HM Revenue & Customs

HM Treasury

Corporation Tax: Controlled Foreign Company (CFC) State aid Recovery/Measure

Who is likely to be affected

UK-based multinational groups who have made claims for full or partial exemption under Chapter 9 of the CFC rules.

General description of the measure

This measure introduces specific powers to enable HM Revenue & Customs (HMRC) to raise CFC tax charges in relation to the requirement to recover State aid.

In particular, the measure enables HMRC to raise such charges for periods from 1 January 2013 to 31 December 2018.

These charges will be based on HMRC’s view of the amount of State aid to be recovered.

Taxpayers can appeal against such charges, but they will not be able to postpone any of the tax charged. The tax charged will be due 30 days after the charge has been raised.

HMRC will be able to vary these CFC tax charges to take account of additional information received; particularly in relation to any reliefs claimed by the taxpayer.

Policy objective

This measure is intended to ensure that the UK can recover State aid in line with an April 2019 European Commission State aid decision (“the Decision”) in relation to an aspect of the CFC rules.

While the UK is challenging the Decision via the courts, State aid rules require that any aid has to be recovered without delay, irrespective of whether the Decision is being challenged.

Introducing specific powers to facilitate recovery will enable HMRC to raise appropriate CFC tax charges for all relevant periods to ensure that State aid can be recovered from beneficiaries, in line with the Decision.

In order to facilitate State aid recovery, the measure prevents taxpayers from seeking postponement of any amounts charged. However, taxpayers’ rights of appeal against the amounts charged are preserved.

Background to the measure

This measure has not been announced previously, and no consultation has been undertaken. This is because the need for specific CFC State aid recovery powers has only become apparent as a result of the recovery process being undertaken by HMRC using existing procedures for the recovery of tax due.

The UK has a legal obligation to implement the Decision.

Detailed proposal

Operative date

The measure will have effect from the date of Royal Assent.

Current law

The CFC regime is contained in Taxation (International and other Provisions) Act 2010, (TIOPA 2010) Part 9A. In relation to this measure, the relevant provisions of Part 9A are Chapters 5 and 9, which deal with certain non-trade finance profits.

Section 371EB in Chapter 5 applies a CFC charge to non-trade finance profits to the extent that those profits have been generated by UK activities, identified by reference to significant people functions.

Chapter 9 provides for full or partial exemption for certain non-trade finance profits generated by loans to related parties.

The Commission Decision ((EU) 2019/1352) found that the UK CFC regime provided illegal State aid to the extent that non-trade finance profits which would otherwise have fallen within the scope of section 371EB (profits from UK activities) had benefitted from exemption under Chapter 9.

The CFC rules were amended with effect from 1 January 2019 so that Chapter 9 exemptions are no longer available in relation to such profits.

Proposed revisions

The measure introduces Schedule 7ZA into TIOPA 2010. This schedule provides for the recovery of State aid in accordance with the Decision.

The measure enables HMRC to issue charging notices which specify the additional amounts of CFC tax to be recovered for each accounting period. Such amounts have to be paid within 30 days.

Companies can appeal against such charging notices, but they cannot seek postponement of any amounts specified in the charging notice as being payable.

Companies can also make claims for relevant reliefs to be set off against additional amounts due. Such claims have to be made within 60 days of the receipt of a charging notice.

The measure also enables HMRC to charge interest on any additional amounts of CFC tax at a compound rate, in accordance with Commission Regulation (EC) 794/2004 rather than at the normal interest rates applicable to corporation tax.

The measure ensures the correct interaction between charging notices and any existing enquiries and assessments, to prevent any double charging.

In the event that the Decision is revoked or annulled and not replaced with a decision to similar effect, the measure provides that regulations must be made to cancel any charges raised as part of the State aid recovery process, and to put companies back in the position they would have been in the absence of the Decision.

Summary of impacts

Exchequer impact (£m)

2020 to 2021	2021 to 2022	2022 to 2023	2023 to 2024	2024 to 2025	2025 to 2026
nil	nil	nil	nil	nil	nil

This measure is not expected to have an Exchequer impact.

Economic impact

This measure is not expected to have any significant economic impacts.

Impact on individuals, households and families

There is no impact on individuals as this measure only affects businesses.

The measure is not expected to have an impact on family formation, stability or breakdown.

Equalities impacts

It is not anticipated that there will be impacts on groups sharing protected characteristics.

Impact on business including civil society organisations

The measure is expected to have a negligible impact on multinational businesses by enabling HMRC to raise CFC tax charges for the period 1 January 2013 to 31 December 2018 in order to recover State aid. There will be a small one-off cost of familiarisation with the rules. There are not expected to be any continuing costs, as these businesses are already engaging with HMRC in relation to the recovery of State aid. However, those groups will have to pay any additional tax charges when raised, without recourse to normal postponement rules. Customer experience is expected to stay broadly the same, as HMRC is already required to recover State aid from taxpayers, and businesses will not see much change to what they currently do now. This measure will apply a uniform recovery process for all years.

There are not expected to be any impacts on civil society organisations.

Operational impact (£m) (HMRC or other)

The measure will have a negligible operational impact on HMRC.

Other impacts

Other impacts have been considered and none has been identified.

Monitoring and evaluation

The measure will be kept under review through communication with affected taxpayer groups.

Further advice

If you have any questions about this change, please email: cfc.stateaid@hmrc.gov.uk

Declaration

The Right Honourable Jesse Norman MP, Financial Secretary to the Treasury, has read this tax information and impact note and is satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impacts of the measure.