



# Taxation (International and Other Provisions) Act 2010

## 2010 CHAPTER 8

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

#### CONTROLLED FOREIGN COMPANIES

#### CHAPTER 3

THE CFC CHARGE GATEWAY: DETERMINING WHICH (IF ANY) OF CHAPTERS 4 TO 8 APPLIES

#### [<sup>F1</sup>371CA] Does Chapter 4 apply?

- (1) Chapter 4 (profits attributable to UK activities) applies for a CFC's accounting period unless condition A, B, C or D is met.
- (2) Condition A is that, at no time during the accounting period, does the CFC hold assets or bear risks under an arrangement to which both subsections (3) and (4) apply.
- (3) This subsection applies to an arrangement if—
  - (a) the main purpose, or one of the main purposes, of the arrangement is to reduce or eliminate any liability of any person to tax or duty imposed under the law of the United Kingdom, and
  - (b) in consequence of the arrangement, at any time the CFC expects its business to be more profitable than it would otherwise be (other than negligibly so).
- (4) This subsection applies to an arrangement if—
  - (a) there is an expectation that, as a consequence of the arrangement, one or more persons will have liabilities to tax or duty imposed under the law of any territory reduced or eliminated, and
  - (b) it is reasonable to suppose that, but for that expectation, the arrangement would not have been made.

*Status: Point in time view as at 17/07/2012.*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, Section 371CA. (See end of Document for details)*

- (5) Condition B is that, at no time during the accounting period, does the CFC have any UK managed assets or bear any UK managed risks (see subsection (9)).
- (6) Condition C is that, at all times during the accounting period, the CFC has itself the capability to ensure that the CFC's business would be commercially effective were—
- (a) the UK managed assets of the CFC, and
  - (b) the UK managed risks borne by the CFC,
- to stop being UK managed.
- (7) In subsection (6) the reference to the capability of the CFC includes (in particular) its capability to select persons not connected with it to provide it with goods or services and to manage the transactions it has with persons not connected with it.
- (8) In determining if the requirements of subsection (6) are met at any time (“the relevant time”) during the accounting period, assume—
- (a) that the CFC would continue to carry on the same business as it is actually carrying on at the relevant time, and
  - (b) that no relevant UK activities (see subsection (10)) by which any asset or risk was UK managed would be replaced—
    - (i) by activities carried on by any person connected with the CFC at any time, or
    - (ii) in any other way which relies to any extent upon the CFC receiving (directly or indirectly) resources or other assistance from a person connected with it at any time.
- (9) An asset or risk is “UK managed” if—
- (a) the acquisition, creation, development or exploitation of the asset, or
  - (b) the taking on, or bearing, of the risk,
- is managed or controlled to any significant extent by way of relevant UK activities.
- (10) “Relevant UK activities” means activities carried on in the United Kingdom—
- (a) by the CFC, otherwise than through a UK permanent establishment, or
  - (b) by companies connected with the CFC under arrangements which would not, it is reasonable to suppose, be entered into by companies not connected with each other.
- (11) Condition D is that the CFC's assumed total profits consist only of one or both of the following—
- (a) non-trading finance profits;
  - (b) property business profits.]

#### Textual Amendments

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

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