EXPLANATORY MEMORANDUM TO

THE CONTROLLED FOREIGN COMPANIES (REVERSAL OF STATE AID RECOVERY) REGULATIONS 2024

2024 No. 1307

1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) on behalf of His Majesty's Treasury and is laid before the House of Commons by Command of His Majesty.

2. Declaration

2.1 James Murray MP, Exchequer Secretary to the Treasury confirms that this Explanatory Memorandum meets the required standard.

2.2 Richard Thomas, Deputy Director for Base Protection Policy at HMRC confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Mark Bryan, CFC Policy team at HMRC, email: stateaidcfc@hmrc.gov.uk, phone number 03000 585607, can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These regulations will enable the repayment of tax and interest collected from multinational groups in accordance with a European Commission state aid decision which has now been overturned on appeal. They will also enable certain tax reliefs to be restored. In particular:

- The regulations require HMRC to issue a "reversal notice" to affected taxpayers. Such notices must cancel any charging notices and consequential amendment notices given to the taxpayer under the state aid recovery provisions in Schedule 7ZA Taxation (International and Other Provisions) Act 2010 ("TIOPA 2010").
- The reversal notices must also make any adjustments or amendments that are necessary, so far as reasonably practicable, to put the taxpayer back in the position that they would have been in absent the European Commission state aid decision and if the recovery provisions in Schedule 7ZA TIOPA 2010 had not had effect. This provision enables any relevant tax reliefs to be restored to the affected taxpayer.
- The regulations also require HMRC to cancel any interest charging notices issued to the taxpayer under the state aid recovery provisions.
- A reversal notice must be issued, and any interest charging notice cancelled, as soon as it is practical to do so.

- The regulations also provide that affected taxpayers can make appropriate or relevant consequential claims and amendments in the light of any adjustments or amendments made by a reversal notice.
- The regulations provide that any appeal against the relevant charging notice or consequential amendment notice issued under the state aid recovery provisions in Schedule 7ZA TIOPA 2010 will be treated as having been withdrawn once a reversal notice has been issued to the taxpayer.
- The regulations also provide that taxpayers can appeal against a reversal notice within 30 days of when that notice is given, specifying the grounds of appeal. The normal appeal provisions in Part 5 TMA 1970 apply to such an appeal, and on appeal a Tribunal may confirm or amend the reversal notice.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 These regulations enable the repayment of amounts of alleged illegal state aid that were collected in accordance with a 2019 European Commission state aid decision. Those amounts were collected under the recovery of unlawful state aid provisions in Schedule 7ZA TIOPA 2010, as introduced by the Taxation (Post Transition Period) Act 2020. European Union law requires amounts of alleged illegal state aid to be recovered from alleged beneficiaries, together with compound interest. The UK, together with affected taxpayers, appealed against the European Commission state aid decision. That appeal was upheld by the European Court of Justice on 19 September 2024, which annulled the European Commission's state aid decision. The recovery provisions in Schedule 7ZA TIOPA 2010 included a requirement that in the event the state aid decision was annulled, regulations should be introduced to put taxpayers back in the position that they would have been in, so far as reasonably practicable, absent the state aid decision and the application of the recovery provisions. These regulations cancel the tax and interest charges, restore tax reliefs that were used as a result of the state aid decision, and make all relevant adjustments to put companies into the position they would have been in absent the state aid decision, which has now been annulled.

What was the previous policy, how is this different?

5.2 There is no change of policy. The previous position was that, pending the outcome of an appeal against the European Commission state aid decision, the UK was required to recover the alleged aid, together with compound interest, from the alleged beneficiaries. The UK carried out this recovery in accordance with the relevant European Union law, having introduced specific recovery legislation to do so. As detailed above, that recovery legislation also required regulations to be introduced to repay all amounts collected and restore reliefs in the event that the state aid decision was annulled. As the European Court has now upheld the appeal against the state aid decision and annulled it, these regulations are required to put taxpayers back in the

position they would have been in, so far as reasonably practicable, absent the 2019 Commission decision.

6. Legislative and Legal Context

How has the law changed?

6.1 Schedule 7ZA TIOPA 2010 imposed additional tax and interest liabilities on certain UK companies on the basis of a European Commission state aid decision. These regulations apply to reverse the effect of Schedule 7ZA TIOPA 2010, to repay any additional tax and interest collected under those provisions, and to restore any tax reliefs that were used to offset or reduce any additional tax charges raised under those provisions. Paragraph 10 of Schedule 7ZA TIOPA 2010 includes a specific requirement for regulations to be introduced to reverse the effect of that Schedule in the event that the state aid decision is annulled. This is the first use of the power in that paragraph.

Why was this approach taken to change the law?

6.2 The relevant primary legislation in Schedule 7ZA TIOPA 2010 includes a specific requirement for such regulations to be made in the event that the state aid decision is annulled.

7. Consultation

Summary of consultation outcome and methodology

7.1 No consultation was undertaken in relation to these regulations. This was both because the regulations are relatively straightforward (simply reversing the previous imposition of certain tax and interest charges) and because consultation would have delayed the repayment of amounts to affected taxpayers. It was not considered practical to consult on any regulations ahead of the final decision from the European Court. Prior to that decision, there was no requirement to issue the regulations.

8. Applicable Guidance

8.1 HMRC will issue appropriate guidance on the application of these regulations by the time they come into force. Guidance will be issued directly to affected taxpayers.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A Tax Information and Impact Note covering this instrument was published on 8 December 2020 alongside Taxation (Post-transition Period) Act 2020 and is available on the GOV.UK website[1]. It remains an accurate summary of the impacts that apply to this instrument.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities, or voluntary bodies because these regulations only affect a small number of companies.

9.3 The legislation does not impact small or micro businesses.

[1] Taxation (Post-transition Period) Bill: https://www.gov.uk/government/publications/taxation-post-transition-period-bill

9.4 There is no, or no significant, impact on the public sector because the regulations only involve very limited amount of tax administration in relation to a small number of taxpayers.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 This legislation will not be subject to any specific monitoring, as it only involves the restoration of specific amounts to a small number of taxpayers. Once those repayments and adjustments have been made, the legislation will have no further application.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, The Exchequer Secretary at the Treasury has made the following statement:

"A review would be disproportionate when taking into account the economic impact of the statutory instrument".

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Exchequer Secretary to the Treasury has made the following statement regarding Human Rights:

"As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").