
STATUTORY INSTRUMENTS

2012 No. 3044

CORPORATION TAX

The Insurance Companies and CFCs (Avoidance of Double Charge) Regulations 2012

<i>Made</i>	- - - -	<i>6th December 2012</i>
<i>Laid before the House of Commons</i>	- - - -	<i>7th December 2012</i>
<i>Coming into force</i>	- -	<i>31st December 2012</i>

The Treasury make the following Regulations in exercise of the powers conferred by section 213A of the Taxation of Chargeable Gains Act 1992⁽¹⁾.

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Insurance Companies and CFCs (Avoidance of Double Charge) Regulations 2012 and come into force on 31st December 2012.

(2) These Regulations have effect in relation to accounting periods beginning on or after 1st January 2013.

Introduction

2.—(1) These Regulations apply in any case where—

- (a) an insurance company to which the I-E rules apply is deemed to make a disposal under section 212 of the Taxation of Chargeable Gains Act 1992 (annual deemed disposal of holdings of unit trusts etc)⁽²⁾ of an interest in an offshore fund,
- (b) the offshore fund is a CFC, and
- (c) there is (or, but for these Regulations, would be) a CFC charge on the company referable to its relevant interest in the CFC for the accounting period in which the disposal is deemed to have been made.

(2) These Regulations modify the operation of—

⁽¹⁾ 1992 c. 12, section 213A was inserted by paragraph 87 of Schedule 16 to the Finance Act 2012 (c. 14).
⁽²⁾ Section 212 was amended by section 91(2)(b) of and Part 3(8) of Schedule 23 to the Finance Act 1993 (c. 34), section 134 of the Finance Act 1995 (c. 4), Part 3(12) of Schedule 43 to the Finance Act 2003 (c. 14), paragraph 11 of Schedule 26 to the Finance Act 2004 (c. 12), section 137 of the Finance Act 2006 (c. 25), section 39 of and paragraph 18 of Schedule 8, paragraphs 5(1) and (3) and 17(2) of Schedule 10 and Part 2(8) and (10) of Schedule 27 to the Finance Act 2007 (c. 11), paragraphs 225 and 249 of Schedule 1 to the Corporation Tax Act 2010 (c. 4), paragraph 165 of Schedule 8 to the Taxation (International and Other Provisions) Act 2010 (c. 8), paragraph 85 of Schedule 16 to the Finance Act 2012 and S.I. 2009/3001.

- (a) the CFC rules (see regulations 3 to 5), and
 - (b) section 212 of the Taxation of Chargeable Gains Act 1992 (see regulation 6).
- (3) In these Regulations—
- “principal CFC” means the CFC referred to in paragraph (1);
 - “associated CFC” means an offshore fund which is a CFC in which the insurance company has an indirect interest by virtue of having an interest in the principal CFC.

CFC control test

3. The CFC rules apply to the insurance company by reference to its interest in the principal CFC or any associated CFC only if the insurance company controls the principal CFC by virtue of section 371RE of TIOPA 2010 (control determined by reference to accounting standards)(**3**).

CFCs which are equity funds

4.—(1) The CFC rules do not apply to the insurance company by reference to its interest in the principal CFC or any associated CFC if—

- (a) at least 95% of the total assets of the CFC consists of shares, and
- (b) no more than 5% of the sum of the CFC’s assumed taxable total profits and exempt distribution income consists of interest or returns which are economically equivalent to interest.

(2) But this regulation does not apply if the insurance company enters into any arrangements the main purpose or one of the main purposes of which is—

- (a) to secure a tax advantage for itself or any other company in relation to the operation of the CFC rules, or
- (b) to avoid bringing an amount into account under Part 5 or 6 of CTA 2009 (loan relationships and relationships treated as loan relationships etc).

(3) In this regulation—

“arrangement” includes any agreement, scheme, transaction or understanding (whether or not legally enforceable);

“assumed taxable total profits” has the same meaning as in Part 9A of TIOPA 2010 (see section 371VA);

“economically equivalent to interest” has the same meaning as in section 486B(2) of CTA 2009(**4**);

“exempt distribution income” has the same meaning as in section 371CC(9) of TIOPA 2010;

“share” has the same meaning as in section 476(1) of CTA 2009;

“tax advantage” has the meaning given by section 1139 of CTA 2010(**5**).

Modification relating to I-E calculation

5. Section 371BH of TIOPA 2010 (companies carrying on BLAGAB) applies as if in subsection (6) after “step 1” there were inserted “or 2”.

(3) Part 9A of the Taxation (International and Other Provisions) Act 2010 (c. 8) which contains sections 371AA to 371VJ was inserted by paragraph 1 of Schedule 20 to the Finance Act 2012.

(4) 2009 c. 4, section 486B was inserted by paragraph 3 of Schedule 24 to the Finance Act 2009 (c. 10)

(5) 2010 c. 4, section 1139 was amended by paragraph 48 of Schedule 19 to the Finance Act 2011 (c. 11) and paragraph 40 of Schedule 20 to the Finance Act 2012.

Modification of section 212 of the Taxation of Chargeable Gains Act 1992

6.—(1) For the purposes of section 212 of the Taxation of Chargeable Gains Act 1992 the market value at the time of the deemed disposal under that section is adjusted as follows.

(2) The market value is treated as reduced by the total chargeable profits of the principal CFC and any associated CFC in any qualifying accounting period in so far as those profits are apportioned to the insurance company under the CFC rules and give rise to a CFC charge.

(3) But if the insurance company has received a distribution from the principal CFC or any associated CFC in any accounting period in which the disposal is deemed to have been made, the market value at the time of the deemed disposal is adjusted on a just and reasonable basis having regard to all the circumstances.

(4) For the purposes of paragraph (2), a “qualifying accounting period” is an accounting period of the principal CFC and any associated CFC which ends in an accounting period of the company in which a disposal of the company’s interest in the principal CFC is deemed to have been made under section 212.

(5) In this regulation, “accounting period” and “chargeable profits”, in relation to a CFC, have the same meanings as in Part 9A of TIOPA 2010 (see section 371VA of that Act).

*Desmond Swayne
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Two of the Lords Commissioners of Her
Majesty’s Treasury

6th December 2012

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to insurance companies to remove unnecessary administrative compliance burdens and avoid a double charge to tax in respect of investments held by insurance companies in controlled foreign companies (“CFCs”).

Regulation 1 provides for citation, commencement and effect. These Regulations have effect for accounting periods beginning on or after 1 January 2013 as the new regime for the taxation of insurance companies and the new regime for CFCs (“CFC rules”) introduced in the Finance Act 2012 both have effect from this date.

Regulation 2 sets out the case where these Regulations apply, gives an overview of the provisions made and defines terms used in the Regulations.

Regulation 3 excludes the operation of the CFC rules where an insurance company does not control a CFC, control here being determined by reference to accounting standards.

Regulation 4 excludes the operation of the CFC rules (subject to an anti-avoidance provision) where the CFC’s assets consist mainly of shares.

Regulation 5 modifies section 371BH (companies carrying on BLAGAB) of the Taxation (International and Other Provisions) Act 2010 to extend the exemption from the CFC rules where chargeable gains are brought into account in determining an insurance company’s I-E profit under section 73 of the Finance Act 2012.

Regulation 6 makes provision to avoid a double charge where an insurance company is deemed to dispose of an interest in a CFC under section 212 of the Taxation of Chargeable Gains Act 1992.

A Tax Information and Impact Note covering this instrument was published on 21 March 2012 alongside draft clauses for the 2012 Finance Bill 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.