STATUTORY INSTRUMENTS

2012 No. 3045

CORPORATION TAX

The Taxation (International and Other Provisions) Act 2010 (Part 7) (Amendment) 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, in exercise of the powers conferred by section 298A(1), (4) and (5) of the Taxation (International and Other Provisions) Act 2010(**a**), make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Taxation (International and Other Provisions) Act 2010 (Part 7) (Amendment) Regulations 2012 and come into force on 1st January 2013.

Amendment of Part 7 of the Taxation (International and Other Provisions) Act 2010

2. The Taxation (International and Other Provisions) Act 2010 is amended as follows.

3.—(1) Amend section 292 (statement of allocated exemptions: requirements) as follows.

(2) In subsection (5) after "financing income amount" insert "(other than an amount determined in accordance with section 314A)".

(3) In subsection (5A) after "amount" insert "(other than an amount determined in accordance with section 314A)".

(4) After subsection (5A) insert—

"(5B) "The relevant details" in relation to a financing income amount determined in accordance with section 314A are—

(a) the fact that the amount is an amount determined in accordance with section 314A, and

(b) the relevant accounting period of the company mentioned in section 314A(1)(b).

(5C) For the purposes of subsection (4)(b) a proportion of a financing income amount determined in accordance with section 314A may be specified (instead of the full amount)."

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4. For section 293 substitute—

(**a**) 2010 c.8. Section 298A was inserted by paragraph 43 of Schedule 20 to the Finance Act 2012 c. 14.

"293 Statement of allocated exemptions: effect

(1) This section applies to a financing income amount of a company to which this Chapter applies that is specified in a statement of allocated exemptions under section 292(4)(b).

(2) If the amount is determined otherwise than in accordance with section 314A, the amount is not to be brought into account by the company for the purposes of corporation tax.

(3) If the amount is determined in accordance with section 314A, the sum charged on the company as mentioned in section 314A(1)(a) is to be re-determined at step 5 in section 371BC(1) on the basis set out in section 298A(2) (subject to section 298A(3)).".

5.—(1) Amend section 296 (failure of reporting body to submit statement of allocated exemptions) as follows.

(2) In subsection (2A) after "amount" insert "(other than an amount determined in accordance with section 314A)".

(3) After subsection (5) insert—

"(6) In relation to a financing income amount determined in accordance with section 314A which is reduced under this section, section 293(3) applies as if the proportion of the financing income amount represented by the amount of the reduction were specified in a statement of allocated exemptions under section 292(4)(b).".

6. In section 298 (balancing payments between group companies: no tax charge or relief)—

(a) in subsection (1) for paragraph (a) substitute—

"(a) a company ("company A") has for the relevant period of account one or more financing income amounts falling within a sub-paragraph below—

(i) a financing income amount determined otherwise than in accordance with section 314A which, because of section 293(2), is not brought into account or, because of section 296, is reduced, or

(ii) a financing income amount determined in accordance with section 314A in relation to which section 293(3) applies (whether by virtue of section 293(1) or section 296(6)),",

(b) after subsection (3) insert—

"(4) Where only a proportion of a financing income amount falling within subsection (1)(a)(ii) is taken into account for the purposes of section 293(3), only that proportion is to be taken into account for the purposes of subsection (3)(a).".

7. In section 314A (the financing income amounts of a chargeable company under Part 9A) after subsection (3) insert—

"(3A) In subsection (1)(a) the reference to a sum charged is to that sum before any re-determination under section 293(3).".

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)

Part 7 of the Taxation (International and Other Provisions) Act 2010 (c.8) ("TIOPA") deals with the tax treatment of financing costs and income of companies which are members of a worldwide group. Chapter 4 deals with exemption of financing income amounts. The new section 314A TIOPA includes a Controlled Foreign Company ("CFC") charge as a financing income amount for all debt cap purposes. Section 293 TIOPA exempts a financing income amount for the purposes of corporation tax. However, the CFC charge is not within the charge to corporation tax. Therefore it cannot be made exempt from corporation tax by virtue of section 293 TIOPA in the way that other financing income amounts of a company are exempted.

These Regulations address this issue by amending the relevant sections of Part 7, to ensure that a CFC charge which is a financing income amount can be treated as exempt where it is specified in a statement of allocated exemptions within section 292(4) TIOPA. The amendments come into force on 1st January 2013.

Regulation 3 amends section 292 TIOPA to include a CFC charge (which by virtue of section 314A is a financing income amount) in a statement of allocated exemptions.

Regulation 4 introduces a substituted section 293 TIOPA which leaves out the chargeable profits of a CFC from its relevant finance profits. Where only a proportion of a financing income amount is specified in a statement of allocated exemptions, a like proportion of its relevant finance profits will be left out. In both cases this results in the CFC's creditable tax being reduced on a just and reasonable basis.

Regulation 5 deals with the situation where section 292 TIOPA does not apply because a statement of allocated exemptions has not been made. It operates to apply the same reductions to the financing income amount as if an allocated statement of exemptions had been made for the purposes of section 293 TIOPA.

Regulation 6 amends section 298 TIOPA to include a section 314A amount (or a specified proportion of that amount) as a financing income amount for the purposes of balancing payments between group companies.

Regulation 7 applies so that references to a sum charged under section 314A are to that sum before the application of section 293(3) TIOPA.

A Tax Information and Impact Note covering this instrument was published on 21 March 2012 alongside the draft Schedule to the Finance Act 2012 (c. 14) and is available on the HMRC website at http://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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