



HM Revenue
& Customs

Corporation tax: controlled foreign companies: loss restriction

Who is likely to be affected?

Large UK multinational companies with overseas subsidiaries.

General description of the measure

The measure stops losses and other surplus expenses from being set off against the CFC charge on the profits of controlled foreign companies (CFCs).

A CFC charge arises to a UK company in relation to profits from its CFCs which have been diverted from the UK.

This measure removes the ability of UK companies to reduce or eliminate a CFC charge by offsetting UK losses and surplus expenses against that CFC charge.

More specifically, the measure prevents the use of the following three types of expenses against a CFC charge:

- losses and surplus expenses brought forward from previous years
- losses and surplus expenses of the current year
- losses and surplus expenses arising in other group companies (group relief).

The measure also amends the rules restricting the use of carried forward losses in Part 14B of CTA 2010 ("tax avoidance involving carried-forward losses") to put beyond doubt that they apply to arrangements involving CFCs.

Policy objective

The UK CFC regime targets profits which have been diverted from the UK. The aim of this measure is to improve the effectiveness of the CFC regime in both deterring the diversion of profits, and in taxing any profits which are diverted.

Under the current rules, UK losses can be offset against profits taxable under the CFC rules. This reduces the amount of UK tax actually paid in respect of those diverted profits.

Restricting the use of UK losses against CFC profits is in line with broader corporate tax policy objectives, which seek to balance competitiveness and fairness.

Background to the measure

The measure was announced at Summer Budget 2015.

The measure forms part of a package of measures which deal with avoidance, evasion and imbalances.

Detailed proposal

Operative date

The measure applies to profits which arise on or after 8 July 2015.

The measure includes commencement provisions which are intended to ensure that profits are allocated appropriately to the periods before and after the commencement date.

Current law

The CFC legislation is set out in TIOPA 2010, Part 9A.

The current law relating to the offset of UK losses and expenses against a CFC charge is set out in TIOPA 2010, Part 9A, Chapter 21, section 371UD.

Anti-avoidance legislation was introduced in Finance Act 2015 restricting the ability of companies to use carried-forward losses in relation to profits that arise in connection with certain arrangements. That legislation is set out in Part 14B of CTA 2010 (tax avoidance involving carried forward losses).

Proposed revisions

Legislation will be introduced to repeal TIOPA 2010, Part 9A, Chapter 21, section 371UD.

The effect of this change is that UK losses and expenses will not be available to set off against a CFC charge.

A CFC charge is computed by reference to the profits of the CFC for an accounting period.

For CFC accounting periods that start on or after the commencement date, the UK losses and expenses set out in section 371UD will no longer be available to set off against a CFC charge arising in respect of these periods.

For CFC accounting periods which begin before but end after the commencement date, this measure includes commencement provisions which apportion the CFC profits (and related CFC charge) on a just and reasonable basis. This will ensure that CFC profits (and related CFC charges) that arise before the commencement date can still have UK losses and expenses set off against them.

Changes will be made to Part 14B of CTA 2010 to clarify that it also applies to arrangements involving the use of carried-forward losses against profits apportioned under the CFC rules. This will apply only where the other conditions in Part 14B of CTA 2010 are also met.

Summary of impacts

Exchequer impact (£m)	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
	+65	+140	+190	+165	+150	+150
These figures are set out in Table 2.1 of summer Budget 2015 and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside Summer Budget 2015.						

Economic impact	<p>This measure is not expected to have any significant macroeconomic impacts.</p> <p>The costing allows for a number of behavioural responses by the UK multinationals affected by the measure that could reduce the yield.</p>
Impact on individuals, households and families	<p>The measure is not expected to have any impacts on individuals, households and families.</p> <p>The measure is not expected to impact on family formation, stability or breakdown.</p>
Equalities impacts	<p>There are no impacts on any group which shares a protected characteristic.</p>
Impact on business including civil society organisations	<p>This measure is expected to have a negligible impact on businesses and civil society organisations. Almost all of the impact is focussed on less than 100 large UK based multinationals, in particular those with offshore financing arrangements. There will be some small one-off familiarisation costs for these businesses, but no significant ongoing additional administrative burdens.</p>
Operational impact (£m) (HMRC or other)	<p>There will be no significant operational impacts for HMRC. The measure is a simple amendment to the existing CFC rules.</p>
Other impacts	<p><u>Small and micro business assessment</u>: there are expected to be no impacts on small or micro businesses as the measure affects large multinationals.</p> <p>Other impacts have been considered and none have been identified.</p>

Monitoring and evaluation

The impact of this measure will be evaluated by monitoring CFC tax receipts, and CFC data included on corporation tax returns.

Further advice

If you have any questions about this change, please contact Mark Bryan on 03000 585607 (email: mark.bryan@hmrc.gsi.gov.uk), or Tommy Li on 03000 542679 (email tommy.li@hmrc.gsi.gov.uk).

1 CFC charge: abolition of relief

- (1) In Part 9A of TIOPA 2010 (controlled foreign companies), omit section 371UD (relief against sum charged).
- (2) Accordingly, omit the following provisions –
 - (a) in CTA 2010, section 398D(6) and (6A);
 - (b) in FA 2012, in Schedule 20, paragraph 38;
 - (c) in FA 2015, in Schedule 2, paragraphs 6 and 8;
 - (d) in the Corporation Tax (Northern Ireland) Act 2015, in Schedule 2, paragraph 3.
- (3) The amendments made by this section have effect in relation to accounting periods of CFCs beginning on or after 8 July 2015.
- (4) Subsection (5) applies where a CFC has an accounting period beginning before 8 July 2015 and ending on or after that date (“the straddling period”).
- (5) For the purposes of determining the relief to which a chargeable company in relation to the straddling period is entitled under section 371UD of TIOPA 2010, or on the making of a claim would be so entitled –
 - (a) so much of the straddling period as falls before 8 July 2015, and so much of that period as falls on or after that date, are treated as separate accounting periods, and
 - (b) any amount charged on the company in accordance with section 371BC of TIOPA 2010 in relation to the straddling period is to be apportioned on a just and reasonable basis between those two periods.
- (6) In this section, “CFC”, “accounting period” in relation to a CFC, and “chargeable company” have the same meanings as in Part 9A of TIOPA 2010.

1 CFC charge: tax avoidance involving carried-forward losses

- (1) Part 14B of CTA 2010 (tax avoidance involving carried-over losses) is amended as follows.
- (2) In section 730G (disallowance of deductions for relevant carried-forward losses), in subsection (4), after “a relevant corporation tax advantage” insert “or a relevant CFC charge advantage”.
- (3) In that section, after subsection (5) insert –
 - “(5A) In this section “relevant CFC charge advantage” means a CFC charge advantage involving the deductible amount mentioned in subsection (3).”
- (4) In that section, in subsection (7) –
 - (a) in paragraph (a) –
 - (i) for “the” substitute “any”;
 - (ii) omit the final “and”;
 - (b) after that paragraph insert –
 - “(aa) any relevant CFC charge advantage, and”;
 - (c) in paragraph (b), at the end insert “or the relevant CFC charge advantage”.
- (5) In that section, in subsection (8), after “subsection (7)(a)” insert “, (aa)”.
- (6) In section 730H (interpretation), in subsection (1), after the definition of “arrangements” insert –
 - ““CFC charge advantage” means the avoidance or reduction of a charge or assessment to a charge under Part 9A of TIOPA 2010 (controlled foreign companies);”.
- (7) The amendments made by this section have effect for the purposes of calculating the taxable total profits of companies for accounting periods beginning on or after after 8 July 2015.
- (8) For the purposes of the amendments made by this section, where a company has an accounting period beginning before 8 July 2015 and ending on or after that date (“the straddling period”) –
 - (a) so much of the straddling period as falls before 8 July 2015, and so much of that period as falls on or after that date, are treated as separate accounting periods, and
 - (b) any amounts brought into account for the purposes of calculating the taxable total profits of the company for the straddling period are to be apportioned to the two separate accounting periods –
 - (i) in accordance with section 1172 of CTA 2010, and
 - (ii) if that method would produce a result that is unjust or unreasonable, on a just and reasonable basis.

Explanatory Note

Clause: CFC charge: abolition of relief

Summary

1. This clause introduces an amendment to the Controlled Foreign Companies (CFC) legislation in Part 9A of Taxation (International and other Provisions) Act (TIOPA) 2010. The amendment removes the ability for UK companies to set UK losses and expenses against a CFC charge. The amendment will have effect from 8 July 2015.

Details of the clause

2. Subsection (1) removes section 371UD, Part 9A, TIOPA 2010, which provides the mechanism for UK losses and expenses to be set against a CFC charge.
3. Subsection (2) makes a number of consequential amendments to remove references to the CFC loss relief provisions.
4. Subsection (3) provides for commencement. The change applies for CFC accounting periods which start on or after 8 July 2015.
5. Subsections (4) and (5) deal with CFC accounting periods which start before and finish after 8 July 2015. It provides for a CFC accounting period to be split into two separate periods, so that the CFC profits can be allocated between the two periods either side of the commencement date. The allocation is made on a just and reasonable basis so that, for example, profits which arise after the commencement date are allocated entirely to the later period.

Background note

6. The UK CFC rules (introduced by Finance Act 2012) are designed to reflect the way business operates in a global economy, whilst providing protection against the diversion of UK profits. A CFC charge arises to a UK company in relation to profits which have been diverted from the UK.
7. The amendments in this clause remove the ability of UK companies to reduce or eliminate a CFC charge by offsetting UK losses and surplus expenses against that CFC charge. This change is intended to ensure that the CFC rules operate as intended, and continue to protect the UK's corporation tax base.

Explanatory Note

Clause: CFC charge: tax avoidance involving carried-forward losses

Summary

1. This clause contains amendments to the loss carried-forward rules in Part 14B Corporate Tax Act (CTA) 2010, to ensure that those rules apply to arrangements involving the avoidance or reduction of a Controlled Foreign Company (CFC) charge. The changes in this clause apply for accounting periods which start on or after 8 July 2015.

Details of the clause

2. Subsections (2), (3) and (4) introduce a definition of a relevant CFC charge advantage into carried-forward loss rules in Part 14B CTA 2010. This definition ensures that arrangements which include a deduction in a CFC fall within the scope of these anti-avoidance rules.
3. Section 730G(4) of Part 14B CTA 2010 is amended to include a reference to "a relevant CFC charge advantage".
4. New section 730G(5A) defines a relevant CFC charge advantage as one which involves a deductible amount
5. New section 730G(7)(aa) includes the value of any relevant CFC charge advantage in the calculation of the tax value of the arrangements which fall within the scope of Part 14B.
6. Subsection (6) amends section 730H(1) to include a definition of a "CFC charge advantage", which for the purposes of Part 14B, is the avoidance or reduction of a CFC charge or assessment.
7. Subsection (7) provides for commencement. The changes in this clause apply for accounting periods which start on or after 8 July 2015.
8. Subsection (8) deals with accounting periods which start before and end after 8 July 2015. It provides for the accounting period to be split into two separate periods, so that the profits of the accounting period are be allocated between the two periods either side of the commencement date. The allocation is made on a time basis, unless a time apportionment would produce an unjust or unfair result, in which case the apportionment is on a just and reasonable basis.

Background note

9. The tax avoidance involving loss carried-forward rules in Part 14B CTA 2010 (introduced by Finance Act 2015) are anti-avoidance rules which are designed to prevent groups entering into tax planning arrangements to access losses carried-forward from previous accounting periods.

10. The amendments to the loss carried-forward rules in this clause ensure that arrangements which involve a deduction which reduces or eliminates a CFC charge are within the scope of the loss-carried forward rules. This ensures that Part 14B has the effect that was intended when it was originally introduced.