STATUTORY INSTRUMENTS

2012 No. 3041

CORPORATION TAX

The Controlled Foreign Companies (Excluded Banking Business Profits) Regulations 2012

Made - - - -	*5th December 2012*
Laid before the House of Commons	*7th December 2012*
Coming into force - -	*1st January 2013*

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by section 371FD 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 Banking Business Profits) Regulations 2012.

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

Interpretation

2.—(1) In these Regulations—

"BIPRU 11" means the rules of that name set out in the FSA Handbook;

"the FSA Handbook" means the Handbook made by the Financial Services Authority under the Financial Services and Markets Act 2000(**b**) (as that Handbook has effect from time to time);

"GENPRU 2 Annex 2" means the rules of that name set out in the FSA Handbook;

"group consolidated accounts" means group accounts prepared in accordance with the requirements of Chapter 4 of Part 15 of the Companies Act 2006(**c**);

"group regulatory return" means consolidated financial information disclosed by a bank in accordance with BIPRU 11;

"regulatory return period" means the period to which a group regulatory return relates;

"total risk weighted assets" means the amount shown as such in the group regulatory return for a regulatory return period;

"total tier one capital" means the amount shown as such (or as "total tier 1 capital") in the group regulatory return for a regulatory return period;

(**a**) 2010 c. 8. Section 371FD was inserted by paragraph 1 of Schedule 20 to the Finance Act 2012 c. 14.
(**b**) 2000 c. 8.
(**c**) 2006 c. 46.

"UK banking group" means a group for which consolidated financial information is required to be compiled under BIPRU 11.

(2) In these Regulations, the following expressions have the meaning given by the FSA Handbook—

(a) "bank",

(b) "exposure",

(c) "group",

(d) "risk weighted exposure amount".

(3) In these Regulations, "net total tier one capital" so far as it is used in relation to a CFC means the CFC's total tier one capital after deductions, as calculated in accordance with the capital resources table shown in GENPRU 2 Annex 2.

Disapplication of Step 3 in section 371FA(1)

3.—(1) Paragraph (2) applies to an accounting period of a CFC if the CFC meets the conditions specified in regulation 4, as supplemented by regulation 5.

(2) Step 3 in section 371FA(1) is not to apply in relation to the CFC's trading finance profits in that accounting period so far as they arise from banking business carried on by the CFC in relation to which the CFC is regulated in the territory in which it is resident.

Regulatory capital requirements test

4.—(1) The first condition is that throughout the accounting period ("the relevant accounting period") the CFC is a member of a UK banking group ("the CFC's UK banking group").

(2) The second condition is that the CFC's tier one capital ratio at the end of the relevant accounting period does not exceed the capital ratio limit.

(3) The third condition is that it is reasonable to suppose that the average tier one capital ratio of the CFC during the relevant accounting period did not exceed the capital ratio limit.

Supplementary provisions

5. For the purposes of regulation 4—

(1) The capital ratio limit is 125% of the group tier one capital ratio of the CFC's UK banking group for its last regulatory return period ending before the beginning of the relevant accounting period.

(2) The group tier one capital ratio of a UK banking group for a regulatory return period is to be calculated using the following formula—

$$100\% \times A/B$$

where—

(a) A is the total tier one capital of the group for the regulatory return period or, if different, the amount calculated in the same way but using amounts (calculated in accordance with BIPRU 11) shown in the group consolidated accounts (if any) for the same period, and

(b) B is the total risk weighted assets of the group for the regulatory return period or, if different, the amount calculated in the same way but using amounts (calculated in accordance with BIPRU 11) shown in the group consolidated accounts (if any) for the same period.

(3) A CFC's tier one capital ratio at a time is to be calculated using the following formula—

$$100\% \times C/D$$

where—

(a) C is the net total tier one capital of the CFC at that time, and

(b) D is the aggregate of the risk weighted exposure amounts of the CFC for all its exposures at that time.

(4) In the formula in paragraph (3), C and D are to be determined on the assumptions that BIPRU 11 applies to the CFC and that the CFC is required by those rules to make a disclosure of financial information other than as part of a group regulatory return.

Simon Bowles
Jim Harra

5th December 2012 Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 371FD of the Taxation (International and Other Provisions) Act 2010 (c. 8) ("TIOPA"). The Regulations provide that if certain conditions are met then no controlled foreign company ("CFC") charge will arise under Chapter 6 of Part 9A of TIOPA in respect of the banking profits of the CFC. A CFC charge is a tax on a UK resident company which has an interest in a CFC.

Regulation 1 provides for citation, commencement and effect.

Regulation 2 provides for interpretation.

Regulation 3 disapplies Step 3 in section 371FA(1) of TIOPA in relation to a CFC's trading finance profits in an accounting period of the CFC so far as they arise from banking business carried on by the CFC in relation to which the CFC is regulated in the territory in which it is resident. Regulation 3 applies if the conditions in regulation 4 are met. The effect of disapplying Step 3 is that no CFC charge will arise under Chapter 6 of Part 9A of TIOPA in respect of the banking profits of the CFC for the accounting period.

Regulation 4 imposes three conditions. The first condition is that the CFC is a member of a UK banking group (its "parent group") which is required by the Financial Services Authority to prepare consolidated financial information. The second condition is that the CFC's tier one capital ratio at the end of the relevant accounting period does not exceed 125% of its parent group's tier one capital ratio. The third condition is that it is reasonable to suppose that the CFC's average tier one capital ratio during the relevant accounting period did not exceed 125% of its parent group's tier one capital ratio.

Regulation 5 provides formulae for calculating a CFC's tier one capital ratio and its parent group's tier one capital ratio.

A Tax Information and Impact Note covering this instrument was published on 21 March 2012 alongside the draft Schedule 20 to the Finance Act 2012 (c. 8) and is available on the HMRC website at www.hmrc.gov.uk/budget2012/tiin-0724.pdf. It remains an accurate summary of the impacts that apply to this instrument.

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