

2012 No. 3024

CORPORATION TAX

**The Controlled Foreign Companies (Excluded Territories)
Regulations 2012**

<i>Made</i>	- - - -	<i>3rd December 2012</i>
<i>Laid before the House of Commons</i>		<i>5th December 2012</i>
<i>Coming into force</i>	- -	<i>1st January 2013</i>

The Commissioners for Her Majesty's Revenue and Customs make these Regulations in exercise of the powers conferred by section 371KB(2) and (3) of the Taxation (International and Other Provisions) Act 2010(a).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Controlled Foreign Companies (Excluded Territories) Regulations 2012 and come into force on 1st January 2013.

(2) These Regulations have effect for accounting periods of CFCs beginning on or after 1st January 2013.

Interpretation

2. In these Regulations—

“TIOPA 2010” means the Taxation (International and Other Provisions) Act 2010;

“the Schedule” means the Schedule to these Regulations.

Excluded territories

3. A territory listed in Part 1 of the Schedule is an excluded territory for the purposes of Chapter 11 of Part 9A of TIOPA 2010 (the excluded territories exemption).

Modified excluded territories exemption to apply in specified cases

4.—(1) For the purposes of Chapter 11 of Part 9A of TIOPA 2010, the requirements of section 371KB(1)(b) and (c) of that Act do not have to be met in order for the excluded territories exemption to apply for a CFC's accounting period if—

(a) for the purposes of that Chapter, the CFC is for the accounting period resident in—

(i) Australia,

(ii) Canada,

(a) 2010 c. 8. As inserted by paragraph 1 of Schedule 20 to the Finance Act 2012 (c. 14).

- (iii) France,
 - (iv) Germany,
 - (v) Japan, or
 - (vi) the United States of America;
- (b) requirement A is met (if applicable); and
- (c) requirement B is met.

(2) Requirement A is applicable only if the CFC is resident as mentioned in paragraph (1)(a) by virtue of section 371TA(1)(b) of TIOPA 2010.

(3) Requirement A is that the CFC would still be resident as mentioned in paragraph (1)(a) were the following subsections to be substituted for section 371KC(3) of TIOPA 2010—

“(3) But section 371TA(1)(b) is to be applied only if the CFC or persons with interests in the CFC are subject to taxation under the law of the territory in question on all of the CFC’s income arising during the accounting period.

(3A) For the purposes of subsection (3), the CFC’s income does not include any dividend or other distribution received, other than one for which the company paying the dividend or other distribution is entitled to a deduction against its profits for tax purposes under the law of the territory in which it is resident.”.

(4) Requirement B is that at no time during the accounting period is the CFC’s business carried on, to any extent, through a permanent establishment which the CFC has in a territory outside the territory in which it is resident for the accounting period for the purposes of Chapter 11 of Part 9A of TIOPA 2010.

Further requirement to be met for excluded territories exemption to apply

5. For the purposes of Chapter 11 of Part 9A of TIOPA 2010, Part 2 of the Schedule specifies a further requirement which must be met in order for the excluded territories exemption to apply for a CFC’s accounting period.

Jim Harra
Edward Troup

3rd December 2012

Two of the Commissioners for Her Majesty’s Revenue and Customs

SCHEDULE

Regulations 3 and 5

PART 1

Excluded Territories

Afghanistan	Fiji	Panama
Algeria	Finland	Papua New Guinea
Angola	France	Peru
Argentina	Gabon	Philippines
Armenia	Gambia	Poland
Aruba	Germany	Portugal
Australia	Ghana	Puerto Rico
Austria	Greece	Republic of Korea
Azerbaijan	Guyana	Russia
Bangladesh	Honduras	Saudi Arabia
Barbados	Iceland	Senegal
Belarus	India	Sierra Leone
Belgium	Indonesia	Slovakia
Belize	Iran	Slovenia
Benin	Israel	Solomon Islands
Bolivia	Italy	South Africa
Botswana	Ivory Coast	Spain
Brazil	Jamaica	Sri Lanka
Brunei	Japan	Swaziland
Burundi	Kenya	Sweden
Cameroon	Lesotho	Tanzania
Canada	Libya	Thailand
China	Luxembourg	Trinidad and Tobago
Colombia	Malawi	Tunisia
Croatia	Malaysia	Turkey
Cuba	Malta	Uganda
Czech Republic	Mexico	Ukraine
Democratic Republic of the Congo	Monaco	United States of America
Denmark	Morocco	Uruguay
Dominican Republic	Namibia	Venezuela
Ecuador	Netherlands	Vietnam
Egypt	New Zealand	Zambia
El Salvador	Nigeria	Zimbabwe
Falkland Islands	Norway	
Faroe Islands	Pakistan	

PART 2

Specified further requirement

If at any time during the accounting period the CFC carries on insurance business in relation to which the CFC is regulated in any territory, none of that business is carried on in Luxembourg at that time.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations exercise powers conferred by the Taxation (International and Other Provisions) Act 2010 (c. 8) (“TIOPA 2010”) in relation to the excluded territories exemption (“the ETE”) in Chapter 11 of the controlled foreign companies legislation contained in Part 9A of TIOPA 2010.

The ETE exempts a controlled foreign company (“CFC”) resident in a territory where the CFC’s income is taxed at a rate similar to the UK main corporation tax rate. It does so in part by way of a list of territories that would qualify as an ‘excluded territory’ for the purposes of the ETE. Other requirements however also have to be met for the ETE to apply. These requirements can be found in section 371KB(1)(b) to (d) of TIOPA 2010. If the ETE applies for a CFC’s accounting period all of its profits are exempted from the CFC charge.

Regulation 1 provides for citation, commencement and effect, and regulation 2 for interpretation.

Regulation 3 and Part 1 of the Schedule provide a list of excluded territories for the purposes of the ETE.

Regulation 4 modifies the ETE which will apply in specified cases. The regulation provides that the requirements in section 371KB(1)(b) and (c) of TIOPA 2010 do not have to be met provided the CFC is resident in one of the territories specified and its business is not carried on through a foreign permanent establishment at any time during the relevant accounting period.

Regulation 5 and Part 2 of the Schedule provide that the ETE is unavailable in respect of a CFC unless a further requirement is met. This further requirement is that if the CFC carries on insurance business, none of that business is carried on in Luxembourg.

A Tax Information and Impact Note covering this instrument was published on 21 March 2012 alongside the draft CFC rules now contained in Part 9A of TIOPA 2010 and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. It remains an accurate summary of the impacts that apply to this instrument.

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STATUTORY INSTRUMENTS

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