EXPLANATORY MEMORANDUM TO

THE CORPORATION TAX ACT 2010 (FACTORS DETERMINING SUBSTANTIAL COMMERCIAL INTERDEPENDENCE) REGULATIONS 2022

2022 No. 1203

1. Introduction

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

2. Purpose of the instrument

2.1 These Regulations set out the factors to be taken into account when determining, for the purposes of section 18G (attribution to persons of rights and powers of their partners) of the Corporation Tax Act 2010 (CTA 2010), whether a relationship between two companies amounts to "substantial commercial interdependence".

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

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

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

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Part 3A of the CTA 2010 provides for a "small profits rate" of corporation tax that is lower than the main rate. Section 18B of the CTA 2010 provides for marginal relief where a company is not eligible for the small profits rate but its profits nevertheless fall below a specified threshold amount. Section 18D of the CTA 2010 specifies that threshold amount is determined with reference to (amongst other things) whether a company has any associated companies. Section 18G of the CTA 2010 sets out the circumstances in which rights and powers of an individual's associates can be attributed to them, for the purpose of establishing whether companies are under common control and, therefore, associated with each other. It provides that companies are associated only where substantial commercial interdependence exists between them.

6.2 Section 18G(3) of the CTA 2010 allows His Majesty's Treasury, by regulations, to prescribe factors that are to be taken into account in determining whether a

relationship between two companies amounts to 'substantial commercial interdependence.' These Regulations set out the factors to be applied to make this determination.

7. Policy background

What is being done and why?

7.1 These Regulations exercise powers, conferred by section 18G(3) of the CTA 2010, to set out the factors to be taken into account when determining whether a relationship between two companies amounts to "substantial commercial interdependence".

7.2 These Regulations are relieving as they ensure that companies are not treated as associated by mere accident of circumstance and consequently not entitled to the small profits rate of corporation tax or marginal relief that provides a reduction in the main rate of corporation tax.

Explanations

7.3 The Regulations are supplementary to legislation introduced in section 7 of, and Schedule 1 to, the Finance Act 2021 that provides for a small profits rate of corporation tax from 1 April 2023 where a company's profits fall below a lower limit. Where a company's profits fall above the upper limit, those profits are chargeable at the main rate of corporation tax. Where profits fall between these limits, the profits are chargeable at the main rate of corporation tax and that sum is then reduced by an amount of marginal relief. The upper and lower limits are proportionately reduced by the number of associated companies of a company.

7.4 Section 18E(4) of the CTA 2010 provides that a company is associated with another company if one has control of the other or both are controlled by the same person or persons. The control tests at sections 450 and 451 CTA 2010 provide for the attribution of rights and powers of certain other persons (including rights in separate companies held by associates) for determining whether a person or group of persons control a company.

7.5 Section 18G CTA 2010 (attribution to persons of rights and powers of their partners), modifies the control rule where there is no substantial commercial interdependence between the two companies so that, in determining whether a person has control of two companies, the rights and powers of that person's associates (including spouses and business partners) as required by section 451(4) and (5) of the CTA 2010, are not taken into account.

7.6 Section 18G(3) provides that the Treasury may, by regulations, specify factors that are to be taken into account in determining whether a relationship between two companies amounts to "substantial commercial interdependence" for the purposes of section 18G. The purpose of these Regulations is to specify certain factors that are required to be taken into account.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are no plans to consolidate the legislation.

10. Consultation outcome

10.1 No consultation has taken place as this relates to a change in the corporation tax rate announced at Budget 2021.

11. Guidance

11.1 Guidance will be published in the Company Taxation Manual (https://www.gov.uk/hmrc-internal-manuals/company-taxation-manual) in December 2022.

12. Impact

12.1 The impact on business is that those businesses to which this measure applies will not be treated as associated with other companies through attribution of rights and powers of a person's associates unless there is substantial commercial interdependence between the companies. A company's eligibility for certain reduced rates of corporation tax is determined by, amongst other things, the number of associated companies it has. These Regulations result in certain companies not being treated as associated and the result is that such companies may pay a lower rate of tax as a result of being able to individually access the small profits rate or marginal relief from the main rate of corporation tax.

12.2 There is no, or no significant, impact on charities or voluntary bodies.

12.3 There is no, or no significant, impact on the public sector.

12.4 A Tax Information and Impact Note covering the corporation tax changes, of which these Regulations form part, was published on 3 March 2021. It is available on the website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins. It remains an accurate summary of the impacts that apply to this instrument.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed in relation to small business or to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that these Regulations are themselves intended specifically to assist small businesses. In particular, they apply in the context of a statutory scheme imposing a reduced-rate of corporation tax specifically for the benefit of small-businesses and operate to increase the number of companies that can benefit from that reduced rate.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that HMRC will monitor the impact through information collected from tax returns and receipts.

14.2 The instrument does not include a statutory review clause, since it is not required under section 28 of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Eva Upali at HMRC; Telephone: 03000 542 465 or email: eva.upali@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Martyn Rounding, Deputy Director for Corporation Tax, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 Victoria Atkins MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.