

Diverted Profits Tax

2015 briefing
21 April 2015



Agenda

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21 April 2015
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- ① Diverted Profits Tax background
- ② Who will Diverted Profits Tax impact?
- ③ How will Diverted Profits Tax work?
- ④ Examples
- ⑤ What does this mean for you?
- ⑥ Questions



Diverted Profits Tax

Background

Overview of legislation

A new 25 % tax on a company's taxable diverted profits in two scenarios



Avoidance
of a UK
taxable
presence

1

Where
foreign
companies
have exploited
the permanent
establishment
rule

Entities or
transactions
lacking
economic
substance

2

Where groups
create a tax
benefit
by using
transactions or
entities that
lack
economic
substance
(including
UK-UK
transactions)



Timetable

Companies must notify if Diverted Profits Tax applies within 6 months of year end (3 months in future years)

Announced during Autumn Statement

10 December 2014

Public consultation held for stakeholders

4 February 2015

Updated draft legislation published in Finance Bill 2015

24 March 2015

Legislation enacted by Parliament and 'interim' guidance released

30 March 2015

Diverted Profits Tax took effect in respect of diverted profits arising on or after

1 April 2015

1

2

3

4

5

Drivers / Political environment

“Let the message go out that our toleration for those who will not pay their taxes will now come to an end.”

George Osborne

“Contemplated changes in the UK and other countries of long-standing tax principles if finalized and adopted could have a material impact on our income tax expense.”

Kellogg’s Annual Report

The OECD’s view on Diverted Profits Tax “is an embarrassed view, I must say. We have sympathy for the need to move and there is an electoral context ... [but] unilateral actions are not exactly in the sense of what we are trying to develop.”

Pascal Saint-Amans

"We are going to work as hard as we can to make sure that companies that earn profits in Australia pay tax in Australia, but it needs to be a coordinated global effort and that is certainly what we are undertaking at the moment."

Joe Hockey (Australian Treasurer)



Diverted Profits Tax

Who will Diverted Profits Tax impact?

Who could be affected?



**CI Co &
UK sales
activities**

**Digital
businesses**

**Real
Estate
development**

**Law
firms**

Fiduciaries

**Fund
Admin**

**Private
Banking**

**Other
Corps**

**CI Co
transacting
with UK Co**

**Offshore
IP Holding**

**Hedge
Fund
Managers**

**Private
Equity
Managers**

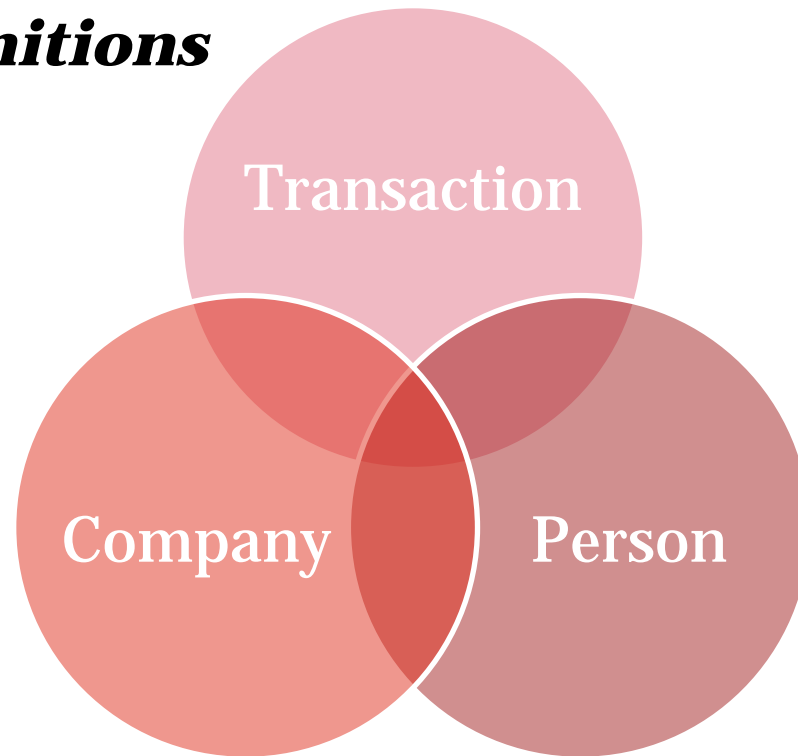
**Captive
Insurance**

**Oil & Gas
Asset
Holders**



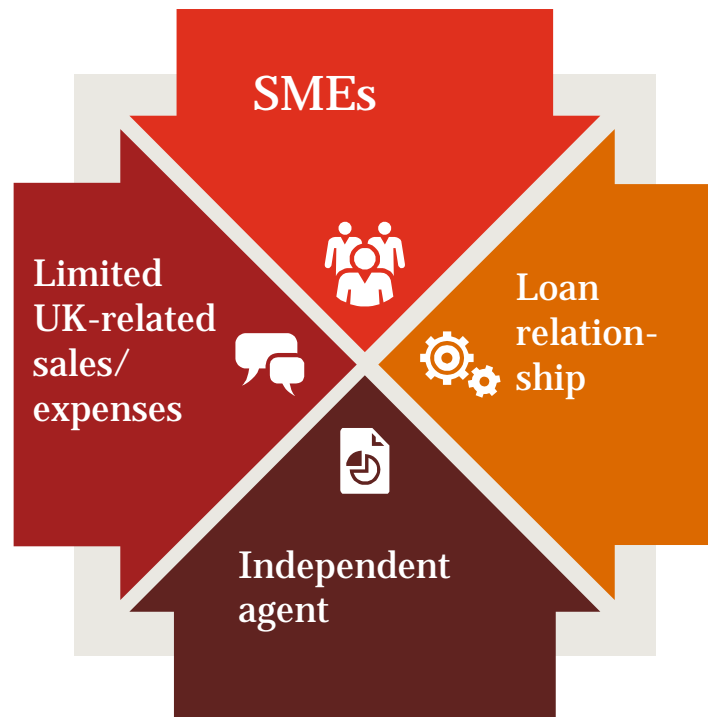
Who could be affected?

Broad definitions





Potential exemptions

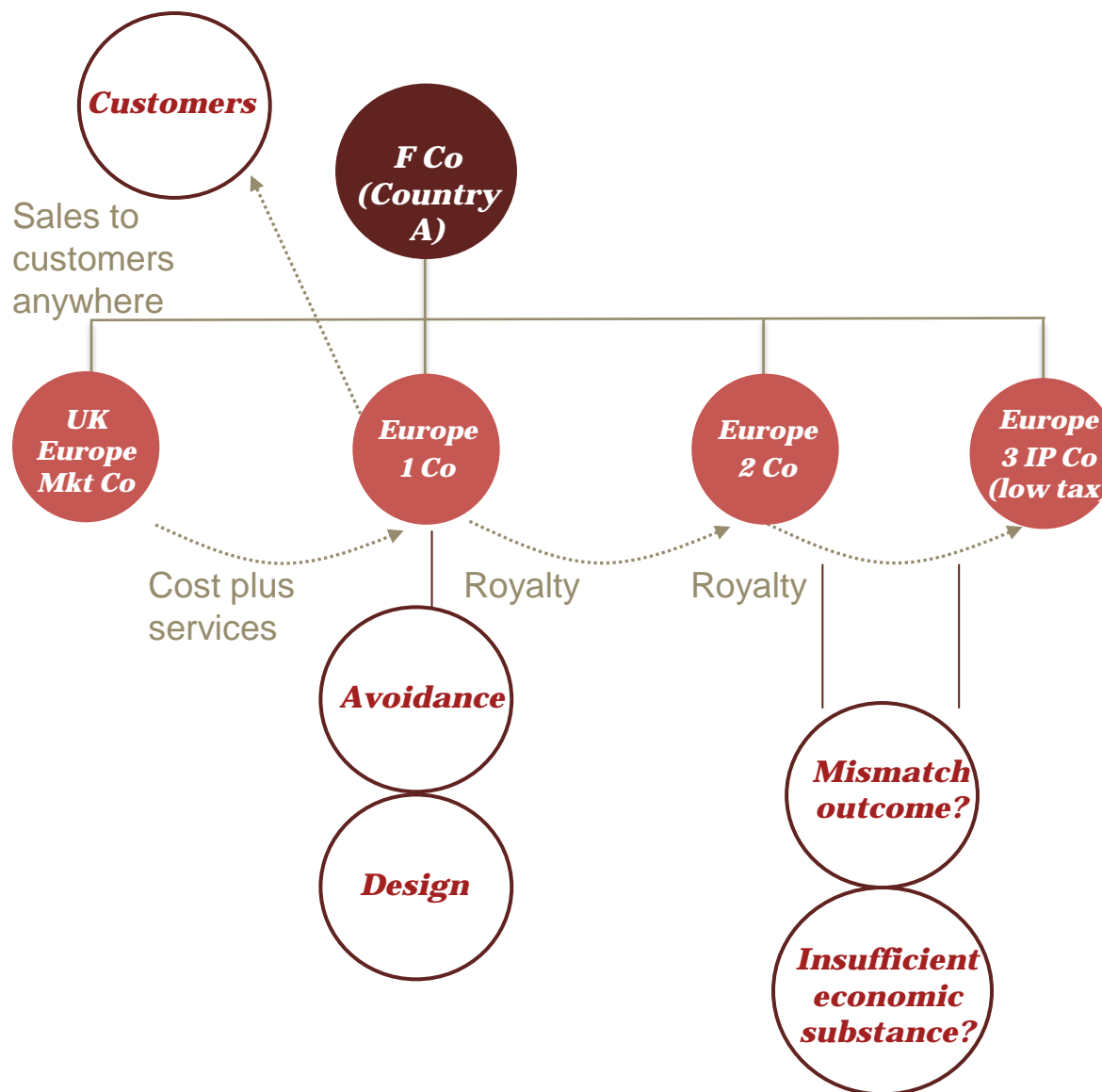




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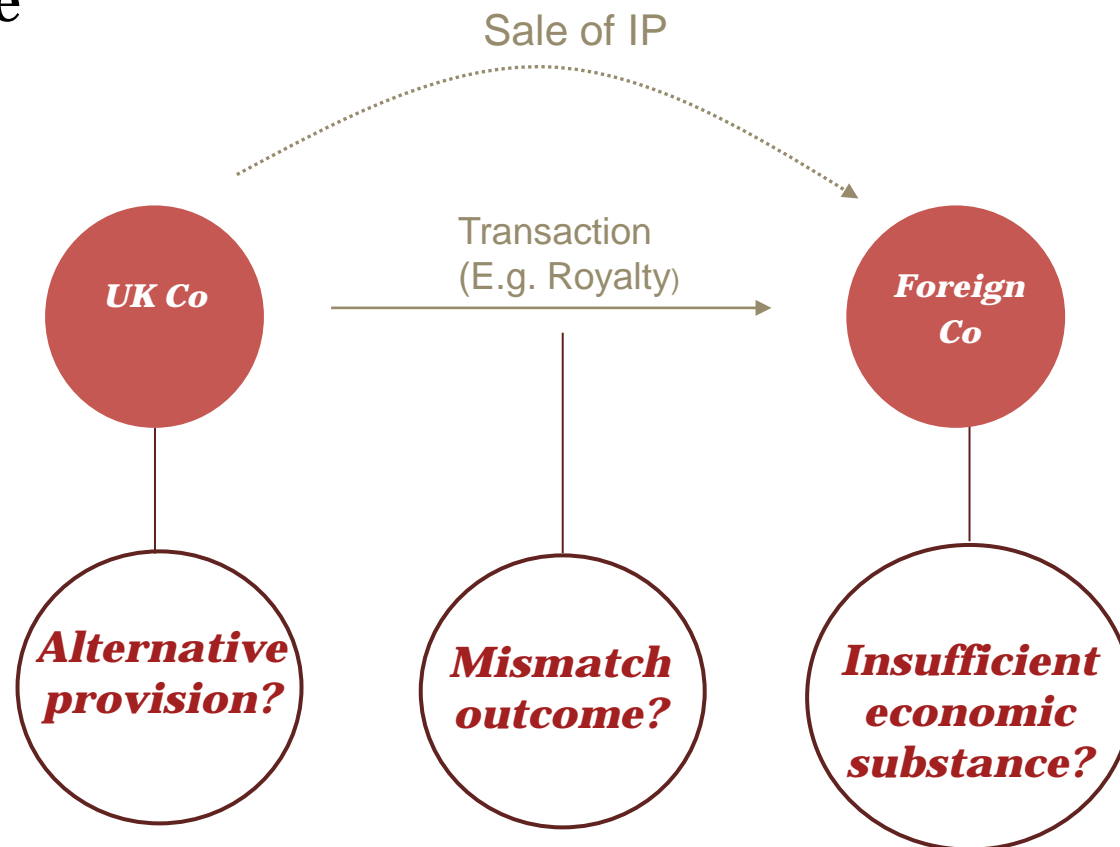
How will Diverted Profits Tax work?

Section 86 Example

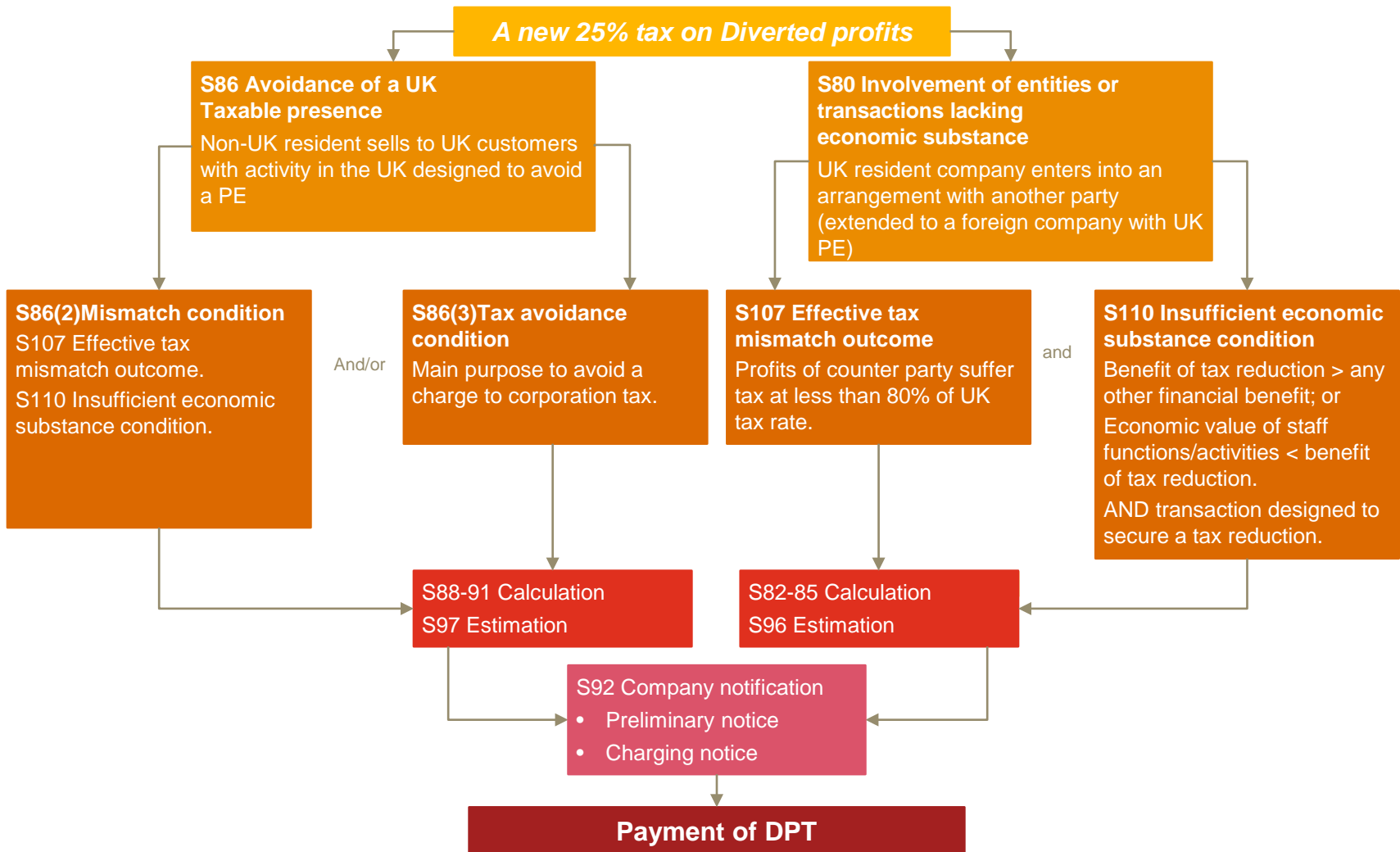


Section 80

Example



Summary flowchart of legislation



Key concepts

Design

s80 - It is reasonable to assume that the transaction was designed to secure a tax reduction

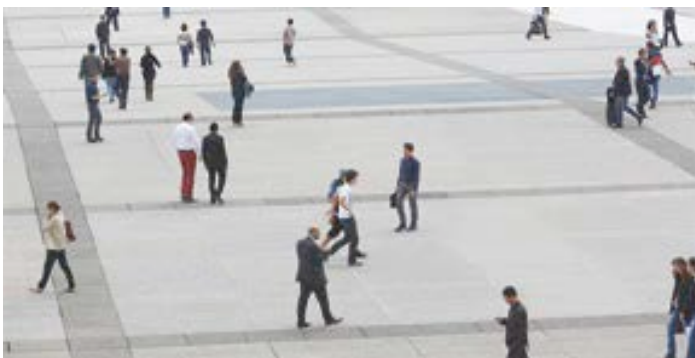
s86 - It is reasonable to assume that the activity of either party was designed to ensure the company is not carrying on a trade though a UK PE

Tax avoidance

There are arrangements in place where the main purpose or one of the main purposes is to avoid a charge to UK Corporation Tax

Recharacterisation

Where it is reasonable to assume that the provision would not have been made had tax (including non-UK Tax) not been a relevant consideration, profits must be calculated assuming the alternative provision was made where tax was not a relevant consideration



There are arrangements in place where the main purpose or one of the main purposes is to avoid a charge to UK Corporation Tax

Specific provisions

Effective tax mismatch outcome (Section 107)

There will be an effective tax mismatch outcome where:

- The material provision between the parties results in an increase in deductions or a reduction in income for one party such that the reduction in that party's tax liability is greater than any resulting increase in the other party's total liability to corporation tax, income tax or any non-UK tax.
- The amount of tax paid by the second party is less than 80% of the corresponding reduction in the first party's tax liability.



Insufficient economic substance (Section 110)

- It is reasonable to assume that the transaction was designed to secure the tax reduction.
- The financial benefit of the tax reduction is greater than any other financial benefit.
- The economic value in terms of the functions or activities that the staff perform, is less than the financial benefit of the tax reduction, over the life.
- In the accounting period income attributable to staff (ignoring asset holding) is less than half the total income from transaction.

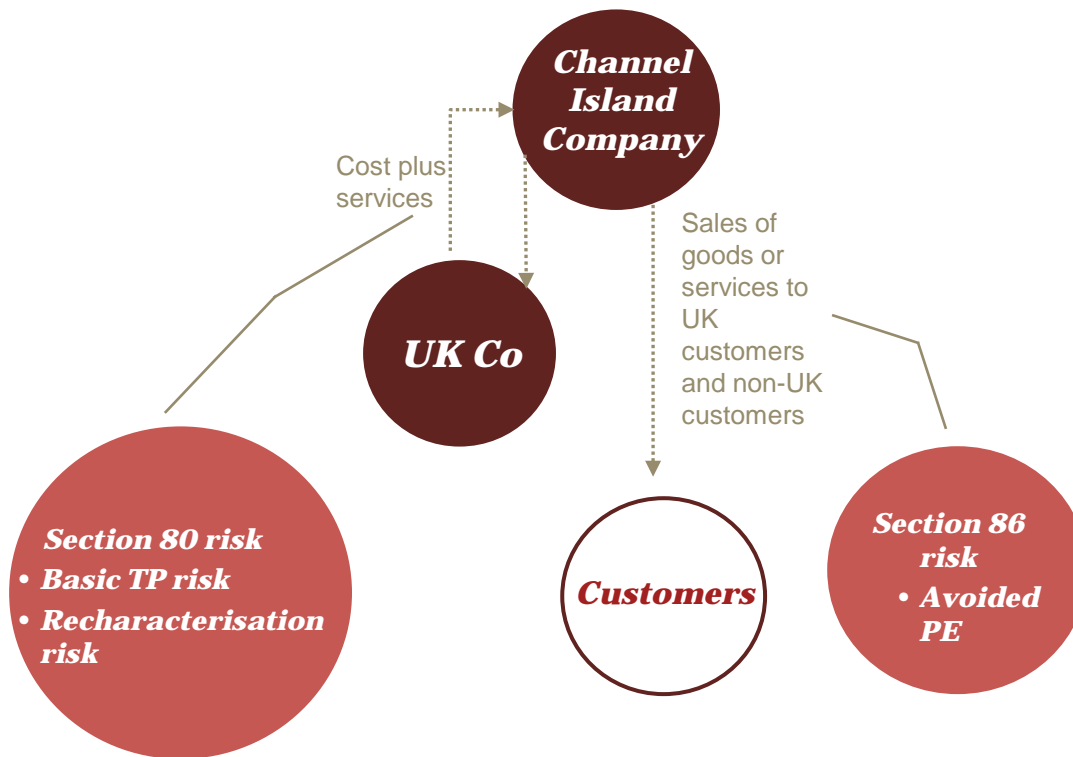




Diverted Profits Tax

Examples

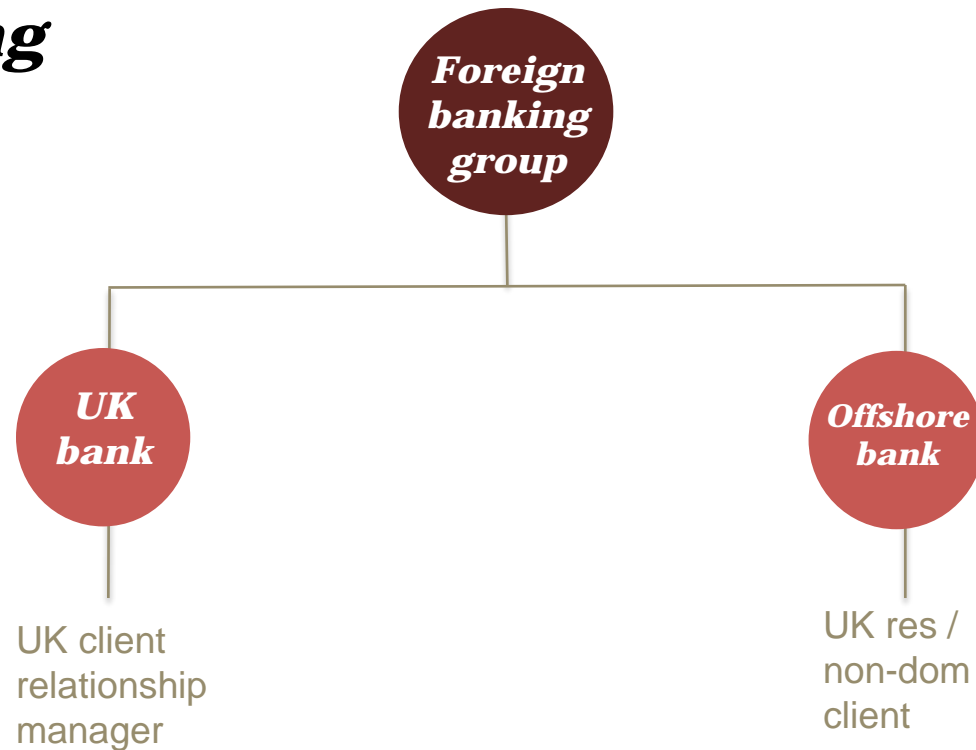
Direct sales from Foreign company Section 86 or Section 80





Private banking

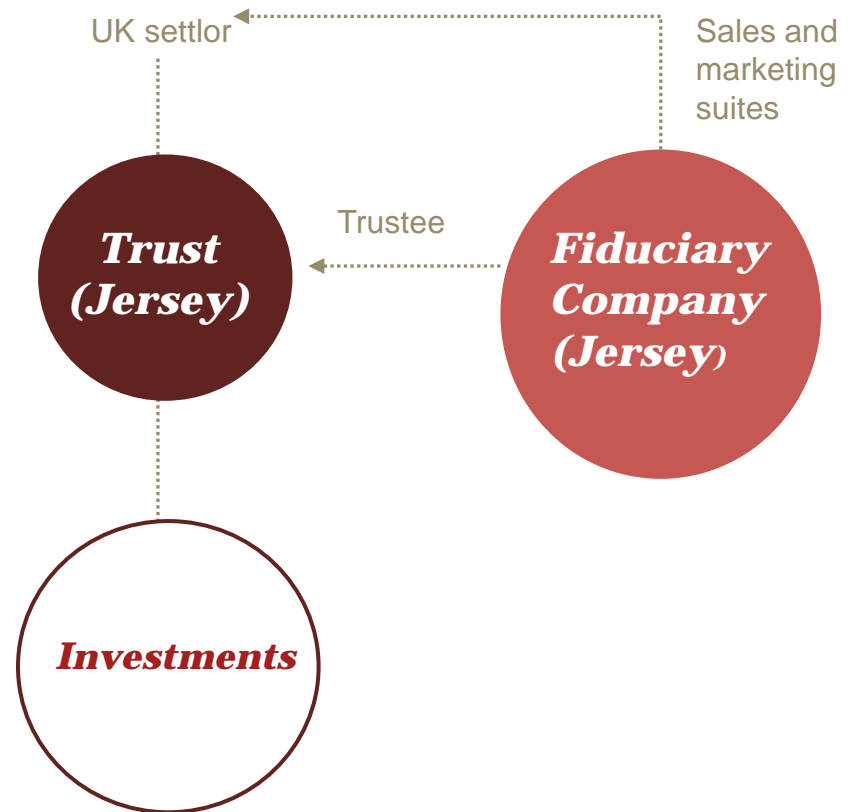
Section 86





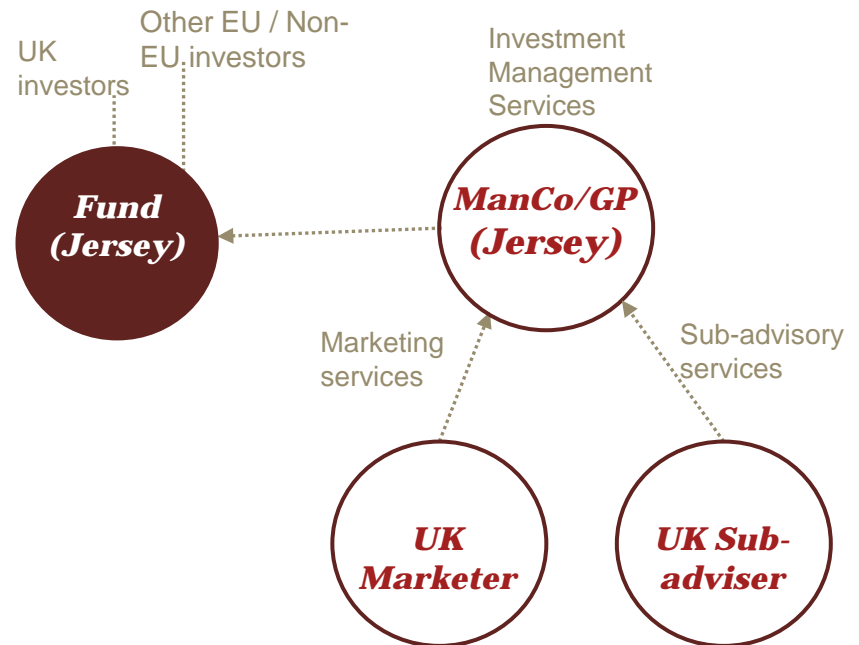
Fiduciary services

Section 86



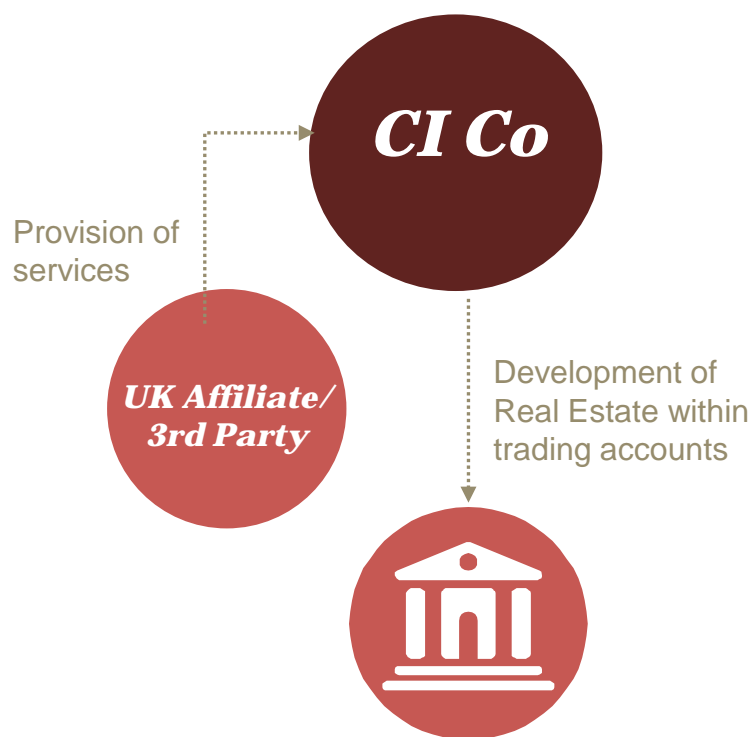


Investment management Section 80 and Section 86





Real Estate Section 86 and Section 80

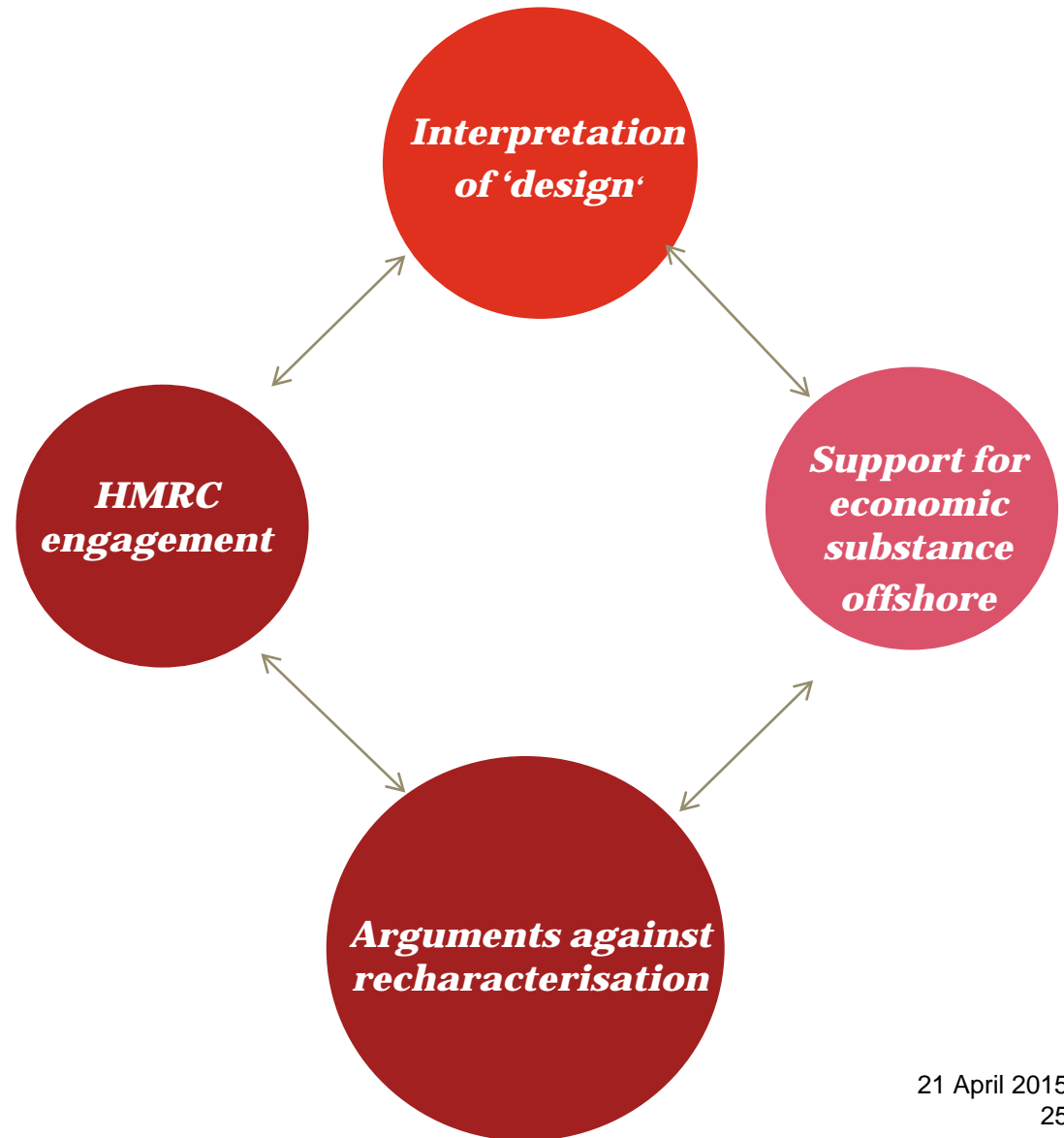




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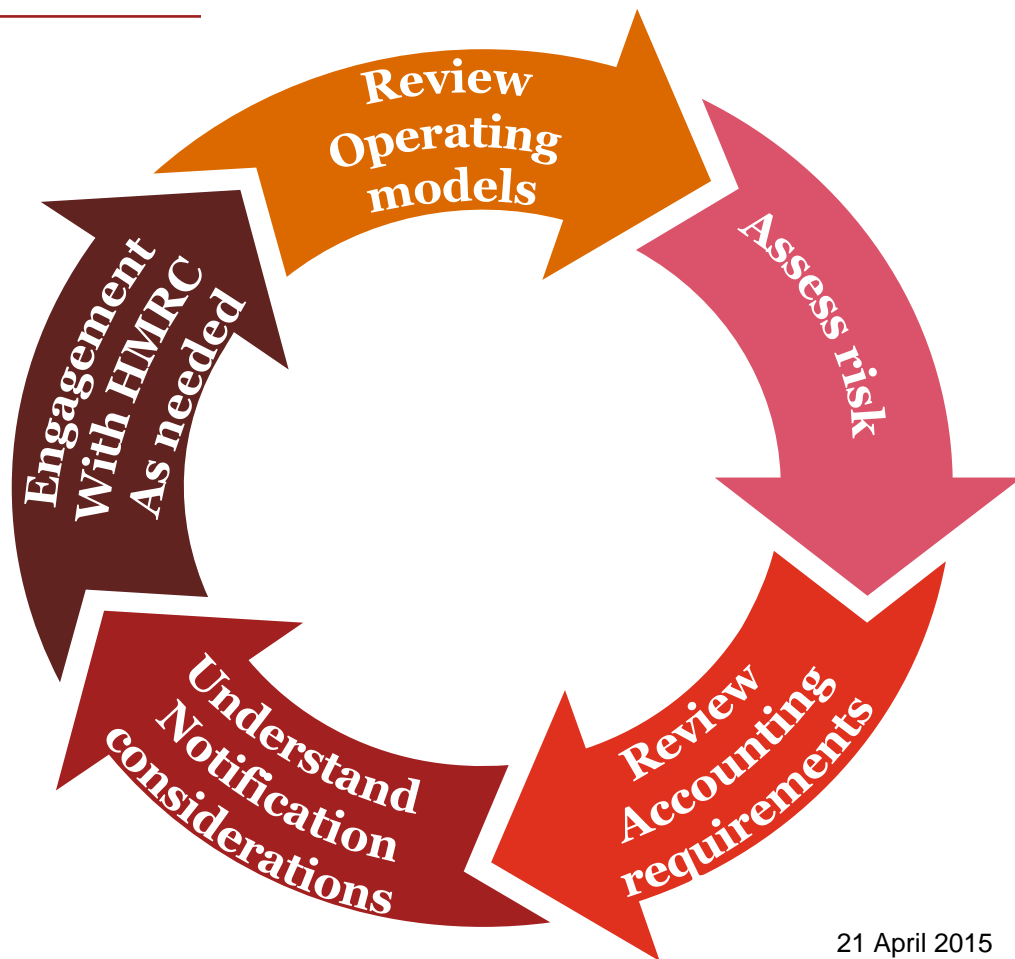
What does this mean for you?

Staying out of trouble





Next steps





Questions?

Contacts

Diverted Profits Tax



Justin Woodhouse
Partner, PwC Channel Islands
+44 (0) 20 7804 6750
justin.woodhouse@uk.pwc.com



Debbie Payne
Tax director, PwC Channel Islands
+44 (0) 1534 838284
debbie.payne@je.pwc.com



Jameson Hyde
Senior tax manager, PwC Channel Islands
+44 (0) 1534 838227
jameson.hyde@je.pwc.com

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