**INTM489825 - Chart 1A: Section 81: Lack of Economic Substance** – **Non-UK Company (P.E.)**

Is company UK resident?

Does Chapter 4 of Part 2 CTA09 apply to determine the company’s (‘the foreign company’) profits by virtue of it trading in the UK through a permanent establishment (‘UKPE’)?

Section 81 does not apply. (section 80 may apply – see ***Chart 1***].

 Treat UKPE as:

(i) a distinct and separate person from the foreign company;

(ii) UK resident company under same control as foreign company, and

(iii) having entered into any transactions entered into by foreign company to extent relevant to UKPE. ***[A]***

Are both C and P **SMEs** within the meaning of section 172 TIOPA 2010?

Has provision been made by means of a transaction or series of transactions between UKPE & another person (‘P’) whether or not UK resident?

Would the material provision result in an **effective tax mismatch outcome** (sections 107 / 108)? ***[chart 3]***

Is the **insufficient economic substance condition** of section 110 met? ***[see chart 4]***

**Section 81 does NOT apply.**

**Section 81 applies**

YES

NO

NO

YES

NO

YES

YES

YES

YES

YES

 Is the **participation condition** of section 106 met in relation to UKPE and P?

Is the effective tax mismatch outcome an **excepted loan relationship outcome** under section 109?

NO

YES

***[A]*** A transaction or series of transactions is “relevant” to UKPE 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 CTA09) to UKPE.

NO

NO

NO

NO

YES