

EXPLANATORY MEMORANDUM TO
THE TAXATION (INTERNATIONAL AND OTHER PROVISIONS ACT 2010)
(PART 7) (AMENDMENT) REGULATIONS 2012

2012 No. 3045

1. This explanatory memorandum has been prepared by HMRC and is laid before the House of Commons by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 These regulations ensure the correct interaction of the Debt Cap rules in Part 7 of the Taxation (International and other Provisions) Act 2010 (“TIOPA 2010”) and the Controlled Foreign Company (CFC) rules in Part 9A of TIOPA 2010.
 - 2.2 The regulations provide for the reduction of a CFC charge in circumstances where there would be a reduction of a corporation tax charge under Part 7. These regulations are necessary because the Part 7 debt cap rules apply to UK companies within the charge to corporation tax, whilst Part 9A CFC rules impose a separate CFC tax charge on UK companies with an interest in a CFC.
3. **Matters of special interest to the Select Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 New CFC legislation was enacted by Part 9A of TIOPA 2010. This is commonly known as CFC reform and was introduced by the 2012 Finance Act. The legislation will, in certain circumstances, impose a CFC charge in respect of overseas companies which are controlled from the UK and in which a UK resident company has a specified interest. Such overseas companies are referred to as Controlled Foreign Companies (CFCs).
 - 4.2 The debt cap rules are included in Part 7 of TIOPA 2010. These rules are designed to limit the extent to which a group’s worldwide debt costs can be claimed as a UK corporation tax deduction. The rules include a mechanism for certain interest income to be exempt from corporation tax in circumstances where interest costs have been disallowed in other group companies.
 - 4.3 These regulations provide for the correct interaction between Part 7 and Part 9A, by enabling a CFC charge to be considered under the debt

cap rules. Where appropriate, a CFC charge can be reduced by the application of the debt cap rules.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

David Gauke has made the following statement regarding Human Rights:

In my view the provisions of The Taxation (International and Other Provisions) (Part 7)(Amendment) Regulations 2013 are compatible with the Convention rights.

7. Policy background

7.1 Within the new CFC regime, a CFC charge can arise in respect of finance income (such as interest). If such income had arisen in the hands of a UK company, then it would be taken into account in the Part 7 TIOPA 2010 debt cap calculations. In some circumstances, those calculations would ensure that this finance income would be exempt from corporation tax.

7.2 However, because the finance income of the CFC gives rise to a CFC tax charge on a UK company, rather than a corporation tax charge, the finance income of a CFC is not taken into account in the standard debt cap calculations.

7.3 These regulations amend Part 7 TIOPA 2010 to ensure that the finance income element of a CFC charge can be taken into account in the debt calculations. In appropriate circumstances, the CFC tax charge can be reduced or eliminated by the application of the debt cap rules.

8. Consultation outcome

8.1 A consultation document on CFC reform was published in June 2011, and subsequent representations on CFC reform have been extensive. Those representations have included requests from taxpayers and advisers to ensure that the CFC and debt cap rules interact correctly.

8.2 These regulations were published in draft for the purposes of consultation with interested parties between 24th October and 21st November 2012. There have been no responses or queries raised.

8.3 The short consultation period was in line with the Tax Consultation Framework guidance for secondary legislation of this type, which is of limited scope and application. The primary legislation had already introduced the concept of an interaction between the CFC rules and the debt cap rules, and interested parties had been given ample opportunity

to comment on that interaction during the wider CFC consultation process. Interested parties – in particular large accountancy firms – have engaged extensively with HMRC during 2012 in relation to the detailed application of the CFC regime, including the interaction with the debt cap rules. However, they have offered no additional or specific comments on these regulations.

9. Guidance

9.1 Draft guidance will be written for the HMRC International Manual and published on the HMRC website.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible. These regulations are intended to ensure that the debt cap and CFC rules interact correctly – they should not impose any additional compliance burden, as they will only apply in circumstances where the CFC and debt cap rules are already under consideration.

10.2 The impact on the public sector is nil.

10.3 A Tax Information and Impact Note covering this instrument was published on 21st March 2012 alongside the draft Schedule to the Finance Act 2012 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.

11. Regulating small business

11.1 The CFC legislation applies to small business. However, it is mainly large groups who have CFCs as part of their group structure. Thus, in practice, these regulations will apply mainly to large groups, and will not affect small business.

12. Monitoring & review

12.1 HMRC will keep these Regulations under review to ensure that they meet to policy objectives set out in section 7.

13. Contact

Mark Bryan at the HMRC Tel: 020 7147 2684 or email: mark.bryan@hmrc.gsi.gov.uk can answer any queries regarding the instrument.