



# Taxation (International and Other Provisions) Act 2010

## 2010 CHAPTER 8

### [<sup>F1</sup>PART 9A

#### CONTROLLED FOREIGN COMPANIES

### [<sup>F1</sup>CHAPTER 10

#### THE EXEMPT PERIOD EXEMPTION

#### Textual Amendments

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

#### **371JA Introduction to Chapter**

- (1) This Chapter sets out an exemption called “the exempt period exemption” for the purposes of section 371BA(2)(b).
- (2) Section 371JE also provides for adjustments of profits which would otherwise pass through the CFC charge gateway (see section 371BB(2)(b)) linked to the exempt period exemption.

#### **371JB The basic rule**

- (1) The exempt period exemption applies for a CFC's accounting period if—
  - (a) the accounting period ends during an exempt period of the CFC (see sections 371JC and 371JD),
  - (b) the subsequent period condition is met, and
  - (c) the chargeable company condition is met.

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*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Chapter 10. (See end of Document for details)*

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- (2) The subsequent period condition is met if—
- (a) the CFC does not cease to be a CFC before having at least one accounting period which begins after the end of the exempt period, and
  - (b) section 371BC (charging the CFC charge) does not apply in relation to the CFC's first accounting period to begin after the end of the exempt period (see section 371BA(2)).
- (3) The chargeable company condition is met if, at all times during the relevant period—
- (a) the charging condition in section 371JC is met, and
  - (b) each company which would be a chargeable company for the purposes of that condition is an original chargeable company or is connected with an original chargeable company.
- (4) In subsection (3)—
- “original chargeable company” means a company which, for the purposes of the charging condition in section 371JC, would be a chargeable company at the beginning of the exempt period, and
- “the relevant period” means the period which—
- (a) begins immediately after the beginning of the exempt period, and
  - (b) ends at the end of the CFC's first accounting period to begin after the end of the exempt period.
- (5) This section is subject to section 371JF (anti-avoidance).

### **371JC When does an exempt period begin?**

- (1) An exempt period of a CFC begins at any time (“the relevant time”) during an accounting period of the CFC if—
- (a) the initial condition is met,
  - (b) the charging condition is met at the relevant time, and
  - (c) at no time during the relevant preceding period (if there is one) is the charging condition met.
- (2) The initial condition is met if—
- (a) immediately before the relevant time, the company (“C”) which is the CFC is carrying on a business, or
  - (b) if the relevant time is the time at which C is incorporated or formed, C is incorporated or formed by one or more persons for the purpose of controlling one or more companies in circumstances where it is expected that an exempt period will begin in relation to one or more of those companies when C begins to control the company or companies.
- (3) To determine if the charging condition is met at any time, assume—
- (a) that the company which is the CFC is a CFC at the time in question if that is not otherwise the case,
  - (b) that the time in question 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.

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- (4) The charging condition is met at the time in question if, as a result of steps 1, 3 and 4 in section 371BC(1), there would be one or more chargeable companies in relation to the assumed accounting period.
- (5) “The relevant preceding period” means the period of 12 months ending immediately before the relevant time, excluding any part of that period during which the company which is the CFC does not exist.

### **371JD How long is an exempt period?**

- (1) Subject to what follows, an exempt period of a CFC lasts 12 months.
- (2) Subsection (3) applies if a notice is given to an officer of Revenue and Customs requesting that the length of an exempt period of a CFC be extended (or further extended).
- (3) An officer of Revenue and Customs may extend (or further extend) the length of the exempt period.
- (4) A notice under subsection (2) must be given no later than the end of the exempt period (as it stands at the time the notice is given).
- (5) A notice under subsection (2) may be given only by a company which, at the time the notice is given, would be a chargeable company for the purposes of the charging condition in section 371JC.

### **371JE Adjustment of profits passing through the CFC charge gateway**

- (1) This section applies for a CFC's accounting period if—
  - (a) the accounting period begins, but does not end, during an exempt period of the CFC, and
  - (b) the subsequent period condition and the chargeable company condition in section 371JB are both met.
- (2) The CFC's assumed total profits which would otherwise pass through the CFC charge gateway are to be adjusted to ensure that no profits which arise in the exempt period, as determined on a just and reasonable basis, pass through the CFC charge gateway.
- (3) This section is subject to section 371JF (anti-avoidance).

### **371JF Anti-avoidance**

- (1) The exempt period exemption does not apply for a CFC's accounting period (“the relevant accounting period”) if condition A or B is met.
- (2) Condition A is that—
  - (a) an arrangement is entered into at any time,
  - (b) the main purpose, or one of the main purposes, of the arrangement is to secure a tax advantage for any person,
  - (c) the arrangement is linked to the exempt period exemption applying or being expected to apply (apart from this section)—
    - (i) for the relevant accounting period, or

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- (ii) for that period and one or more other accounting periods of the CFC, and
- (d) the arrangement involves one or both of the following—
  - (i) the CFC holding assets which give rise to non-trading finance profits or trading finance profits of the CFC, or
  - (ii) the CFC holding intellectual property which gives rise to any income of the CFC.
- (3) Condition B is that—
  - (a) an arrangement is entered into at any time,
  - (b) in consequence of the arrangement, the length of any accounting period of the CFC is less than 12 months, and
  - (c) the main purpose, or one of the main purposes, of the arrangement is to secure that the exempt period exemption applies—
    - (i) for the relevant accounting period, or
    - (ii) for that period and one or more other accounting periods of the CFC.
- (4) In this section references to the exempt period exemption include references to section 371JE.

### **371JG Amendment of company tax returns**

- (1) This section applies in relation to a company's company tax return for a corporation tax accounting period if an exempt period of a CFC falls (wholly or partly) in the corporation tax accounting period.
- (2) Any amendment of the return which relates to the application (or non-application) of the exempt period exemption or section 371JE for an accounting period of the CFC may be made by the company at any time no later than 12 months after the relevant filing date.
- (3) “The relevant filing date” means the date which is the filing date under paragraph 14 of Schedule 18 to FA 1998 for the company's company tax return for its corporation tax accounting period in which ends the CFC's first accounting period to begin after the end of the exempt period.
- (4) “Corporation tax accounting period” means an accounting period for corporation tax purposes.]

**Changes to legislation:**

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