HMRC - INTM286070 - Anti-Diversion Rule: Transitional Provisions

This applies for relevant periods beginning before 1 January 2013.

Legislative “safe harbour”

Where the business carried on by a foreign permanent establishment was already carried on in substantially the same way before exemption takes effect for a company, either in the same PE or in a subsidiary that is not within the scope of CFC rules, it is unlikely that the PE will have been set up in order to achieve a UK tax reduction. This guidance describes the statutory transitional provisions and also HMRC’s interpretation of the motive test as it applies to newly transferred business in cases where the transitional provision does not apply.

The legislation provides a “safe harbour”, which deals with cases where there is no major change in the nature or conduct of the PE business, on condition that the volume of the business does not increase by more than 10%.

This legislative safe harbour is additional to the “period of grace” in which condition B of the motive test may be presumed to be satisfied provided that there is no significant change in the nature of the business carried on (see INTM286100).

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