statutory instrument, substitute a different figure for the figure for the time being specified in subsection (2).
- (6) Regulations under this section are subject to annulment in pursuance of a resolution of the House of Commons.

*Duty to notify if within scope of tax*

**13 Duty to notify if potentially within scope of tax**

- (1) Where a company meets the requirements of subsection (2) or (3), it must notify an officer of Revenue and Customs of any accounting period of the company which is a period for which it is reasonable to assume taxable diverted profits might arise to the company.
- (2) A company meets the requirements of this subsection if—
  - (a) section 2 would apply to the company were the following paragraph substituted for subsection (1)(c) and (d) of that section—
    - “(c) the foreign company is not carrying on a trade in the United Kingdom through a permanent establishment in the United Kingdom by reason of the avoided PE’s activity,” and
  - (b) the company does not meet the UK sales threshold condition (see section 12) for the accounting period.
- (3) A company meets the requirements of this subsection if—
  - (a) section 3 would apply to the company (including where it would apply by virtue of section 4) if sections 6 and 7 had effect subject to the modifications in subsection (4), and
  - (b) the financial benefit of the tax reduction is significant relative to any other financial benefit of the material provision.
- (4) The modifications are that—
  - (a) section 6(3) has effect as if—
    - (i) at the end of paragraph (a) there were inserted “and”, and
    - (ii) paragraph (c) (and the “and” before it) were omitted, and
  - (b) section 7 has effect as if, in each of subsections (4), (5) and (6)—
    - (i) at the end of paragraph (a) there were inserted “and”, and
    - (ii) paragraph (c) (and the “and” before it) were omitted.
- (5) When determining under subsection (1) whether it is reasonable to assume taxable diverted profits might arise to the company for an accounting period, sections 2 and 3 have effect as modified by subsections (2)(a) and (3)(a).
- (6) A notification under subsection (1) must be made—
  - (a) in writing, and
  - (b) within 3 months from the end of the accounting period to which it relates.



*Process for imposing charge***14 Preliminary notice**

- (1) If a designated HMRC officer has reason to believe that section 2 or 3 applies (or both apply) to a company and, as a result, taxable diverted profits arise to the company in an accounting period, the officer must give the company a notice (a “preliminary notice”) in respect of that period.
- (2) Where a preliminary notice is issued to a company, the officer must give a copy of the notice –
  - (a) if the notice is issued on the basis that section 2 applies, to the avoided PE (within the meaning of that section), and
  - (b) if the notice is issued on the basis that section 3 applies by virtue of section 4, to UKPE (within the meaning of section 4).
- (3) A preliminary notice must –
  - (a) set out the basis on which the officer has reason to believe that section 2 or 3 applies (or both apply) in relation to the company;
  - (b) state the accounting period of the company to which the notice applies;
  - (c) explain the basis on which the proposed charge is calculated, including –
    - (i) how the taxable diverted profits to which the proposed charge would relate have been determined, and
    - (ii) how the amount of interest comprised in that charge in accordance with section 1(4)(b) would be calculated,
  - (d) state who would be liable to pay the diverted profits tax;
  - (e) explain when the tax would be payable;
  - (f) explain how interest is applied in accordance with section 101 of FA 2009 (late payment interest on sums due to HMRC) if the diverted profits tax is not paid, the period for which interest is charged and the rate at which it is charged.
- (4) Where the designated HMRC officer has insufficient information to determine or identify any of the matters set out in subsection (3), it is sufficient if the preliminary notice sets out those matters determined to the best of the officer’s information and belief.
- (5) A preliminary notice may be given to a company in respect of an accounting period whether or not any notification has been given under section 13.
- (6) Subject to subsections (7) and (8), a preliminary notice may not be issued more than 24 months after the end of the accounting period to which it relates.
- (7) Subsection (8) applies where –
  - (a) notification has not been received by an officer of Revenue and Customs under section 13 in respect of an accounting period of a company, and
  - (b) it is reasonable for a designated HMRC officer to believe, in relation to that accounting period, that an amount of diverted profits tax that ought to have been charged under this Part has not been charged.
- (8) A designated HMRC officer may issue to the company a preliminary notice in respect of that tax within the period of 4 years after the end of the accounting period with a view to making good to the Crown the loss of tax.

## 15 Representations

- (1) This section applies where a designated HMRC officer gives a preliminary notice, in respect of an accounting period, to a company under section 14 (and that notice is not withdrawn).
- (2) The company has 30 days beginning with the day the notice is received to send written representations to the officer in respect of the notice.
- (3) The officer may consider representations made in accordance with subsection (2) only if they are made on the following grounds—
  - (a) that there is an arithmetical error in the calculation of the amount of the diverted profits tax or the taxable diverted profits or an error in a figure on which an assumption in the notice is based;
  - (b) that the small or medium-sized enterprise requirement is not met;
  - (c) that in a case where the preliminary notice states that section 2 applies—
    - (i) that section does not apply by virtue of section 2(2),
    - (ii) if it also states that the mismatch condition (within the meaning of section 2(3)) is met, the condition is not met because the participation condition is not met, the 80% payment test is met or the material provision is an excluded loan relationship (within the meaning of section 2(6)), or
    - (iii) the company meets the UK sales threshold condition (see section 12) for the accounting period;
  - (d) that in a case where the preliminary notice states that section 3 applies—
    - (i) the participation condition is not met,
    - (ii) the 80% payment test is met, or
    - (iii) the material provision is an excluded loan relationship (within the meaning of section 2(6)).
- (4) But nothing in subsection (3) requires the officer to consider any representations if, and to the extent that, they relate to—
  - (a) any provision of Part 4 of TIOPA 2010 (transfer pricing), or
  - (b) the attribution of profits of a company to a permanent establishment in the United Kingdom through which the company carries on a trade (including any notional attribution made for the purposes of section 8).
- (5) “The small or medium-sized enterprise requirement” is—
  - (a) where the notice was issued on the basis that section 2 applies to the company, the requirement in subsection (1)(e) or (3)(e) of that section,
  - (b) where the notice was issued on the basis that section 3 applies by virtue of section 4, the requirement in section 3(1)(f) as it operates by reason of section 4(3), and
  - (c) in any other case where the notice was issued on the basis that section 3 applies, the requirement in section 3(1)(f).
- (6) “The participation condition” means—
  - (a) where the notice was issued on the basis that section 2 applies to the company, the condition in subsection (3)(b) of that section,
  - (b) where the notice was issued on the basis that section 3 applies by virtue of section 4, the condition in section 3(1)(c) as it operates by reason of section 4(3), and

- (c) in any other case where the notice was issued on the basis that section 3 applies, the condition in section 3(1)(c).
- (7) “80% payment test” means –
- (a) where the notice was issued on the basis that section 2 applies and the mismatch condition in subsection (3) of that section is met, the requirement in section 6(3)(c) as it operates by reason of section 2(3)(c),
  - (b) where the notice was issued on the basis that section 3 applies by virtue of section 4, the requirement in section 6(3)(c) as it operates by reason of section 4(3), and
  - (c) in any other case where the notice was issued on the basis that section 3 applies, the requirement in section 6(3)(c) as it operates by reason of section 3(1)(d).
- (8) See section 20 for provision about the power of a designated HMRC officer to review a charging notice.

## 16 Charging notice

- (1) This section applies where a designated HMRC officer has given a company a preliminary notice under section 14 in relation to an accounting period.
- (2) Having considered any representations in accordance with section 15, the officer must determine whether to –
- (a) issue a notice under this section (a “charging notice”) to the company for that accounting period, or
  - (b) notify the company that no charging notice will be issued for that accounting period pursuant to that preliminary notice,
- and must take that action before the end of the period of 30 days immediately following the period of 30 days mentioned in section 15(2).
- (3) A notification under subsection (2)(b) does not prevent a charging notice being issued for the same accounting period pursuant to any other preliminary notice the person may be given in respect of that period.
- (4) Where a charging notice is issued to a company, the officer must give a copy of the notice –
- (a) if the notice is issued by reason of section 2 applying, to the avoided PE (within the meaning of that section), and
  - (b) if the notice is issued by reason of section 3 applying by virtue of section 4, to UKPE (within the meaning of section 4).
- (5) A charging notice must –
- (a) state the amount of the charge to diverted profits tax imposed by the notice;
  - (b) set out the basis on which the officer considers that section 2 or 3 applies;
  - (c) state the accounting period of the company to which the notice applies;
  - (d) set out an explanation of the basis on which the charge is calculated, including –
    - (i) how the taxable diverted profits to which the charge relates have been determined, and
    - (ii) how the amount of interest comprised in the charge under section 1(4)(b) has been calculated;

- (e) state who is liable to pay the tax;
- (f) state when the tax is due and payable;
- (g) explain how interest is applied in accordance with section 101 of FA 2009 (late payment interest on sums due to HMRC) if the diverted profits tax is not paid, the period for which interest is charged and the rate at which it is charged.

*Payment and recovery of tax*

**17 Payment of tax**

- (1) This section applies where a charging notice is issued to a company.
- (2) Diverted profits tax charged by the notice must be paid within 30 days after the day the notice is issued.
- (3) The company is liable to pay the tax.
- (4) The payment of the tax may not be postponed on any grounds, and so the diverted profits tax charged by the charging notice remains due and payable despite any review being conducted under section 20 or any appeal in respect of the notice.
- (5) In Schedule 1 –
  - (a) Part 1 contains provision treating a liability of a non-UK resident company to pay diverted profits tax as if it were also a liability of its UK representative;
  - (b) Part 2 contains provision enabling unpaid diverted profits tax due from a non-UK resident company to be recovered from a related company.

**18 Ignore diverted profits tax for purposes of income tax and corporation tax**

- (1) In calculating income, profits or losses for any tax purpose –
  - (a) no deduction, or other relief, is allowed in respect of diverted profits tax, and
  - (b) no account is to be taken of any amount which is paid (directly or indirectly) by a person for the purposes of meeting or reimbursing the cost of diverted profits tax.
- (2) An amount paid as mentioned in subsection (1)(b) is not to be regarded for the purposes of the Corporation Tax Acts as a distribution (within the meaning of CTA 2010).

**19 Credit for UK or foreign tax on same profits**

- (1) This section 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.
- (2) Such credit as is just and reasonable is allowed in respect of that tax against any liability which the company has to diverted profits tax in respect of those same profits.

- (3) For the purposes of subsection (1), any withholding tax paid on payments made to a person is (unless it is refunded) to be treated as tax paid by the person (and not the person making the payment).
- (4) In subsection (3) the reference to tax being refunded is to be read in accordance with section 6(12) (reading references in that provision to the second party as references to the company).

### *Review and appeals*

## **20 HMRC review of charging notice**

- (1) Where a charging notice is issued to a company for an accounting period, a designated HMRC officer, within the review period—
  - (a) must carry out a review of the amount of diverted profits tax charged on the company for the accounting period, and
  - (b) may carry out more than one such review.
- (2) Subject to subsection (13), “the review period” means the period of 12 months beginning immediately after the period of 30 days mentioned in section 17(2).
- (3) Subsection (4) applies if—
  - (a) the company has paid (in full) the amount of diverted profits tax charged by the charging notice, and
  - (b) the officer is satisfied that the total amount of diverted profits tax charged on the company for that period is excessive having regard to—
    - (i) section 8 or 10 (calculation of taxable diverted profits), and
    - (ii) section 19 (credit for UK or foreign tax on same profits).
- (4) The officer may, during the review period, issue to the company an amending notice which amends the charging notice so as to—
  - (a) reduce the amount of taxable diverted profits to which the notice relates, and
  - (b) accordingly, reduce the charge to diverted profits tax imposed on the company in respect of the accounting period.
- (5) More than one amending notice may be issued to the company in respect of the charging notice.
- (6) Where an amending notice is issued, any tax overpaid must be repaid.
- (7) Subsection (8) applies if a designated HMRC officer is satisfied that the total amount of diverted profits tax charged on the company for the accounting period is insufficient having regard to—
  - (a) section 8 or 10 (calculation of taxable diverted profits), and
  - (b) section 19 (credit for UK or foreign tax on same profits).
- (8) The officer may, during the review period, issue a notice (a “supplementary charging notice”) to the company imposing an additional charge to diverted profits tax on the company in respect of the accounting period on taxable diverted profits which—
  - (a) arise to the company for that period, and
  - (b) are not already charged to tax.

- (9) Only one supplementary charging notice may be issued to the company in respect of a charging notice.
- (10) No supplementary charging notice may be issued during the last 30 days of the review period.
- (11) Subsections (3) to (6) (amending notices) apply in relation to a supplementary charging notice as they apply to the charging notice.
- (12) Section 16(5) (content of charging notice) and section 17 (payment of tax) apply in relation to a supplementary charging notice as they apply in relation to a charging notice.
- (13) If either of the following events occurs before the end of the period of 12 months referred to in subsection (2), the review period ends at the time of that event –
  - (a) following the issuing of a supplementary charging notice, the company notifies HMRC that it is terminating the review period, or
  - (b) a designated HMRC officer and the company agree (in writing) the review period is to terminate.
- (14) When determining on a review whether the total amount of taxable diverted profits charged on the company for an accounting period is excessive or insufficient –
  - (a) the designated HMRC officer must not take any account of section 9 or (as the case may be) section 11 (which apply only for the purposes of the officer estimating the taxable diverted profits for the purposes of issuing a preliminary notice or charging notice), and
  - (b) nothing in section 15 applies to restrict the representations which the officer may consider.
- (15) Where a supplementary charging notice or an amending notice is issued to a company, the officer must give a copy of the notice –
  - (a) if the charging notice was issued by reason of section 2 applying, to the avoided PE (within the meaning of that section), and
  - (b) if the charging notice was issued by reason of section 3 applying by virtue of section 4, to UKPE (within the meaning of section 4).

## **21 Appeal against charging notice or supplementary charging notice**

- (1) A company to which a charging notice or a supplementary charging notice is issued may appeal against the notice.
- (2) Notice of an appeal must be given to HMRC, in writing, within 30 days after the end of the review period (see section 20(2) and (13)).
- (3) The notice of appeal must specify the grounds of appeal.
- (4) For the purposes of an appeal, sections 9 and 11 (which apply only for the purposes of the officer estimating the taxable diverted profits for the purposes of issuing a preliminary notice or charging notice) are to be ignored when determining whether the taxable diverted profits in respect of which a charge is imposed have been correctly calculated.
- (5) On an appeal under this section the Tribunal may –
  - (a) confirm the charging notice or supplementary charging notice to which the appeal relates,

- (b) amend that charging notice or supplementary charging notice, or
  - (c) cancel that charging notice or supplementary charging notice.
- (6) For the purposes of Part 5 of TMA 1970 (appeals etc), an appeal under this section is to be treated as if it were an appeal under the Taxes Acts (within the meaning of that Act), and for that purpose references in that Part to an assessment includes a charging notice or supplementary charging notice under this Part.
- (7) Subsection (6) is subject to section 17(4) (no postponement of payment of tax pending appeal etc).

*Administration of tax*

**22 Responsibility for collection and management**

The Commissioners for Her Majesty’s Revenue and Customs are responsible for the collection and management of diverted profits tax.

**23 Penalties etc**

- (1) Schedule 56 to FA 2009 (penalty for failure to make payments on time) is amended as follows.
- (2) In the Table at the end of paragraph 1, after item 6ZA insert –

|      |                      |  |  |
|------|----------------------|--|--|
| “6ZB | Diverted profits tax | Amount of diverted profits tax payable under Part 1 of FA 2015 | The date when, in accordance with section 17(2) the amount must be paid” |
|------|----------------------|--|--|

- (3) In paragraph 3 (amount of penalty: occasional amounts and amounts in respect of periods of 6 months or more), after sub-paragraph (1)(a) insert –
  - “(aa) a payment of tax falling within item 6ZB in the Table,”.
- (4) Schedule 41 to FA 2008 (penalties: failure to notify etc) is amended as follows.
- (5) In the Table in paragraph 1, after the entry for corporation tax insert –

|                       |  |
|-----------------------|--|
| “Diverted profits tax | Section 13 of FA 2015 (duty to notify if within scope of diverted profits tax).” |
|-----------------------|--|

- (6) In paragraph 7 (meaning of “potential lost revenue”), after sub-paragraph (4) insert –
  - “(4A) In the case of a relevant obligation relating to diverted profits tax, the potential lost revenue is the amount of diverted profits tax for which P would be liable at the end of the period of 6 months beginning immediately after the accounting period assuming –

- (a) a charge to diverted profits tax had been imposed on P on the taxable diverted profits arising to P for the accounting period, and
- (b) that tax was required to be paid before the end of that period of 6 months.”

## **24 Information and inspection powers etc**

- (1) In Schedule 36 to FA 2008 (information and inspection powers), in paragraph 63(1) (taxes to which powers apply), after paragraph (c) insert –  
“*(ca) diverted profits tax,*”.
- (2) In Schedule 23 to FA 2011 (data-gathering powers), in paragraph 45(1) (taxes to which powers apply), after paragraph (c) insert –  
“*(ca) diverted profits tax,*”.

### *Interpretation*

## **25 “Transaction” and “series of transactions”**

- (1) In this Part “transaction” includes arrangements, understandings and mutual practices (whether or not they are, or are intended to be, legally enforceable).
- (2) References in this Part to a series of transactions include references to a number of transactions each entered into (whether or not one after the other) in pursuance of, or in relation to, the same arrangement.
- (3) A series of transactions is not prevented by reason only of one or more of the matters mentioned in subsection (4) from being regarded for the purposes of this Part as a series of transactions by means of which provision has been made or imposed as between any two persons.
- (4) Those matters are –
  - (a) that there is no transaction in the series to which both those persons are parties,
  - (b) that the parties to any arrangement in pursuance of which the transactions in the series are entered into do not include one or both of those persons, and
  - (c) that there is one or more transactions in the series to which neither of those persons is a party.
- (5) In this section “arrangement” means any scheme or arrangement of any kind (whether or not it is, or is intended to be, legally enforceable).

## **26 Accounting periods**

- (1) In this Part references to an accounting period of a company are to an accounting period of the company for the purposes of corporation tax.
- (2) For the purposes of this Part, a non-UK resident company in relation to which paragraphs (b) and (c) of section 2(1) are met, but which is not within the charge to corporation tax, is assumed to have such accounting periods for the purposes of corporation tax as it would have had if it had carried on a trade in the United Kingdom through a permanent establishment in the United



Kingdom by reason of the activity of the avoided PE mentioned in section 2(1)(c).

For this purpose “the avoided PE” has the meaning given in that section.

- (3) Where the designated HMRC officer has insufficient information to identify, in accordance with subsection (2), the accounting periods of a non-UK resident company in relation to which paragraphs (b) and (c) of section 2(1) are met, for the purposes of this Part the officer is to determine those accounting periods to the best of the officer’s information and belief.

## 27 Other defined terms in Part 1

- (1) In this Part—
- “company” has the same meaning as in the Corporation Tax Acts (see section 1121 of CTA 2010);
  - “designated HMRC officer” means an officer of Revenue and Customs who has been designated by the Commissioners for Her Majesty’s Revenue and Customs for the purposes of diverted profits tax;
  - “non-UK resident” has the same meaning as in the Corporation Tax Acts (see section 1119 of CTA 2010);
  - “non-UK tax” has the meaning given by section 187 of CTA 2010;
  - “permanent establishment”, in relation to a company, has the meaning given by Chapter 2 of Part 24 of CTA 2010 (and accordingly section 1141(1) of that Act has effect, for the purposes of this Part, as if the reference to the Corporation Tax Acts were a reference to this Part);
  - “small or medium-sized enterprise” means a small enterprise, or a medium-sized enterprise, within the meaning of section 172 of TIOPA 2010;
  - “the tax reduction” has the meaning given by section 6(4);
  - “UK resident” has the same meaning as in the Corporation Tax Acts (see section 1119 of CTA 2010).
- (2) For the purposes of this Part a tax may correspond to corporation tax even though—
- (a) it is payable under the law of a province, state or other part of a country, or
  - (b) it is levied by or on behalf of a municipality or other local body.

### *Final provisions*

## 28 Application of other enactments to diverted profits tax

- (1) In section 206(3) of FA 2013 (taxes to which the general anti-abuse rule applies), after paragraph (d) insert—
- “(da) diverted profits tax.”
- (2) In section 1139 of CTA 2010 (definition of “tax advantage” for the purposes of provisions of the Corporation Tax Acts which apply this section), in subsection (2), omit the “or” at the end of paragraph (da) and after paragraph (e) insert “,
- (f) the avoidance or reduction of a charge to diverted profits tax.”

- (3) In section 178 of FA 1989 (setting rates of interest), in subsection (2), omit the “and” before paragraph (u) and after that paragraph insert “, and  
(v) section 1 of FA 2015.”
- (4) In section 1 of the Provisional Collection of Taxes Act 1968 (temporary statutory effect of House of Commons resolutions affecting income tax, purchase tax or customs or excise duties), in subsection (1), after “the bank levy,” insert “diverted profits tax,”.

## **29 Commencement and transitional provision**

- (1) This Part has effect in relation to accounting periods beginning on or after 1 April 2015.
- (2) For the purposes of this Part, if an accounting period of a company begins before and ends on or after 1 April 2015 (“the straddling period”) –
  - (a) so much of that accounting period as falls before 1 April 2015 and so much of it as falls on or after that date are treated as separate accounting periods, and
  - (b) where it is necessary to apportion taxable diverted profits, or chargeable profits for corporation tax purposes, for the straddling period to the different parts of that period, that apportionment is to be made on a just and reasonable basis.

## SCHEDULE 1

Section 17

### RECOVERY OF UNPAID DIVERTED PROFITS TAX DUE FROM NON-UK RESIDENT COMPANY

#### PART 1

##### IMPOSING LIABILITY ON UK REPRESENTATIVE OF NON-UK RESIDENT COMPANY

- 1 (1) Chapter 6 of Part 22 of CTA 2010 (collection etc of tax from UK representatives of non-UK resident companies) has effect as if the enactments referred to in section 969(1) of that Act included enactments relating to diverted profits tax so far as they make provision for or in connection with the charging, collection and recovery of diverted profits tax or of interest on that tax.
- (2) In its application in accordance with sub-paragraph (1), that Chapter has effect subject to the following modifications.
- (3) In a case where section 2 applies in relation to company, that Chapter applies in relation to the avoided PE (within the meaning of that section) in relation to that company as it would apply to a permanent establishment in the United Kingdom through which the company carries on a trade.
- (4) In section 969(3) of that Act references to “chargeable profits of the company attributable to that establishment” are to be read as references to “taxable diverted profits arising to the company”.
- (5) In section 971 of that Act references to the giving or service of a notice includes a reference to the issuing of a notice.

#### PART 2

##### RECOVERY OF DIVERTED PROFITS TAX FROM RELATED COMPANIES

###### *Cases in which this Part applies*

- 2 (1) This Part of this Schedule applies if—
- (a) an amount of diverted profits tax has been charged on a company for an accounting period,
  - (b) the whole or any part of that amount is unpaid at the end of the due and payable date, and
  - (c) the company is non-UK resident.
- (2) In this Part of this Schedule “the taxpayer company” means the company mentioned in sub-paragraph (1).

###### *Meaning of “the relevant period”*

- 3 In this Part of this Schedule “the relevant period”, in relation to an amount of unpaid diverted profits tax for an accounting period of the taxpayer company, means the period—

- (a) beginning 12 months before the start of the accounting period, and
- (b) ending when the unpaid tax became payable.

*Meaning of “related company”*

- 4 (1) A company is a “related company”, for the purposes of this Part of this Schedule, if, at any time in the relevant period, it was a member –
- (a) of the same group as the taxpayer company,
  - (b) of a consortium which at that time owned the taxpayer company, or
  - (c) of the same group as a company which at that time was a member of a consortium owning the taxpayer company.
- (2) For the purposes of sub-paragraph (1)(a) two companies are members of the same group if –
- (a) one is the 51% subsidiary of the other, or
  - (b) both are 51% subsidiaries of a third company.
- (3) For the purposes of sub-paragraph (1)(c), two companies are members of the same group if they are members of the same group of companies within the meaning of Part 5 of CTA 2010 (group relief).
- (4) For the purposes of this Part of this Schedule –
- (a) a company is a member of a consortium if it is a member of a consortium within the meaning of Part 5 of CTA 2010, and
  - (b) a company is owned by a consortium if it is owned by a consortium within the meaning of that Part.
- (5) In this paragraph “51% subsidiary” has the meaning given by section 1154 of CTA 2010

*Notice requiring payment of unpaid tax*

- 5 (1) An officer of Revenue and Customs may serve a notice on a related company requiring it, within 30 days of the service of the notice, to pay –
- (a) in a case which is not a consortium case, the amount of the unpaid tax, or
  - (b) in a consortium case, the proportion of that amount found under paragraph 7.
- (2) The notice must state –
- (a) the amount of diverted profits tax charged on the taxpayer company for the accounting period in question that remains unpaid,
  - (b) the date when it first became payable, and
  - (c) the amount which is to be paid by the company on which the notice is served.
- (3) The notice has effect –
- (a) for the purposes of the recovery from that company of the amount required to be paid and of interest on that amount, and
  - (b) for the purposes of appeals,
- as if it were a charging notice and that amount were an amount of diverted profits tax charged on that company.
- (4) In this Part of this Schedule “consortium case” means a case where the related company is not within paragraph 4(1)(a).

*Time limit for giving notice*

- 6 A notice under this Part of this Schedule must be served before the end of the period of 3 years beginning with the date when the charging notice or supplementary charging notice imposing the charge to tax was issued.

*Amount payable in consortium case*

- 7 (1) In a consortium case, the amount that the related company may be required to pay by notice under this Part of this Schedule is the proportion of the unpaid tax corresponding –
- (a) if the company is only within paragraph 4(1)(b), to the share which the company has had in the consortium for the relevant period,
  - (b) if the company is only within paragraph 4(1)(c), to the share which companies that have been members of the same group of companies as the company have had in the consortium for the relevant period, or
  - (c) if the company is within paragraph 4(1)(b) and (c), to whichever is the greater of the amounts given by paragraph (a) and (b).
- (2) For the purposes of this paragraph, a member's share in a consortium, in relation to the relevant period, is whichever is the lowest in that period of the percentages specified in sub-paragraph (3).
- (3) Those percentages are –
- (a) the percentage of the ordinary share capital of the taxpayer company which is beneficially owned by the member,
  - (b) the percentage to which the member is beneficially entitled of any profits available for distribution to equity holders of the taxpayer company, and
  - (c) the percentage to which the member would be beneficially entitled of any assets of the taxpayer company available for distribution to its equity holders on a winding up.
- (4) If any of the percentages mentioned in sub-paragraph (3) has fluctuated in the relevant period, the average percentage over the period is to be taken.
- (5) Chapter 6 of Part 5 of CTA 2010 (equity holders and profits or assets available for distribution) applies for the purposes of sub-paragraph (3) as it applies for the purposes of sections 143(3)(b) and (c) and 144(3)(b) and (c) of that Act.

*Part 2: supplementary*

- 8 (1) A company that has paid an amount in pursuance of a notice under this Part of this Schedule may recover that amount from the taxpayer company.
- (2) A payment in pursuance of a notice under this Part of this Schedule is not allowed as a deduction in calculating income, profits or losses for any tax purposes.

## EXPLANATORY NOTE

### CLAUSE [1]: CHARGE TO TAX

#### SUMMARY

1. Clause [1] describes the new diverted profits tax which will be charged at a rate of 25%.

#### DETAILS OF THE CLAUSE

2. Subsection 1 provides for a new tax to be charged on a company's taxable diverted profits.
3. Subsection 2 specifies that taxable diverted profits arise only if either of the two rules set out in the subsequent Clauses apply.
4. Subsection 3 specifies that a charge to the tax is imposed by a designated HMRC officer issuing a charging notice or supplementary notice to a company for an accounting period.
5. Subsection 4 provides for the tax charged to be at a rate of 25% of the amount of taxable diverted profits, and to include any interest in accordance with Subsection 5.
6. Subsection 5 describes how the interest charged under Subsection 1(4)(b) is to be calculated.

#### BACKGROUND NOTE

7. 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.

8. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).

**EXPLANATORY NOTE****CLAUSE [2] AVOIDANCE OF A UK TAXABLE PRESENCE****SUMMARY**

1. Clause [2] sets out the first of the two rules that can give rise to a charge on taxable diverted profits. In particular, it identifies arrangements through which companies exploit the permanent establishment (PE) rules.

**DETAILS OF THE CLAUSE**

2. Subsection 1 sets out the conditions for Clause [2] to apply in relation to a foreign (non-UK resident) company. It requires a person (“the avoided PE”) to be carrying on activity in the UK as described at subsection 1(b). The condition at subsection 1(c) relates to the way in which the activity of the avoided PE or foreign company (or both) is designed. Further clarification on that is provided at subsection 5. Subsection 1(d) requires either or both of two further conditions to be met. Clause [2] does not apply if both the avoided PE and foreign company are small or medium-sized enterprises in accordance with the definition of the term at Clause [27].

3. Subsection 2 disapplies Clause [2] where the foreign company would not be treated as carrying on a trade in the UK through a PE in the UK as a result of section 1142 (“Agent of independent status”) or 1144 (“Alternative finance arrangements”) of CTA 2010, subject to subsection (2)(b). The further requirement of that subsection is that, where section 1142(1) CTA 2010 applies, the foreign company and avoided PE are not connected within the meaning of section 1122 CTA 2010. This further requirement does not apply if the avoided PE is regarded for the purposes of section 1142(1) CTA 2010 as an agent of independent status by virtue of section 1145, 1146 or 1151 CTA 2010 (in relation to brokers, investment managers and Lloyd’s agents respectively).

4. Subsection 3 sets out the elements of the “the mismatch condition”, the first of the two further conditions mentioned at subsection 1(d), in terms of provision (“the material provision”) made or imposed as between the foreign company and another person (“A”). The use of the term “provision” here is consistent with the transfer pricing rules at Part 4 TIOPA 2010.

5. Subsection 4 sets out “the tax avoidance condition”, the second of the two further conditions mentioned at subsection 1(d).

6. Subsection 5 provides clarification on a reference to activity of the avoided PE or the foreign company at subsection 1(c).

7. Subsection 6 defines “excluded loan relationship” for the purposes of subsection (3)(f) in the mismatch condition.
8. Subsection 7 provides a definition of “arrangements” for the purposes of subsections 3 and 4.
9. Subsection 8 cross-refers to Clauses [8] and [9] which deal with the calculation of taxable diverted profits where Clause [2] applies. Clause [9] deals specifically with the estimation of taxable diverted profits by the designated HMRC officer when issuing a preliminary or charging notice.
10. Subsection 9 cross-refers to Clause [12] which provides an exemption in relation to Clause [2] for companies with limited UK sales.

#### **BACKGROUND NOTE**

11. 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.
12. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).



## EXPLANATORY NOTE

### CLAUSE [3]: INVOLVEMENT OF ENTITIES OR TRANSACTIONS LACKING ECONOMIC SUBSTANCE

#### SUMMARY

1. Clause [3] sets out the second of the two rules that can give rise to a charge on taxable diverted profits. As with Clause 2, there are exclusions in respect of small or medium-sized enterprises and excluded loan relationships.

#### DETAILS OF THE CLAUSE

2. Subsection 1 sets out the conditions that give rise to taxable diverted profits where a UK resident company enters into transactions that lack economic substance or involve entities that lack such substance.

3. Subsection 2 cross-refers to Clauses [10] and [11] which deal with the calculation of taxable diverted profits where Clause [3] applies. Clause [11] deals specifically with the estimation of taxable diverted profits by the designated HMRC officer when issuing a preliminary or charging notice.

4. Subsection 3 cross-refers to Clause [4] in relation to the application of the section to a non-UK resident company that has a permanent establishment in the UK.

#### BACKGROUND NOTE

5. 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.

6. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).

## EXPLANATORY NOTE

### CLAUSE [4]: EXTENSION OF SECTION 3 TO FOREIGN COMPANIES WITH UKPE

#### SUMMARY

1. Clause [4] extends Clause [3] to non-UK resident companies with a UK permanent establishment (PE).

#### DETAILS OF THE CLAUSE

2. Subsection 1 applies Clause [3] to a company that is not UK resident, subject to two conditions.

3. Subsection 2 provides the first condition. Clause [3] applies where the foreign company is carrying on of a trade in the UK through a PE (“UKPE”) so that Chapter 4 of Part 2 CTA 2009 applies to determine its chargeable profits for corporation tax.

4. Subsection 3 provides the second condition which is that Clause [3] would apply to UKPE if it were treated for the purposes of Clauses [3], [5], [6] and [7] as described at subsections 3(a) to (c) of Clause 4.

5. Subsection 4 explains the circumstances in which a transaction or series of transactions are “relevant” to UKPE for the purposes of subsections 3(c).

#### BACKGROUND NOTE

6. 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.

7. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).

## EXPLANATORY NOTE

### CLAUSE [5]: THE PARTICIPATION CONDITION

#### SUMMARY

1. Clause [5] provides the test of connection between the “first party” and “the second party” for the purposes of Clauses [2] and [3].

#### DETAILS OF THE CLAUSE

2. Subsection 2 sets out the meaning of the “first party” and “the second party” for Clause [2] (the foreign company and “A”, as at Clause [2]) and for Clause [3] (“C” and “P”, as at Clause [3]).

3. Subsection 3 provides that the participation condition is met, with references to condition A, which applies so far as “the material condition” is provision relating to financing arrangements and condition B, which applies so far as the material condition is not provision relating to financing arrangements.

4. Subsection 4 sets out condition A, which considers the relationship between the parties at the time the material provision was made or imposed, or within the period of 6 months beginning with the day the material provision was made or imposed.

5. Subsection 5 sets out condition B which considers the relationship between the parties at the time the material provision was made or imposed.

6. Subsection 6 defines the term “financing arrangements”.

7. Subsection 7 provides for section 157(2) of TIOPA 2010 to apply for the purposes of the Clause and for section 158 to 163 of that Act to apply in relation to subsections 4 and 5.

#### BACKGROUND NOTE

8. 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.

9. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).

**EXPLANATORY NOTE****CLAUSE [6]: EFFECTIVE TAX MISMATCH OUTCOME****SUMMARY**

1. Clause [6] describes the effective tax mismatch outcome which is a condition at subsection 3 of Clause [2] and subsection 1 of Clause [3].

**DETAILS OF THE CLAUSE**

2. Subsection 2 cross-refers to subsection 2 of Clause [5] for the meaning of the “first party” and the “second party”, with the necessary adaptation.

3. Subsection 3 sets out the conditions under which an effective tax rate mismatch occurs.

4. Subsection 4 defines references to “the tax reduction” as to the amount of the excess described in subsection 3(b).

5. Subsection 5 specifies that, for the purpose of the effective tax mismatch outcome, it does not matter whether the tax reduction results from the application of different tax rates, the operation of a relief, the exclusion of any amount from a charge to tax, or another reason.

6. Subsection 6 provides, for the purposes of 3(b), the calculation methodology for the resulting reduction in the first party’s liability to a relevant tax (which is defined at subsection 13 as corporation tax, income tax or any non-UK tax).

7. Subsection 7 sets out, for the purposes of subsection 3(b), that the resulting increase in the second party’s total liability to the taxes specified is the lower of (a) and (b). Subsection 7(a) is with reference to the total amount which falls to be paid and (b) to the total that would be payable on the basis of the assumption at subsection 8(b).

8. Subsection 8 provides that, for the purposes of subsection 7, withholding tax that falls to be paid in relation to payments made to the second party is treated as tax that falls to be paid by the second party and sets out the assumption mentioned at subsection 7. This assumption is in relation to the steps taken to minimise the amount of tax for which the second party is liable.

9. Subsection 9 identifies the steps that could be taken to minimise the tax liabilities as referred to in subsection 7(b), which are included in what is meant at subsection 8(b).
10. Subsection 10 describes the calculation of “the 80% payment test”, for the purposes of subsection 3(c).
11. Subsection 11 sets out the way in which for the purposes of subsection 10, the reduction of a liability for tax by mean of loss relief is treated as payment of the tax.
12. Subsection 12 sets out, for the purposes of subsections 7 and 10, the conditions by which an amount of tax is considered to be refunded, excluding amounts resulting from loss relief obtained by the second party.
13. Subsection 13 defines “loss relief” and “relevant tax” for the purposes of the Clause.

#### **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.
15. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).

**EXPLANATORY NOTE****CLAUSE [7]: INSUFFICIENT ECONOMIC SUBSTANCE CONDITION****SUMMARY**

1. Clause [7] provides for the insufficient economic substance condition, which is required to be met for the mismatch condition at subsection 3 of Clause [2] and for Clause [3] to apply.

**DETAILS OF THE CLAUSE**

2. Subsection 2 cross-refers to the definitions of “the first party” and “the second party” at subsection 2 of Clause [5], with the necessary adaptation.

3. Subsection 3 defines the “insufficient economic substance condition” in terms of where one or more of the conditions described in subsections 4 to 6 apply.

4. Subsection 4 may apply where the material provision that gives the effective tax mismatch outcome is made or imposed by means of a single transaction. It requires a comparison of the financial benefit of the tax reduction with any other financial benefit referable to the transaction, for the first and second parties taken together. The “tax reduction” has the meaning given by subsection 4 of Clause [6]. It must also be reasonable to assume that the transaction was designed to secure the tax reduction, subject to the clarification provided at subsection 8.

5. Subsection 5 may apply where the material provision is made or imposed by means of a series of transactions, one or more of which give the effective tax mismatch outcome. It requires a comparison of the financial benefit of the tax reduction with any other financial benefit referable to the transaction or transactions, for the first and second parties taken together. “The tax reduction” has the meaning given by subsection 4 of Clause [6]. It must also be reasonable to assume that the transaction was designed to secure the tax reduction, subject to the clarification provided at subsection 8.

6. Subsection 6 may apply by reference to the contribution of economic value by a person that is party to a transaction or to one or more transactions in a series, to which subsection 3(a) of Clause [2] or subsection 1(b) of Clause [3] refers. The person’s contribution of economic value to the transaction or series is considered in terms of the functions or activities that its staff perform. This is compared to the value of the financial benefit of the tax reduction. It must also be reasonable to assume that the person’s

involvement in the transaction or transactions was designed to secure the tax reduction, subject to the clarification provided at subsection 8.

7. Subsection 7 provides, for the purposes of subsection 6, some detail on the meaning of a person's staff and the functions or activities of that staff.

8. Subsection 8 provides for the purposes of the Clause that a transaction or transactions designed to secure a tax reduction may also be designed to secure a commercial or other objective.

9. Subsection 9 gives definitions or clarifications on some specific terms in Clause [7].

### **BACKGROUND NOTE**

10. 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.

11. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).

**EXPLANATORY NOTE****CLAUSE [8]: TAXABLE DIVERTED PROFITS IN A SECTION 2 CASE****SUMMARY**

1. Clause [8] provides for the calculation of the diverted profits tax for cases within Clause [2] (“Avoidance of a UK taxable presence”).

**DETAILS OF THE CLAUSE**

2. Subsection 1 applies Clause [8] for the purpose of determining the taxable diverted profits in Clause [2] cases and provides a signpost to Clause [9], which sets out special rules for estimating the taxable diverted profits.

3. Subsection 2 cross-refers to Clause [2] for the meaning of “the foreign company”, “the avoided PE” and “the material provision”.

4. Subsection 3 sets out the basis on which the taxable diverted profits arising to the foreign company in an accounting period are calculated. They are an amount equal to the profits that it is just and reasonable to assume would have been calculated as the chargeable profits of the foreign company under CTA 2009, based on the assumption set out in the subsection.

5. Subsection 4 subjects subsection 3 to subsections 5 to 8.

6. Subsection 5 sets out the conditions under which subsection 6 applies. These are that the mismatch condition in subsection 3 of Clause [2] is met and it is reasonable to assume that, absent the effective tax mismatch outcome, the material provision would not have been made or imposed.

7. Subsection 6 sets out the further assumptions to be made where the condition in subsection 5 are met. In that case, when determining what the chargeable profits would have been for subsection 3 it is assumed that alternative provision was made or imposed. Subject to subsections 7 and 8, this is the provision that (a) it is just and reasonable to assume would have been made or imposed if the avoided PE had been a UK PE through which the foreign company carried on the relevant trade and (b) which would not have resulted in an effective tax mismatch outcome.

8. Subsection 7 disapplies subsection 6 (the assumption of the alternative provision) if both the conditions at subsection 7(a) and (b) in relation to expenses of the foreign



company are met. However, if they are met then the disapplication of subsection 6 is subject to subsection 8.

9. Subsection 8 provides for a situation where the alternative provision would have resulted in income of a company that would have been within the charge to corporation tax in relation to the income. This might occur, for example, if the material provision was a payment to a company lacking economic substance and the alternative provision on the basis of a just and reasonable assumption was that the payment was made to a UK resident company. In such a case, an amount equal to that income is added to the foreign company taxable diverted profits.

10. Subsection 9 clarifies that for the purposes of subsections 6 and 7 the meaning of the alternative provision can include no provision being made or imposed.

11. Subsection 10 describes how, for the purpose of subsection 6(b), Clause [6] applies in determining whether an alternative provision would have resulted in an effective tax mismatch.

12. Subsection 11 defines “the relevant trade” for the purposes of this Clause.

## **BACKGROUND NOTE**

13. 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.

14. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).

## EXPLANATORY NOTE

### CLAUSE [9]: ESTIMATING PROFITS FOR PRELIMINARY AND CHARGING NOTICES: SECTION 2 CASE

#### SUMMARY

1. Clause [9] provides the rules for estimating the taxable diverted profits in cases within Clause [2] for the purposes of issuing a preliminary or charging notice under Clauses 14 or 16.

#### DETAILS OF THE CLAUSE

2. Subsection 1 applies this section for the purposes of issuing a preliminary or charging notice where taxable diverted profits of a foreign company for an accounting period are to be determined under Clause [8].

3. Subsection 2 provides that, subject to subsections 4 and 5, the taxable diverted profits are the amount that the designated HMRC officer (as defined at Clause [27]) determines on the basis of the best estimate made in accordance with Clause [8].

4. Subsection 3 sets out the four criteria under which “the inflated expenses condition” is met. Subsection 3(d) provides that the designated HMRC officer may consider, in consequence of the other three criteria being met, that the relevant expenses might be greater than they would have been at arm’s length. “The relevant expenses” are defined at subsection 11.

5. Subsection 4 provides for subsection 5 to apply if the designated HMRC officer issuing the notice considers that the “inflated expenses condition” at subsection 3 is met and that it is reasonable to assume either subsection 4(a) or 4(b) apply. Subsection 4(a) refers to the notional alternative provision and allowable expenses. These terms are defined at subsection 11.

6. Subsection 5 requires that the best estimate made in accordance with subsection 2 is to be made by reducing by 30% the relevant expenses included in the deduction mentioned in subsection 3(b) and ignoring the transfer pricing rules at Part 4 TIOPA 2010.

7. Subsections 6 and 7 provides for the Treasury to make regulations to substitute a different percentage in Subsection 5(a).

8. Subsection 8 defines or provides clarification on the meaning of the terms “allowable expenses”, “the foreign company”, “the material provision”, “the notional alternative provision” and “the relevant expenses” in this Clause.

**BACKGROUND NOTE**

9. 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.

10. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).

## EXPLANATORY NOTE

### CLAUSE [10]: TAXABLE DIVERTED PROFITS IN A SECTION 3 CASE

#### SUMMARY

1. Clause [10] provides for the calculation of the diverted profits tax for cases within Clause [3] (“Involvement of entities or transactions lacking economic substance”).

#### DETAILS OF THE CLAUSE

2. Subsection 1 applies Clause [10] for the purposes of determining the taxable diverted profits in Clause [9] cases and provides a signpost to Clause [11], which sets out special rules for estimating the taxable diverted profits.

3. Subsection 2 provides that references to “C” are to be construed in accordance with Clause [3].

4. Subsection 3 provides for calculation of the diverted profits tax arising to C in an accounting period as an amount equal to any additional profits of C chargeable to corporation tax in the period as described in subsection 3(a) and (b).

5. Subsection 4 makes subsection 3 subject to subsections 5 to 7.

6. Subsection 5 provides, subject to subsections 6 and 7, for the reasonable assumption that alternative provision had been made or imposed instead of the material condition. This is the provision that (a) it is just and reasonable to assume would have been made or imposed in the absence of the effective tax mismatch outcome and (b) which does not result in an effective tax mismatch outcome.

7. Subsection 6 disapplies subsection 5 if both the conditions at subsection 6(a) and (b), in relation to expenses of the foreign company, are met. However, if they are met then the disapplication of subsection 5 is subject to subsection 7.

8. Subsection 7 provides for a situation where the alternative provision would have resulted in income of a company that would have been within the charge to corporation tax in relation to the income. This could occur, for example, if the material provision was a payment to a company lacking economic substance and the alternative provision was that the payment was made to a UK resident company. In such a case an amount equal to that income is added to the foreign company taxable diverted profits.

9. Subsection 8 clarifies that, for the purposes of subsections 4 and 5, the meaning of the alternative provision can include no provision being made or imposed.

10. Subsection 9 makes the necessary adaptations to the reading of this section where Clause [3] is applied by virtue of Clause [4] to a non-UK resident company carrying on a trade in the UK through a permanent establishment (PE).

11. Subsection 10 describes how, for the purpose of subsection 5(b), Clause [6] applies in determining whether an alternative provision would have resulted in an effective tax mismatch.

### **BACKGROUND NOTE**

12. 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.

13. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).

**EXPLANATORY NOTE****CLAUSE [11]: ESTIMATING PROFITS FOR PRELIMINARY AND CHARGING NOTICES: SECTION 3 CASE****SUMMARY**

1. Clause [11] provides the rules for calculating taxable diverted profits in cases within Clause [3] for the purposes of issuing a preliminary or charging notice under Clauses [14] or [16].

**DETAILS OF THE CLAUSE**

2. Subsection 1 applies this section for the purposes of issuing a preliminary or charging notice where taxable diverted profits of C for an accounting period fall to be determined under Clause [10].
3. Subsection 2 provides that, subject to subsections 4 to 6, the taxable diverted profits are the amount that the designated HMRC officer (as defined at Clause [27]) determines on the basis of the best estimate made in accordance with Clause [10].
4. Subsection 3 sets out the three criteria under which the “inflated expenses condition” is met. Subsection 3(c) provides that the designated HMRC officer may consider, in consequence of the other two criteria being met, that the relevant expenses might be greater than they would have been at arm’s length. “The relevant expenses” are defined at subsection 11.
5. Subsection 4 provides for subsection 5 to apply if the designated HMRC officer issuing the notice considers that the “inflated expenses condition” at subsection 3 is met and that it is reasonable to assume either subsection 4(a) or 4(b) apply. Subsection 4(b) refers to the notional alternative provision and allowable expenses. These terms are defined at subsection 11.
6. Subsection 5 requires that the best estimate made in accordance with subsection 2 is to be made by reducing by 30% the relevant expenses included in the deduction mentioned in subsection 3(a) and ignoring the transfer pricing rules at Part 4 TIOPA 2010.
7. Subsection 6 allows for the adjustment required by subsection 5(a) to take into account a transfer pricing adjustment under part 4 TIOPA 2010 to the deduction for expenses if reflected in C’s company tax return prior to the issue of the charging notice. The 30% adjustment is reduced accordingly, but not below nil.

8. Subsection 7 modifies the effect of subsection 3 of Clause [10] for the purposes of this Clause.

9. Subsection 8 makes the necessary adaptations to the reading of this section where Clause [3] is applied by virtue of Clause [4] to a non-UK resident company carrying on a trade in the UK through a permanent establishment (PE).

10. Subsections 9 and 10 provide for the Treasury to make regulations to substitute a different percentage in Subsection 4(a).

11. Subsection 11 defines or provides clarification on the meaning of the terms “allowable expenses”, “C”, “the notional alternative provision”, “the relevant expenses” and “UKPE” in this Clause.

#### **BACKGROUND NOTE**

12. 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.

13. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).

## EXPLANATORY NOTE

### CLAUSE [12]: EXEMPTION FOR COMPANIES WITH LIMITED UK SALES

#### SUMMARY

1. Clause [12] describes an exemption from the application of section 2 (“Avoidance of a UK taxable presence”) for companies that meet “the UK sales threshold condition”.

#### DETAILS OF THE CLAUSE

2. Subsection 1 provides for an exemption from diverted profits tax in relation to section 2 for an accounting period if the UK sales threshold condition is met for that period.

3. Subsection 2 defines the UK sales threshold condition. A company meets this condition if the total sales revenues from all supplies of goods and services made by it or connected companies to customers in the UK in the accounting period, does not exceed £10,000,000.

4. Subsection 3 sets out the proportional reduction of the threshold where the accounting period is less than 12 months.

5. Subsection 4 applies section 1122 of CTA 2010 for the purposes of identifying connected companies in applying subsection 2.

6. Subsections 5 and 6 allow the Treasury, by regulations or statutory instrument, to amend the level of the threshold set out in subsection 2.

#### BACKGROUND NOTE

7. 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.

8. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).



## EXPLANATORY NOTE

### CLAUSE [13]: DUTY TO NOTIFY IF WITHIN SCOPE OF TAX

#### SUMMARY

1. Clause [13] places a duty upon a company to notify an officer of Revenue and Customs if they are within the scope of the diverted profits tax.

#### DETAILS OF THE CLAUSE

2. Subsection 1 obliges a company meeting the requirements of subsections 2 or 3 to notify an officer of Revenue and Customs if it has profits for an accounting period that might be within the scope of the diverted profits tax.

3. Subsection 2 sets out the first of the alternative requirements that give rise to an obligation to notify. These are that Clause [2] would apply to the company if the condition in subsection 1(c) of that Clause were modified in the way set out and the company does not meet the UK sales threshold condition in Clause [12].

4. Subsection 3 sets out the second of the alternative requirements that give rise to an obligation to notify. These are that Clause [3] would apply to the company if the modifications to Clauses [6] and [7] set out in subsection 4 were made and the financial benefit of the tax reduction (see Clause [6], subsection 4) is significant when compared to any other financial benefit of the material provision (see Clause [3], subsection 1(b)).

5. Subsection 4 sets out the modifications that are to be read in Clause [6], subsection 3 and Clause [7], subsections 4, 5 and 6 for the purposes of applying subsection 3.

6. Subsection 5 clarifies that the modifications at subsections 2(a) and 3(a) to the effect of Clause [2] and [3] are to be taken into account in determining if taxable diverted profits might arise to the company for an accounting period.

7. Subsection 6 requires that a notification should be made in writing and within 3 months from the end of the accounting period to which it relates.

#### BACKGROUND NOTE

8. 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.

9. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).

## EXPLANATORY NOTE

### CLAUSE [14]: PRELIMINARY NOTICE

#### SUMMARY

1. Clause [14] provides for the issue of a preliminary notice to a company if the designated HMRC officer believes the company to be within the scope of the diverted profits tax.

#### DETAILS OF THE CLAUSE

2. Subsection 1 requires a designated HMRC officer to issue a preliminary notice to a company where the officer has reason to believe the company is within the scope of the diverted profits tax because either or both Clause [2] or Clause [3] apply.

3. Subsection 2 requires a copy of the notice to be sent to “the avoided PE”, where Clause [2] applies, and to “UKPE”, where Clause [3] applies by virtue of Clause [4]. The terms “the avoided PE” and “UKPE” take their meaning from Clauses [2] and [4].

4. Subsection 3 stipulates what information and explanations must be included in a preliminary notice.

5. Subsection 4 provides for the situation where the designated officer has insufficient information to determine any of the matters set out in subsection 3.

6. Subsection 5 makes clear that a designated HMRC officer may issue a preliminary notice to a company in respect of an accounting period, whether or not a notification has been given by the company under Clause [13].

7. Subsection 6 sets a time limit of 24 months from the end of the affected accounting period for the issue of a preliminary notice. But this is subject to subsections 7 and 8.

8. Subsection 7 describes when subsection 8 will apply. The requirements are that no notification has been received under Clause [13] in respect of an accounting period and it is reasonable for a designated HMRC officer to believe that an amount of diverted profits tax that should have been charged in relation to that accounting period has not been charged.

9. Subsection 8 allows a designated HMRC officer to issue a charging notice (see Clause [16]) within an extended time limit of four years from the end of the affected accounting period where the requirements of subsection 7 are met.

**BACKGROUND NOTE**

10. 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.

11. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).

## EXPLANATORY NOTE

### CLAUSE [15]: REPRESENTATIONS

#### SUMMARY

1. Clause [15] allows a company receiving a preliminary notice to make representations to the designated HMRC officer in respect of that notice and governs the scope and handling of those representations.

#### DETAILS OF THE CLAUSE

2. Subsection 1 applies the clause where a designated HMRC officer has given a preliminary notice under Clause [14].

3. Subsection 2 sets a time limit of 30 days from the receipt of a preliminary notice in which a company can make written representations to the designated HMRC officer.

4. Subsection 3 provides that the designated HMRC officer may consider representations if they are made on the grounds listed in (a) to (d).

5. Subsection 4 provides that the designated HMRC officer is not required to consider representations that relate to either of the two matters listed in (a) and (b) (but see Clause [20], subsection 14).

6. Subsection 5 defines “the small or medium-sized enterprise requirement” for the purposes of subsection 3(b).

7. Subsection 6 defines “the participation condition” for the purposes of subsection 3(d)(i).

8. Subsection 7 defines the “80% payment test” for the purposes of subsection 3(c)(ii) and (d)(ii).

9. Subsection 8 refers the reader to the provisions of Clause [20], which provide for and govern a review process.

**BACKGROUND NOTE**

10. 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.

11. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).

## EXPLANATORY NOTE

### CLAUSE [16]: CHARGING NOTICE

#### SUMMARY

1. Clause [16] provides for the issue of a charging notice to a company that has been given a preliminary notice and following consideration of any representations under Clause [15].

#### DETAILS OF THE CLAUSE

2. Subsection 1 provides that this Clause applies where a designated HMRC officer has given a company a preliminary notice under Clause [14].

3. Subsection 2 provides that, having considered any representations under Clause [15], a designated HMRC officer must either issue a charging notice to the company or notify the company that no charging notice will be issued for the accounting period covered by the preliminary notice. The designated HMRC officer must take this action within 30 days from the end of the 30 day period allowed for representations under Clause [15].

4. Subsection 3 allows a charging notice to be issued for an accounting period, notwithstanding that the company has been notified under subsection 2 that no charging notice will be issued for that accounting period, where that charging notice is pursuant to a different preliminary notice issued in respect of that same accounting period.

5. Subsection 4 provides that where a charging notice is issued to a company, a copy must also be given to “the avoided PE”, where Clause [2] applies, and to “UKPE”, where Clause [3] applies by virtue of Clause [4]. The terms “the avoided PE” and “UKPE” take their meaning from Clauses [2] and [4].

6. Subsection 5 stipulates what information and explanations must be included in the charging notice.

#### BACKGROUND NOTE

7. 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.

8. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).

## EXPLANATORY NOTE

### CLAUSE [17]: PAYMENT OF TAX

#### SUMMARY

1. Clause [17] and Schedule 1 govern the payment and recovery of tax payable under a charging notice.

#### DETAILS OF THE CLAUSE

2. Subsection 1 applies the clause when a charging notice is issued.
3. Subsection 2 requires the payment of diverted profits tax within 30 days after the day the charging notice is issued.
4. Subsection 3 makes the company to which the notice is issued liable for payment of the tax (but see also Schedule 1).
5. Subsection 4 prevents postponement of payment of the tax on any grounds. The subsection makes clear that this means the tax is due and payable regardless of whether it is subject to review under Clause [20], or appeal under Clause [21].
6. Subsection 5 introduces Schedule 1.

#### BACKGROUND NOTE

7. 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.
8. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).



## EXPLANATORY NOTE

### CLAUSE [18]: IGNORE DIVERTED PROFITS TAX FOR PURPOSES OF INCOME TAX AND CORPORATION TAX

#### SUMMARY

1. Clause [18] stipulates that diverted profits tax is not to be taken into account for the purposes of income tax or corporation tax.

#### DETAILS OF THE CLAUSE

2. Subsection 1 prevents diverted profits tax from giving rise to a deduction or other relief) when calculating income, profits, or losses for any tax purposes. It also prevents account being taken of any amount paid (directly or indirectly) by a person for the purposes of meeting, or reimbursing the cost of diverted profits tax.

3. Subsection 2 prevents any amount paid under subsection 1(b) from being treated as a distribution within the meaning of CTA 2010.

#### BACKGROUND NOTE

4. 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.

5. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).

## EXPLANATORY NOTE

### CLAUSE [19]: CREDIT FOR UK OR FOREIGN TAX ON SAME PROFITS IN SECTION 3 CASES

#### SUMMARY

1. Clause [19] makes provision for credit to be given against a liability to diverted profits tax for certain UK and foreign taxes in defined circumstances

#### DETAILS OF THE CLAUSE

2. Subsection 1 applies the clause where a company has paid corporation tax or equivalent foreign taxes by reference to its profits.

3. Subsection 2 permits a just and reasonable credit for the tax referred to in subsection 1 to be given against a liability to diverted profits tax, where both taxes are in respect of the same profits.

4. Subsection 3 treats any withholding tax deducted from payments made to a person as tax paid by that person (and not by the person making the payments), for the purposes of subsection 1, provided the withholding tax is not refunded.

5. Subsection 4 provides that the reference in subsection 3 to tax being refunded is to be read in accordance with Clause [6], subsection 12, with the modification that references to the second party are read as references to the company.

#### BACKGROUND NOTE

6. 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.

7. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).

## EXPLANATORY NOTE

### CLAUSE [20]: HMRC REVIEW OF CHARGING NOTICE

#### SUMMARY

1. Clause [20] sets out and governs the process under which a designated HMRC officer must review a charge to diverted profits tax and may amend a charging notice or issue a supplementary charging notice.

#### DETAILS OF THE CLAUSE

2. Subsection 1 provides that, where a charging notice has been issued to a company, a designated HMRC officer must carry out a review of the total amount of taxable diverted profits included in that notice and may carry out more than one such review. The review(s) must be completed within the period defined in subsection 2.

3. Subsection 2 defines “the review period” as the 12 months starting after the period allowed for payment of the tax by Clause [17], subsection 2. This is subject to subsection 13.

4. Subsection 3 sets out the circumstances in which subsection 4 applies.

5. Subsection 4 describes the circumstances in which a designated HMRC officer may issue an amending notice to reduce the amount of diverted profits tax payable.

6. Subsections 5 and 6 set out that the designated HMRC officer may issue more than one amending notice and that where such a notice is issued any tax overpaid must be repaid.

7. Subsection 7 sets out the circumstances in which subsection 8 applies.

8. Subsection 8 describes the circumstances in which a designated HMRC officer may issue a notice, known as a “supplementary charging notice”, to impose an additional charge where the diverted profits tax charged under an existing charging notice is lower than it should be.

9. Subsection 9 permits only one supplementary charging notice to be issued in respect of any existing charging notice.

10. Subsection 10 prevents the issuing of a supplementary charging notice during the last 30 days of the review period.

11. Subsection 11 extends the application of subsections 3 to 6, to allow a supplementary charging notice to be amended downwards.
12. Subsection 12 extends the application of Clause [16], subsection 5, and Clause [17], so that the rules governing the content of a charging notice and payment of tax charged by a charging notice apply in the same way to a supplementary charging notice.
13. Subsection 13 is a derogation from subsection 2 and permits the review period to be brought to an end before the expiry of the 12 months set out there, where either of the events described in (a) or (b) occur.
14. Subsection 14 provides that, when carrying out a review under Clause [20] to determine if the taxable diverted profits charged on a company for an accounting period are too high or low, the designated HMRC officer must disregard the special provisions in Clauses [9] and [11]. The subsection also makes clear that any representations that a designated HMRC may consider during the review are not limited by Clause [15].
15. Subsection 15 provides that where a supplementary charging notice or amending notice is issued to a company, a copy must also be given to “the avoided PE”, where Clause [2] applies, and to “UKPE”, where Clause [3] applies by virtue of Clause [4]. The terms “the avoided PE” and “UKPE” take their meaning from Clauses [2] and [4].

## BACKGROUND NOTE

16. 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.
17. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).

## EXPLANATORY NOTE

### CLAUSE [21]: APPEAL AGAINST DIVERTED PROFITS NOTICES

#### SUMMARY

1. Clause [21] governs appeals against charging notices and supplementary charging notices.

#### DETAILS OF THE CLAUSE

2. Subsection 1 gives a company to which a charging notice or supplementary charging notice is issued a right of appeal against the notice.

3. Subsection 2 provides that an appeal under subsection 1 must be made in writing and within 30 days after the end of the review period. The end of the review period is determined by reference to Clause [20], subsections 2 and 13.

4. Subsection 3 requires the grounds of appeal to be specified.

5. Subsection 4 stipulates that, when determining for the purposes of an appeal whether the taxable diverted profits have been correctly calculated, the special rules in Clause [9] and [11] must be disregarded.

6. Subsection 5 sets out that the Tribunal in deciding the appeal, may confirm, amend, or cancel the appealed notice or supplementary charging notice.

7. Subsection 6 sets out that an appeal under this Clause is to be treated as if it were an appeal under the Taxes Act.

8. Subsection 7 makes subsection 6 subject to Clause [17], subsection 4.

#### BACKGROUND NOTE

9. 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.

10. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).

**EXPLANATORY NOTE**

**CLAUSE [22]: RESPONSIBILITY FOR COLLECTION AND MANAGEMENT**

**SUMMARY**

1. Clause [22] assigns responsibility for the collection and management of the diverted profits tax.

**DETAILS OF THE CLAUSE**

2. This clause makes the Commissioners for HM Revenue & Customs responsible for collection and management of the diverted profits tax.

**BACKGROUND NOTE**

3. 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.
4. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).

**EXPLANATORY NOTE**

**CLAUSE [23]: PENALTIES ETC**

**SUMMARY**

1. Clause [23] amends other enactments to apply penalty provisions to the diverted profits tax.

**DETAILS OF THE CLAUSE**

2. Subsections 1 to 3 amend Schedule 56 of FA2009 to apply penalties for failure to make payments of the diverted profits tax on time.
3. Subsections 4 to 6 amend Schedule 41 of FA2008 to apply penalties for failure by a company to notify that it is within the scope of the diverted profits tax.

**BACKGROUND NOTE**

4. 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.
5. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).

## EXPLANATORY NOTE

### CLAUSE [24]: INFORMATION AND INSPECTION POWERS ETC

#### SUMMARY

1. Clause [24] amends other enactments to apply information and inspection powers provisions for the purposes of the diverted profits tax.

#### DETAILS OF THE CLAUSE

2. Subsection 1 amends Schedule 36 of FA2008 so that HMRC's information and inspection powers applies to the diverted profits tax.
3. Subsection 2 amends Schedule 23 of FA2011 so that HMRC's data-gathering powers applies to the diverted profits tax.

#### BACKGROUND NOTE

4. 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.
5. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).



## EXPLANATORY NOTE

### CLAUSE [25]: “TRANSACTION” AND “SERIES OF TRANSACTIONS”

#### SUMMARY

1. Clause [25] defines “transaction” and “series of transactions” as those terms are used in [this Part].

#### DETAILS OF THE CLAUSE

2. Subsection 1 defines “transaction”.

3. Subsection 2 defines “series of transactions”.

4. Subsection 3 provides that none of the matters set out in subsection 4 will prevent a series of transactions from being regarded as constituting the means by which provision has been made or imposed between any two persons.

5. Subsection 4 lists at (a) to (c) the matters referred to in subsection 3.

6. Subsection 5 defines “arrangement” for the purposes of Clause [25].

#### BACKGROUND NOTE

7. 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.

8. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).

## EXPLANATORY NOTE

### CLAUSE [26]: ACCOUNTING PERIODS

#### SUMMARY

1. Clause [26] defines what is meant by an “accounting period” or “accounting periods”.

#### DETAILS OF THE CLAUSE

2. Subsection 1 provides that an accounting period of a company for the purposes of the diverted profits tax is the same as an accounting period of the company for the purposes of corporation tax.
3. Subsection 2 deems that a non-UK resident company to which subsections 1(a) and (b) of Clause [2] apply and which is not within the scope of corporation tax to have such accounting periods for corporation tax purposes as it would have had if it carried on a trade in the UK through a permanent establishment by reason of the activity of the avoided PE, as that term is used in Clause [2], described in subsection 1(c) of Clause [2].
4. Subsection 3 allows a designated HMRC officer to determine the accounting periods of a non-UK resident company to the best of the officer’s information and belief, where there is insufficient information to identify the accounting periods in accordance with subsection 2.

#### BACKGROUND NOTE

5. 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.
6. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).

## EXPLANATORY NOTE

### CLAUSE [27]: OTHER DEFINED TERMS IN PART 1

#### SUMMARY

1. Clause [27] defines various terms used in [this Part].

#### DETAILS OF THE CLAUSE

2. Subsection 1 defines various terms by reference to other enactments.
3. Subsection 2 provides that, for the purposes of [this Part], a tax having the characteristics set out at (a) or (b) may be considered to correspond to corporation tax.

#### BACKGROUND NOTE

4. 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.
5. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).

## EXPLANATORY NOTE

### CLAUSE [28]: APPLICATION OF OTHER ENACTMENTS TO DIVERTED PROFITS TAX

#### SUMMARY

1. Clause [28] governs the application of other enactments to the diverted profits tax.

#### DETAILS OF THE CLAUSE

2. Subsection 1 amends section 206(3) of FA2013, to add the diverted profits tax to the taxes to which the general anti-abuse rule applies.
3. Subsection 2 amends section 1139 of CTA 2009 to add to the definition of “tax advantage” the avoidance or reduction of a charge to diverted profits tax.
4. Subsection 3 amends section 178 of FA1989, so that it applies for the purposes of Clause [1].
5. Subsection 4 amends section 1 of the Provisional Collection of Taxes Act 1968, so that it applies for the purposes of diverted profits tax.

#### BACKGROUND NOTE

6. 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.
7. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).

## EXPLANATORY NOTE

### CLAUSE [29]: COMMENCEMENT AND TRANSITIONAL PROVISION

#### SUMMARY

1. Clause [29] provides for the diverted profits tax to come into effect on 1 April 2015 and establishes transitional arrangements for accounting periods which straddle the effective date.

#### DETAILS OF THE CLAUSE

2. Subsection 1 provides that the diverted profits tax will have effect for accounting periods starting on or after 1 April 2015.

3. Subsection 2 sets out transitional arrangements for accounting periods that start before but end on or after 1 April 2015. The subsection provides for the parts of the accounting period that fall before 1 April 2015 and the parts that fall on or after that date to be treated as separate accounting periods and for the profits of the whole accounting period to be apportioned between them on a just and reasonable basis.

#### BACKGROUND NOTE

4. 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.

5. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).

## EXPLANATORY NOTE

### SCHEDULE 1: RECOVERY OF DIVERTED PROFIT TAX DUE FROM NON-UK RESIDENT COMPANY

#### SUMMARY

1. Schedule 1 sets out provisions for the recovery of diverted profits tax from the UK-representative of a non-UK resident company and from any company that is related to the non-resident company.

#### DETAILS OF THE SCHEDULE

##### Part 1

2. Part 1 of the Schedule applies, with some modifications, the provisions of Chapter 6 of Part 22 of CTA 2010 (collection, etc. of tax from UK representatives of non-UK resident companies) to the recovery of diverted profits tax.

##### Paragraph 1

3. This paragraph ensures that Chapter 6 of Part 22 of CTA 2010 has effect in relation to diverted profits tax and interest on diverted profits tax.

4. Subparagraph 2 introduces subparagraphs 3 to 5, which modify the application of Chapter 6 of Part 22 of CTA 2010 in relation to diverted profits tax.

5. Subparagraph 3 applies Chapter 6 of Part 22 “the avoided PE” (within the meaning of Clause [2]), as it would apply to a permanent establishment in the United Kingdom through which the company carries on a trade.

6. Subparagraph 4 allows for references to “chargeable profits of the company attributable to that establishment”, within section 969(3) of the chapter, to be read as references to “taxable diverted profits arising to the company...” for the purposes of the application of the chapter to diverted profits tax.

7. Subparagraph 5 provides that references to the giving or service of a notice in section 971 of CTA 2010 include a reference to the giving of a notice.

##### Part 2

8. Part 2 of the Schedule enables unpaid diverted profits tax due from a non-UK resident company to be recovered from a related company.

Paragraph 2

9. Subparagraph 1 applies the Schedule where an amount of diverted profits tax has been charged on a non-UK resident company for an accounting period and the whole or any part of that amount is unpaid at the end of the due and payable date.

10. Subparagraph 2 defines “the taxpayer company” for the purposes of Part 2 of the Schedule as the non-UK resident company described in subparagraph 1.

Paragraph 3

11. This paragraph defines what is meant by “the relevant period” for the purposes of Part 2 of the Schedule.

Paragraph 4

12. This paragraph defines what is meant by a “related company” for the purposes of Part 2 of the Schedule.

13. Subparagraph 1 defines a “related company” by reference to group and consortium relationships.

14. Subparagraph 2 defines when two companies are members of the same group, for the purposes of subparagraph 1(a).

15. Subparagraph 3 defines when two companies as members of the same group, for the purposes of subparagraph 1(c).

16. Subparagraph 4 defines when a company is a member of a consortium or owned by a consortium for the purposes of Part 2 of the Schedule.

17. Subparagraph 5 provides that “51% subsidiary” in paragraph 4 has the same meaning as in section 1154 CTA 2010.

Paragraph 5

18. This paragraph governs the serving of notices on related companies for the recovery of diverted profits tax.

19. Subparagraph 1 allows a notice to be served on a related company, requiring the payment of diverted profits tax (or in a consortium case the proportion of that tax provided for by paragraph 7) within 30 days of the service of the notice.

20. Subparagraph 2 stipulates what information must be included in the notice.

21. Subparagraph 3 gives effect to the notice as if it were a charging notice and as if the amount recoverable under the notice were diverted profits tax charged on the company on which the notice is served.

22. Subparagraph 4 defines “consortium case” for the purposes of Part 2 of the Schedule.

Paragraph 6

23. This paragraph sets a time limit for the serving of a notice under Part 2 of the Schedule of three years beginning with the date when the diverted profits tax charging notice or supplementary charging notice was issued.

Paragraph 7

24. This paragraph sets out rules for the calculation of the amount recoverable from a related company in a consortium case.

25. Subparagraph 1 establishes the amount that a related company may be required to pay by notice under Part 2 of the Schedule by reference to the group and consortium relationship categories in paragraph 4(1).

26. Subparagraph 2 provides that, for the purposes of paragraph 7, a member’s share in a consortium is the lower of the percentages set out in subparagraph 3(a)-(c).

27. Subparagraph 3 sets out the three percentage measures referred to in subparagraph 2.

28. Subparagraph 4 requires the calculation of an average percentage where the percentages set out above have fluctuated during the relevant period.

29. Subparagraph 5 applies Chapter 6 of Part 5 of CTA 2010 for the purposes of subparagraph 3, as it applies for the purposes of sections 143(3)(b) and (c) and 144(3)(b) and (c) of CTA 2010.

Paragraph 8

30. Subparagraph 1 allows a company that has paid an amount in pursuance of a notice under Part 2 of the Schedule to recover that amount from the taxpayer company.

31. Subparagraph 2 prevents a payment made in pursuance of a notice under Part 2 of the Schedule from being allowed as a deduction in calculating income, profits, or losses, for any tax purpose.

**BACKGROUND NOTE**



32. 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.

33. If you have any questions about this change, or comments on the legislation, please email: [divertedprofits.mailbox@hmrc.gsi.gov.uk](mailto:divertedprofits.mailbox@hmrc.gsi.gov.uk).