



Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

[^{F1}PART 9A

CONTROLLED FOREIGN COMPANIES

[^{F1}CHAPTER 17

APPORTIONMENT OF A CFC'S CHARGEABLE PROFITS AND CREDITABLE TAX

Textual Amendments

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

Introduction

371QA Application of Chapter

This Chapter applies for the purpose of apportioning a CFC's chargeable profits and creditable tax for an accounting period among the relevant persons as required by step 3 in section 371BC(1).

371QB Provision about interpretation

- (1) This section applies for the purposes of this Chapter.
- (2) Section 371OB applies as it applies for the purposes of Chapter 15.
- (3) "Ordinary shares", in relation to any company, means shares of a single class, however described, which is the only class of share issued by the company.

Status: Point in time view as at 17/07/2012.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Chapter 17. (See end of Document for details)

- (4) For the purposes of subsection (3)—
 - (a) “share” includes a fraction of a share, and
 - (b) shares issued by a company which are paid up to different amounts are not to be taken to be of a single class.
- (5) A person (“P”) holds ordinary shares in the CFC “indirectly” if P directly holds ordinary shares in a company which is share-linked to the CFC.
- (6) A company is “share-linked” to the CFC if it has an interest in the CFC only by virtue of it holding directly—
 - (a) ordinary shares in the CFC, or
 - (b) ordinary shares in another company which is share-linked to the CFC (whether by virtue of paragraph (a) or this paragraph),
 and “share-linked company” means a company which is share-linked to the CFC.

How are the apportionments to be made?

371QC The basic rules

- (1) If conditions X to Z are met, the CFC's chargeable profits and creditable tax are to be apportioned among the relevant persons in accordance with section 371QD.
- (2) If not, the percentage of the chargeable profits and the percentage of the creditable tax to be apportioned to each relevant person is to be determined on a just and reasonable basis.
- (3) Condition X is that the relevant persons all have their relevant interests by virtue only of their holding, directly or indirectly, ordinary shares in the CFC.
- (4) Condition Y is that each relevant person meets the requirement that the person is either—
 - (a) UK resident at all times during the accounting period, or
 - (b) non-UK resident at all times during the accounting period.
- (5) Condition Z is that no company which has an intermediate interest in the CFC at any time in the accounting period has that interest otherwise than by virtue of holding, directly or indirectly, ordinary shares in the CFC.
- (6) A company (“C”) has an “intermediate interest” in the CFC if—
 - (a) C has an interest in the CFC, and
 - (b) one or more of the relevant persons have relevant interests in the CFC by virtue of having an interest in C.

371QD Apportionments to be made in proportion to shareholding

- (1) If conditions X to Z in section 371QC are met, apply subsections (2) and (3) to each relevant person.
- (2) Determine the percentage (“P%”) of the issued ordinary shares in the CFC represented by the relevant person's relevant interest.
- (3) P% of the CFC's chargeable profits and P% of the CFC's creditable tax is then apportioned to the relevant person.

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- (4) This section is supplemented by sections 371QE and 371QF.

371QE Indirect shareholdings

- (1) This section applies to the relevant interest of a relevant person (“R”) so far as R has that interest by virtue of holding, indirectly, ordinary shares in the CFC (“the relevant shares”).
- (2) The percentage of the issued ordinary shares in the CFC represented by R's relevant interest (so far as this section applies to it) is given by the following formula—

$$P \times S$$

where—

P is the product of the appropriate fractions of R and each of the share-linked companies through which R indirectly holds the relevant shares, other than the share-linked company which directly holds the relevant shares, and

S is the percentage of the issued ordinary shares in the CFC which the relevant shares represent.

- (3) “The appropriate fraction”, in relation to any person who directly holds ordinary shares in a share-linked company, means that fraction of the issued ordinary shares in the share-linked company which the holding represents.
- (4) If R has different indirect holdings of shares in the CFC (as in the case where different shares are held through different share-linked companies)—
- apply subsection (2) separately in relation to each holding (reading references to the relevant shares accordingly), and
 - then add the separate results together to give the total percentage of the issued ordinary shares in the CFC represented by R's relevant interest (so far as this section applies to it).

371QF Variable shareholdings

- (1) This section applies if the percentage of the issued ordinary shares in the CFC represented by a relevant person's relevant interest varies during the accounting period.
- (2) That percentage is taken to be the percentage equal to the sum of the relevant percentages for each holding period.
- (3) “Holding period” means a part of the accounting period during which the percentage of the issued ordinary shares in the CFC represented by the relevant person's relevant interest remains the same.
- (4) “Relevant percentage”, in relation to a holding period, means the percentage given by the following formula—

$$\frac{P \times H}{A}$$

where—

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P is the percentage of the issued ordinary shares in the CFC represented by the relevant person's relevant interest during the holding period,

H is the number of days in the holding period, and

A is the number of days in the accounting period.

371QG Anti-avoidance

- (1) This section applies in relation to an accounting period (“the relevant accounting period”) of a CFC if—
 - (a) at any time an arrangement is entered into, and
 - (b) the main purpose, or one of the main purposes, of the arrangement is to obtain for any person a tax advantage within section 1139(2)(da) of CTA 2010 in relation to—
 - (i) the relevant accounting period, or
 - (ii) that period and one or more other accounting periods of the CFC.
- (2) The CFC's chargeable profits and creditable tax for the relevant accounting period are to be apportioned in accordance with section 371QC(2) (and not section 371QD if that section would otherwise apply).
- (3) The apportionments must (in particular) be made in a way which, so far as practicable, counteracts the effects of the arrangement mentioned in subsection (1)(a) so far as those effects are referable to the purpose mentioned in subsection (1)(b).]

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