Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

[[F1]PART 9A

CONTROLLED FOREIGN COMPANIES

[[F1]CHAPTER 18

CONTROL ETC

Textual Amendments

F1 Pt. 9A inserted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 20 para. 1** (with ss. 56-58)

371RA Overview of Chapter

(1) Sections 371RB and 371RE set out how to determine for the purposes of this Part if a company is "controlled" by another person or persons.

(2) [[F2]Sections 371RC and 371RG set] out certain cases in which a non-UK resident company which would not otherwise be a CFC is to be taken to be a CFC for the purposes of this Part.

Textual Amendments

F2 Words in s. 371RA(2) substituted (with effect in accordance with s. 20(5)(6) of the amending Act) by Finance Act 2019 (c. 1), **s. 20(3)**

371RB Legal and economic control

(1) A person ("P") "controls" a company ("C") if—

(a) by means of the holding of shares or the possession of voting power in or in relation to C or any other company, or

(b) by virtue of any powers conferred by the articles of association or other document regulating C or any other company,

P has the power to secure that the affairs of C are conducted in accordance with P's wishes.

(2) A person ("P") "controls" a company ("C") if it is reasonable to suppose that P would—

(a) if the whole of C's share capital were disposed of, receive (directly or indirectly and whether at the time of the disposal or later) over 50% of the proceeds of the disposal,

(b) if the whole of C's income were distributed, receive (directly or indirectly and whether at the time of the distribution or later) over 50% of the distributed amount, or

(c) in the event of the winding-up of C or in any other circumstances, receive (directly or indirectly and whether at the time of the winding-up or other circumstances or later) over 50% of C's assets which would then be available for distribution.

(3) For the purposes of subsection (2) any rights which P has as a relevant bank are to be ignored.

(4) In subsection (2)—

(a) in paragraph (a) the reference to C's share capital is to C's share capital excluding any share capital held by relevant banks,

(b) in determining for the purposes of paragraph (b) the percentage of the distributed amount which it is reasonable to suppose P would receive, ignore any rights of a relevant bank which would entitle the bank directly to receive a percentage of the distributed amount at the time of the distribution, and

(c) in determining for the purposes of paragraph (c) the percentage of C's assets which it is reasonable to suppose P would receive, ignore any rights of a relevant bank which would entitle the bank directly to receive a percentage of C's assets at the time of the winding-up or other circumstances.

(5) "Relevant bank" means a person ("RB") who—

(a) carries on banking business which is regulated in the territory in which RB is resident, and

(b) is acting, in the ordinary course of that business, in relation to money lent to C by RB in the ordinary course of that business.

(6) In subsections (2) and (4) references to P receiving any proceeds, amount or assets include references to the proceeds, amount or assets being applied (directly or indirectly) for P's benefit.

(7) If two or more persons, taken together, meet the requirement of subsection (1) or (2) for controlling a company, those persons are taken to control the company.

Modifications etc. (not altering text)

C1 S. 371RB applied by 2009 c. 4, s. 931E(4)(6) (as substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 20 para. 31** (with Sch. 20 para. 53))

371RC Legal and economic control: the 40% rule

(1) This section applies to a non-UK resident company ("C") if—

(a) in accordance with section 371RB(7), two persons ("the controllers") control C, and

(b) one of the controllers is UK resident and the other is non-UK resident.

(2) If conditions X and Y are met, C is to be taken to be a CFC (if C would not otherwise be).

(3) Condition X is that the UK resident controller has interests, rights and powers representing at least 40% of the holdings, rights and powers in respect of which the controllers fall to be taken as controlling C.

(4) Condition Y is that the non-UK resident controller has interests, rights and powers representing—

(a) at least 40%, but

(b) no more than 55%,

of the holdings, rights and powers in respect of which the controllers fall to be taken as controlling C.

371RD Legal and economic control: supplementary provision

(1) Subsection (2) applies for the purpose of—

(a) determining, in accordance with section 371RB, if a person, or two or more persons, control a company, or

(b) determining if condition X or Y in section 371RC is met in relation to two persons who control a company.

(2) There is to be attributed to each person all the rights and powers mentioned in subsection (3) (so far as they would not otherwise be attributed to the person).

(3) The rights and powers referred to in subsection (2) are—

(a) rights and powers which the person ("P") is entitled to acquire at a future date or which P will, at a future date, become entitled to acquire,

(b) rights and powers of other persons so far as they fall within subsection (4),

(c) if P is UK resident, rights and powers of any UK resident person who is connected with P, and

(d) if P is UK resident, rights and powers which would, in accordance with subsection (2), be attributed to a UK resident person ("Q") who is connected with P if Q were P (including rights and powers which would be attributed to Q by virtue of this paragraph).

(4) Rights and powers fall within this subsection so far as they—

(a) are required, or may be required, to be exercised in one or more of the following ways—

(i) on behalf of P,

(ii) under the direction of P, or

(iii) for the benefit of P, and

(b) are not confined, in a case where a loan has been made by one person to another, to rights and powers conferred in relation to property of the borrower by the terms of any security relating to the loan.

(5) In subsections (3)(b) to (d) and (4) references to a person's rights and powers include references to any rights or powers which the person—

(a) is entitled to acquire at a future date, or

(b) will, at a future date, become entitled to acquire.

(6) In determining for the purposes of this section whether one person is connected with another, section 1122(4) of CTA 2010 (as applied by section 371VF(2)(b)) is to be ignored.

(7) In this section and sections 371RB and 371RC references to—

(a) rights and powers of a person, or

(b) rights and powers which a person is or will become entitled to acquire,

include references to rights and powers which are exercisable by that person, or (when acquired by that person) will be exercisable, only jointly with one or more other persons.

Modifications etc. (not altering text)

C2 S. 371RD applied by 2009 c. 4, s. 931E(5)(6) (as substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 20 para. 31** (with Sch. 20 para. 53))

371RE Control determined by reference to accounting standards

(1) A person ("P") "controls" a company ("C") at any time when P is C's parent [F3]....

(2) But C is not to be taken to be a CFC by virtue of subsection (1) at the time in question unless the 50% condition is met at that time.

(3) To determine if the 50% condition is met at the time in question, assume—

(a) that C is a CFC at that time,

(b) that that time is itself an accounting period of the CFC, and

(c) that section 371BC (charging the CFC charge) applies in relation to the assumed accounting period.

(4) The 50% condition is met at the time in question if, as a result of steps 1 and 3 in section 371BC(1), at least 50% of the CFC's chargeable profits would be apportioned to P taken together with its UK resident **[**[F4]subsidiaries**]** (if any).

(5) **[**[F5]"Parent"**]** and **[**[F6]"subsidiary"**]** are to be read in accordance with **[**[F7]Financial Reporting Standard 102 issued in March 2013 by the Financial Reporting Council**]** , as from time to time modified, amended or revised.

(6) For the purposes of this section it does not matter if P does not prepare, or is not required to prepare, consolidated financial statements in accordance with **[**[F8]Financial Reporting Standard 102**]** (but see section 371RF(3)).

Textual Amendments

F3 Word in s. 371RE(1) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of The Taxation (International and Other Provisions) Act 2010 (Amendment to Section 371RE) (Controlled Foreign Companies) Regulations 2014 (S.I. 2014/3237), regs. 1(2), **2(a)**

F4 Word in s. 371RE(4) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Taxation (International and Other Provisions) Act 2010 (Amendment to Section 371RE) (Controlled Foreign Companies) Regulations 2014 (S.I. 2014/3237), regs. 1(2), **2(b)**

F5 Word in s. 371RE(5) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Taxation (International and Other Provisions) Act 2010 (Amendment to Section 371RE) (Controlled Foreign Companies) Regulations 2014 (S.I. 2014/3237), regs. 1(2), **2(c)(i)**

F6 Word in s. 371RE(5) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Taxation (International and Other Provisions) Act 2010 (Amendment to Section 371RE) (Controlled Foreign Companies) Regulations 2014 (S.I. 2014/3237), regs. 1(2), **2(c)(ii)**

F7 Words in s. 371RE(5) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Taxation (International and Other Provisions) Act 2010 (Amendment to Section 371RE) (Controlled Foreign Companies) Regulations 2014 (S.I. 2014/3237), regs. 1(2), **2(c)(iii)**

F8 Words in s. 371RE(6) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Taxation (International and Other Provisions) Act 2010 (Amendment to Section 371RE) (Controlled Foreign Companies) Regulations 2014 (S.I. 2014/3237), regs. 1(2), **2(d)**

371RF Power to amend section 371RE etc

(1) The Treasury may by regulations amend section 371RE as they consider appropriate to take account of—

- (a) any modification, amendment or revision of Financial Reporting Standard 2, or
- (b) any relevant document.

(2) "Relevant document" means—

- (a) a document which replaces Financial Reporting Standard 2, or
- (b) a document which replaces, modifies, amends or revises a document falling within paragraph (a) or a document which is a relevant document by virtue of this paragraph.

(3) The Treasury may by regulations make provision corresponding to section 371RE—

- (a) which operates by reference to any other accounting standard dealing with consolidated financial statements, and
- (b) which is to apply, instead of section 371RE, to determine if a person "controls" a company where that person prepares, or is required to prepare, consolidated financial statements in accordance with that standard.

(4) The Treasury may by regulations provide that, if specified conditions are met, a company is not to be taken to be a CFC by virtue of—

- (a) section 371RE, or
- (b) provision corresponding to section 371RE contained in regulations under subsection (3).

(5) In subsections (3) and (4) references to section 371RE are to that section as amended from time to time by regulations under subsection (1).

[F9 371RG Companies in which a UK resident company has more than a 50% investment

(1) If a UK resident company (whether alone or together with any associated enterprises) directly or indirectly has more than a 50% investment in a non-UK resident company, the non-UK resident company is to be taken to be a CFC (if it would not otherwise be).

(2) A person ("P") is an "associated enterprise" in relation to a UK resident company if—

(a) P directly or indirectly has a 25% investment in the company (or vice versa), or

(b) another person directly or indirectly has a 25% investment in each of P and the company.

(3) Section 259ND (meaning of "50% investment" and "25% investment") applies for the purposes of determining for the purposes of this section—

(a) whether a person has "more than a 50% investment" in another person, and

(b) whether a person has a "25% investment" in another person,

and, accordingly, references in section 259ND to "X%" are to be read as references to more than 50% or to 25% (as appropriate) and references in that section to "X % or more" are to be read as references to more than 50% or to 25% or more (as appropriate).**]]**

Textual Amendments

F9 S. 371RG inserted (with effect in accordance with s. 20(5)(6) of the amending Act) by Finance Act 2019 (c. 1), **s. 20(4)**

Changes to legislation:
There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Chapter 18.