Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

[F1PART 9A

CONTROLLED FOREIGN COMPANIES

Textual Amendments

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

CHAPTER 1

OVERVIEW

371AA Overview of Part

(1) A charge ("the CFC charge") is charged under this Part on UK resident companies which have certain interests in CFCs.

(2) The CFC charge is charged by reference to the chargeable profits of CFCs.

(3) A "CFC" is a non-UK resident company which is controlled by a UK resident person or persons (but see subsection (6)).

(4) Chapter 2 sets out the basic details of the CFC charge, including—

(a) the CFC charge gateway (through which profits of a CFC must pass in order to be chargeable profits), and

(b) the steps to be taken for charging the CFC charge.

(5) Chapter 2 is supplemented by Chapters 3 to 17; in particular—

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Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 9A. (See end of Document for details)*

(a) Chapter 3 sets out how to determine which (if any) of Chapters 4 to 8 apply in relation to the profits of a CFC,

(b) so far as applicable, Chapters 4 to 8 set out how to determine which profits (if any) of a CFC pass through the CFC charge gateway, with—

(i) Chapter 4 dealing with profits attributable to UK activities,

(ii) Chapter 5 dealing with non-trading finance profits,

(iii) Chapter 6 dealing with trading finance profits,

(iv) Chapter 7 dealing with profits derived from captive insurance business, and

(v) Chapter 8 dealing with cases involving solo consolidation,

(c) Chapter 9 sets out exemptions for profits from qualifying loan relationships,

(d) Chapters 10 to 14 set out full exemptions from the CFC charge,

(e) Chapter 15 sets out how to determine the persons whose interests in a CFC are relevant to the charging of the CFC charge,

(f) Chapter 16 sets out how to determine the creditable tax of CFCs (for which credit is given against chargeable profits), and

(g) Chapter 17 sets out how to apportion a CFC's chargeable profits and creditable tax among the persons who have relevant interests in the CFC.

(6) Chapter 18 explains the concept of "control" and also sets out certain cases in which a non-UK resident company is to be taken to be a CFC even though it is not controlled by a UK resident person or persons.

(7) Chapter 19 explains the concepts of "assumed taxable total profits", "assumed total profits" and "the corporation tax assumptions" which are referred to in this Part.

(8) Chapter 20 contains rules for determining the territory in which a CFC is resident for the purposes of this Part.

(9) Chapter 21 contains provision about the management of the CFC charge, including the collection of sums charged.

(10) Chapter 22 contains supplementary provision, including definitions of terms used in this Part.

(11) Nothing in this Part affects—

(a) the liability to corporation tax of a non-UK resident company in accordance with section 5(2) and (3) of CTA 2009 (non-UK resident companies within the charge to corporation tax), or

(b) the determination of such a company's chargeable profits for corporation tax purposes in accordance with Chapter 4 of Part 2 of CTA 2009.

(12) This Part is part of the Corporation Tax Acts.

CHAPTER 2

THE CFC CHARGE

371BA Introduction to the CFC charge

(1) The CFC charge is charged in relation to accounting periods of CFCs in accordance with section 371BC.

(2) Section 371BC applies in relation to a CFC's accounting period if (and only if)—
  (a) the CFC has chargeable profits for the accounting period, and
  (b) none of the exemptions set out in Chapters 10 to 14 applies for the accounting period.

(3) A CFC's chargeable profits for an accounting period are its assumed taxable total profits for the accounting period determined on the basis—
  (a) that the CFC's assumed total profits for the accounting period are limited to only so much of those profits as pass through the CFC charge gateway, and
  (b) that amounts are to be relieved against the assumed total profits at step 2 in section 4(2) of CTA 2010 only so far as it is just and reasonable for them to be so relieved having regard to paragraph (a).

(4) "The CFC charge gateway" is explained in section 371BB.

(5) Subsection (3) is subject to section 371SB(7) and (8) (which relates to settlement income included in a CFC's chargeable profits).

371BB The CFC charge gateway

(1) Take the following steps to determine the extent to which a CFC's assumed total profits for an accounting period pass through the CFC charge gateway.

Step 1 In accordance with Chapter 3, determine which (if any) of Chapters 4 to 8 apply for the accounting period. If none of those Chapters applies, none of the CFC's assumed total profits pass through the CFC charge gateway and step 2 is not to be taken.

Step 2 Determine the extent to which the CFC's assumed total profits fall within any of the Chapters which applies for the accounting period. The CFC's assumed total profits pass through the CFC charge gateway so far as they fall within any of those Chapters.

(2) Subsection (1) is subject to—
  (a) Chapter 9 (exemptions for profits from qualifying loan relationships), and
  (b) section 371JE (which provides for adjustments of profits which would otherwise pass through the CFC charge gateway linked to the exemption set out in Chapter 10).

Modifications etc. (not altering text)

C1 S. 371BB applied (with modifications) by 2009 c. 4, ss. 18H-18HE (as substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 20 para. 6** (with Sch. 20 para. 55(2))

371BC Charging the CFC charge

(1) Take the following steps if, as provided for by section 371BA(2), this section applies in relation to a CFC's accounting period.

Step 1 In accordance with Chapter 15, determine the persons ("the relevant persons") who have relevant interests in the CFC at any time during the accounting period. If none of the relevant persons is a company which meets the UK residence condition (see subsection (2)), the CFC charge is not charged in relation to the accounting period and no further steps are to be taken.

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Step 2 In accordance with Chapter 16, determine the CFC's creditable tax for the accounting period.

Step 3 In accordance with Chapter 17, apportion the CFC's chargeable profits and creditable tax among the relevant persons.

Step 4 Take each relevant person which is a company meeting the UK residence condition and, in accordance with section 371BD, determine if the company is a chargeable company. If there are no chargeable companies, the CFC charge is not charged in relation to the accounting period and step 5 is not to be taken.

Step 5 The CFC charge is charged on each chargeable company as follows. A sum equal to—

(a) corporation tax at the appropriate rate on P% of the CFC's chargeable profits, less

(b) Q% of the CFC's creditable tax,

is charged on the chargeable company as if it were an amount of corporation tax charged on the company for the relevant corporation tax accounting period. This step is subject to sections 371BG and 371BH.

(2) A company meets the UK residence condition if it is UK resident at a time during the accounting period when it has a relevant interest in the CFC.

(3) For the purpose of taking step 5 in subsection (1) in relation to a chargeable company ("CC")—

"the appropriate rate", subject to section 371BH, means—

(a) the rate of corporation tax applicable to CC's profits of the relevant corporation tax accounting period on which corporation tax is chargeable (see section 4(1) and (2) of CTA 2010), or

(b) if there is more than one such rate, the average rate over the whole of the relevant corporation tax accounting period,

"P%" means the percentage of the CFC's chargeable profits apportioned to CC,

"Q%" means the percentage of the CFC's creditable tax apportioned to CC, and

"the relevant corporation tax accounting period" means CC's accounting period for corporation tax purposes during which the CFC's accounting period ends.

371BD Chargeable companies

(1) A company ("C") which meets the UK residence condition is a chargeable company for the purposes of step 4 in section 371BC(1) if the total of the following percentages is at least 25%—

(a) the percentage of the CFC's chargeable profits apportioned to C at step 3 in section 371BC(1), and

(b) the percentages (if any) of those profits which are apportioned at that step to relevant persons who, at any time during the accounting period, are connected or associated with C.

(2) Subsection (1) is subject to sections 371BE and 371BF.

371BE Companies which are managers of offshore funds etc

(1) A company ("C") is not a chargeable company for the purposes of step 4 in section 371BC(1) if—

(a) the CFC is an offshore fund (as defined in section 355),
(b) the genuine diversity of ownership condition set out in regulation 75 of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001) is met in relation to the fund,
(c) C meets the fund management condition, and
(d) apart from this section, a sum of no more than £500,000 would be charged on C as a chargeable company at step 5 in section 371BC(1).

(2) In applying regulation 75 of the 2009 Regulations for the purposes of subsection (1)(b), the reference in paragraph (1) to the period of account is to be read as a reference to the accounting period.

(3) C meets the fund management condition if at all times during the accounting period when C has relevant interests in the offshore fund—
(a) the assets of the offshore fund are managed by C or a person connected with C,
(b) C or the person connected with C receives out of those assets fees for managing those assets, and
(c) C holds its relevant interests only or mainly for the purpose of attracting participants (as defined in section 362) to the fund who are not connected with C.

(4) If the accounting period is less than 12 months, the amount specified in subsection (1)(d) is to be reduced proportionately.

371BF Companies which are participants in offshore funds

(1) A company ("C") is not a chargeable company for the purposes of step 4 in section 371BC(1) if—
(a) the CFC is an offshore fund (as defined in section 355),
(b) at the relevant time and at all subsequent relevant times, C reasonably believes that the requirement of section 371BD(1) will not be met in relation to it, and
(c) the meeting of that requirement in relation to C is in no way attributable to any step—
(i) which was taken by C or any person connected or associated with C, and
(ii) which, at the time it was taken, could reasonably have been expected to cause that requirement to be met.

(2) "The relevant time" means—
(a) the beginning of the accounting period, or
(b) if C has no relevant interests in the offshore fund at the beginning of the accounting period, the time when C first has a relevant interest during the accounting period.

(3) "Subsequent relevant time" means any time during the accounting period at which there is an increase or some other change in the relevant interests in the offshore fund which C has.

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371BG Companies holding shares as trading assets etc

(1) Subsection (2) applies if conditions A to C are met in relation to a relevant interest, or a part of a relevant interest, which a chargeable company ("CC") has in the CFC at all times during the CFC's accounting period.

(2) Step 5 in section 371BC(1) is to be taken in relation to CC on the following basis.

(3) That basis is—

(a) so much of P% as is attributable to CC having the relevant interest, or the part of a relevant interest, during the CFC's accounting period is to be left out of P%, and

(b) so much of Q% as is so attributable is to be left out of Q%.

(4) Condition A is that, at all times during the CFC's accounting period, CC has the relevant interest, or the part of a relevant interest, by virtue of its holding shares ("the relevant shares") in the CFC (directly or indirectly).

(5) Condition B is that any increase in the value of the relevant shares at any time during the relevant corporation tax accounting period is (or would be) income, or brought into account in determining any income, of CC chargeable to corporation tax for that period.

(6) Condition C is that any dividend or other distribution received at any time during the relevant corporation tax accounting period by CC from the CFC (directly or indirectly) by virtue of its holding the relevant shares is (or would be) income, or brought into account in determining any income, of CC chargeable to corporation tax for that period.

(7) Subsection (8) applies if—

(a) CC has the relevant interest, or the part of a relevant interest, by virtue of section 371OB(3) or (4),

(b) the CFC is an offshore fund (as defined in section 355) which does not meet the qualifying investments test in section 493 of CTA 2009, and

(c) conditions B and C would be met but for the offshore fund not meeting that test.

(8) Conditions B and C are to be taken to be met.

(9) This section is subject to section 371BH.

371BH Companies carrying on BLAGAB

(1) Subsection (2) applies in relation to a chargeable company ("CC") if—

(a) CC carries on basic life assurance and general annuity business during the relevant corporation tax accounting period,

(b) the I-E rules apply to CC for the relevant corporation tax accounting period, and

(c) the following are met in relation to a relevant interest, or a part of a relevant interest, which CC has in the CFC at all times during the CFC's accounting period—

(i) condition D,

(ii) condition E or F (or both), and

(iii) condition G.

(2) An additional sum is charged on CC at step 5 in section 371BC(1) and, for this purpose, step 5 is to be taken on the following basis.

(3) That basis is—

(a) in paragraph (a) at step 5, the reference to the appropriate rate is to be read as a reference to—

(i) the policyholders' rate of tax under section 102 of FA 2012 applicable to the I-E profit for the relevant corporation tax accounting period, or

(ii) if there is more than one such rate, the average rate over the whole of the relevant corporation tax accounting period, and

(b) any reduction of P% or Q% under section 371BG(3) by reference to any relevant interest of CC is to be ignored, but—

(i) P% is to be reduced so that it represents only the policyholders' share of the BLAGAB component of the apportioned profit (see subsections (10) to (12)), and

(ii) Q% is to be reduced by the same proportion as P% is reduced under sub-paragraph (i).

(4) Condition D is that, at all times during the CFC's accounting period, CC has the relevant interest, or the part of a relevant interest, by virtue of its holding shares ("the relevant shares") in the CFC (directly or indirectly).

(5) Condition E is met if the following requirement is met in relation to a time during the relevant corporation tax accounting period.

(6) The requirement is that any increase (or any part of any increase) in the value of the relevant shares which occurs at that time is not (or would not be) brought into account at step 1 in section 73 of FA 2012 in determining whether CC has an I-E profit for the relevant corporation tax accounting period.

(7) Condition F is met if the following requirement is met in relation to a time during the relevant corporation tax accounting period.

(8) The requirement is that any dividend or other distribution (or any part of any dividend or other distribution) received at that time by CC from the CFC (directly or indirectly) by virtue of its holding the relevant shares is not (or would not be) brought into account at step 1 in section 73 of FA 2012 in determining whether CC has an I-E profit for the relevant corporation tax accounting period.

(9) Condition G is that the assets which represent the relevant interest, or the part of a relevant interest, during the CFC's accounting period are (to any extent) assets held by CC for the purposes of CC's long-term business.

(10) "The apportioned profit" means so much of P% as is attributable to CC having the relevant interest, or the part of a relevant interest, during the CFC's accounting period.

(11) Take the following steps to determine the "BLAGAB component" of the apportioned profit.

Step 1 Assume that the apportioned profit is income falling within section 74(1)(j) of FA 2012 paid to CC at the end of the CFC's accounting period.

Step 2 Calculate how much of that income would be referable, in accordance with Chapter 4 of Part 2 of FA 2012, to CC's basic life assurance and general annuity business. That amount is the "BLAGAB component" of the apportioned profit.

(12) The "policyholders' share" of the BLAGAB component of the apportioned profit is equal to the policyholders' share of the I - E profit for the relevant corporation tax accounting period as determined in accordance with the rules contained in Chapter 5 of Part 2 of FA 2012.

Modifications etc. (not altering text)

C2 S. 371BH modified (with effect in accordance with reg. 2(2) of the amending S.I.) by The Insurance Companies and CFCs (Avoidance of Double Charge) Regulations 2012 (S.I. 2012/3044), regs. 1(1), **5**

CHAPTER 3

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

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.

(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.

Modifications etc. (not altering text)

C3 Pt. 9A Ch. 3 applied (with modifications) by 2009 c. 4, s. 18HA (as substituted (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 20 para. 6**)

371CB Does Chapter 5 apply?

(1) Subject to sections 371CC and 371CD, Chapter 5 (non-trading finance profits) applies for a CFC's accounting period if (and only if) the CFC has non-trading finance profits.

(2) In this section and Chapter 5 references to the CFC's non-trading finance profits are to those profits excluding any profits falling within subsection (3) or (4) or Chapter 8 (solo consolidation).

(3) Profits fall within this subsection so far as they arise from the investment of funds held by the CFC for the purposes of a trade—

(a) which is carried on by the CFC, and

(b) no trading profits of which pass through the CFC charge gateway for the accounting period.

(4) Profits fall within this subsection so far as they arise from the investment of funds held by the CFC for the purposes of a UK property business or overseas property business carried on by the CFC.

(5) Neither subsection (3) nor subsection (4) applies in relation to funds—

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(a) held only or mainly because of a prohibition or restriction on the CFC paying dividends or making other distributions imposed under—
  (i) the law of the territory in which the CFC is incorporated or formed,
  (ii) the articles of association or other document regulating the CFC, or
  (iii) any arrangement entered into by or in relation to the CFC,
(b) held with a view to paying dividends or making other distributions at a time after the end of the relevant 12 month period,
(c) held with a view to acquiring shares in any company or making any capital contribution to a person,
(d) held with a view to acquiring, developing or otherwise investing in land at a time after the end of the relevant 12 month period,
(e) held only or mainly for contingencies, or
(f) held only or mainly for the purpose of reducing or eliminating a liability of any person to tax or duty imposed under the law of any territory.

(6) Subsection (5)(a) does not cover a prohibition or restriction which ceases to have effect before the end of the relevant 12 month period.

(7) "The relevant 12 month period" means the period of 12 months after the end of the accounting period.

(8) In the case of a chargeable company which makes a claim under Chapter 9, in this section and Chapter 5 references to the CFC's non-trading finance profits are to those profits excluding also the CFC's qualifying loan relationship profits (as defined in Chapter 9).

371CC Incidental non-trading finance profits: the 5% rule

(1) This section applies in relation to a CFC's accounting period if one or both of the following requirements is met—
  (a) the CFC has trading profits or property business profits (or both);
  (b) the CFC has exempt distribution income and, at all times during the accounting period, a substantial part of its business is the holding of shares or securities in companies which are its 51% subsidiaries.

(2) Chapter 5 does not apply for the accounting period if the CFC's non-trading finance profits are no more than 5% of the relevant amount.

(3) "The relevant amount" is—
  (a) if the requirement of subsection (1)(a) is met, the total of the CFC's trading profits and property business profits determined before deduction of interest or any tax or duty imposed under the law of any territory,
  (b) if the requirement of subsection (1)(b) is met, the total of the CFC's exempt distribution income, or
  (c) if both those requirements are met, the sum of the totals given by paragraphs (a) and (b).

(4) Subsection (5) applies for the purposes of subsection (2) if—
  (a) the requirement of subsection (1)(b) is met (whether or not the requirement of subsection (1)(a) is also met),
  (b) at any time during the accounting period, a 51% subsidiary of the CFC ("the CFC subsidiary") is also a CFC, and

(c) the CFC subsidiary has relevant non-trading finance profits as determined in accordance with subsection (6) or (7).

(5) The CFC subsidiary's relevant non-trading finance profits are to be added to the CFC's non-trading finance profits.

(6) If—

(a) the CFC subsidiary has an accounting period ("the relevant period") which is the same as the CFC's accounting period or otherwise falls wholly within the CFC's accounting period, and

(b) by virtue of this section or section 371CD, Chapter 5 does not apply (in the case of the CFC subsidiary) for the relevant period,

the CFC subsidiary's "relevant non-trading finance profits" are its non-trading finance profits for the relevant period.

(7) If—

(a) the CFC subsidiary has an accounting period ("the relevant period") which otherwise overlaps with the CFC's accounting period, and

(b) by virtue of this section or section 371CD, Chapter 5 does not apply (in the case of the CFC subsidiary) for the relevant period,

the CFC subsidiary's "relevant non-trading finance profits" are a just and reasonable proportion of its non-trading finance profits for the relevant period.

(8) In this section references to the CFC's trading profits are to those profits excluding any of them which pass through the CFC charge gateway for the accounting period.

(9) "Exempt distribution income" means any dividends or other distributions which are not brought into account in determining the CFC's assumed total profits on the basis that they would be exempt for the purposes of Part 9A of CTA 2009 (company distributions).

(10) This section needs to be read with section 371CD.

371CD Incidental non-trading finance profits: the further 5% rule

(1) This section applies in relation to a CFC's accounting period if—

(a) the requirements of section 371CC(1)(a) and (b) are both met, but

(b) the CFC's non-trading finance profits (as added to under section 371CC(5) if applicable) are more than 5% of the relevant amount for the purposes of section 371CC(2).

(2) Chapter 5 does not apply for the accounting period if the CFC's adjusted non-trading finance profits are no more than 5% of the total of the CFC's exempt distribution income (as defined in section 371CC(9)).

(3) The CFC's "adjusted non-trading finance profits" are its non-trading finance profits excluding any profits falling within section 371CB(3) or (4).

(4) Subsection (5) applies if any CFC subsidiary's relevant non-trading finance profits are added under section 371CC(5) to the CFC's non-trading finance profits for the purposes of section 371CC(2).

(5) The CFC subsidiary's relevant non-trading finance profits are also to be added to the CFC's adjusted non-trading finance profits for the purposes of subsection (2) above.

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371CE Does Chapter 6 apply?

(1) Subject to what follows, Chapter 6 (trading finance profits) applies for a CFC's accounting period if (and only if)—

(a) the CFC has trading finance profits, and

(b) at any time during the accounting period, the CFC has funds or other assets which derive (directly or indirectly) from UK connected capital contributions.

(2) The CFC's trading finance profits are to be treated for the purposes of this Part as if they were non-trading finance profits (and, accordingly, Chapter 6 cannot apply for the accounting period) if—

(a) the CFC is a group treasury company in the accounting period, and

(b) a notice is given to an officer of Revenue and Customs requesting that the CFC's trading finance profits be treated as if they were non-trading finance profits.

(3) Profits treated as non-trading finance profits under subsection (2) are not to be taken to fall within section 371CB(3) or (4).

[[F2](4) The CFC is a "group treasury company" in the accounting period if, assuming the relevant period were the accounting period—

(a) the CFC would be a group treasury company in the relevant period in accordance with section 316(2) (group treasury companies), and

(b) throughout the relevant period, the requirements of section 316(3)(a) and (b) would be met in relation to the CFC as a group treasury company.

(5) For the purpose of applying section 316 in accordance with subsection (4)—

(a) section 316(2) applies with the omission of paragraph (d), and

(b) section 337(1) (definition of "the worldwide group") applies with the omission of paragraph (a).**]**

(6) A notice under subsection (2)(b)—

(a) may be given only by a company or companies determined under subsection (7) or (8), and

(b) must be given—

(i) within 20 months after the end of the accounting period, or

(ii) within such longer period as an officer of Revenue and Customs may allow.

(7) A company may give a notice if—

(a) the company would be a chargeable company were section 371BC (charging the CFC charge) to apply in relation to the accounting period, and

(b) the percentage of the CFC's chargeable profits which would be apportioned to the company at step 3 in section 371BC(1) would represent more than half of X%.

(8) Two or more companies may together give a notice if—

(a) the companies would all be chargeable companies were section 371BC (charging the CFC charge) to apply in relation to the accounting period, and

(b) the percentage of the CFC's chargeable profits which would be apportioned to the companies, taken together, at step 3 in section 371BC(1) would represent more than half of X%.

(9) In subsections (7) and (8) "X%" means the total percentage of the CFC's chargeable profits which would be apportioned to chargeable companies at step 3 in section 371BC(1) were section 371BC (charging the CFC charge) to apply in relation to the accounting period.

Textual Amendments

F2 S. 371CE(4)(5) substituted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), **Sch. 47 paras. 17**, 21 (with Sch. 47 para. 22)

371CF Does Chapter 7 apply?

(1) Chapter 7 (captive insurance business) applies for a CFC's accounting period if (and only if)—

(a) at any time during the accounting period, the main part of the CFC's business is insurance business, and

(b) the CFC's assumed total profits include amounts falling within subsection (2).

(2) An amount falls within this subsection if it derives (directly or indirectly) from—

(a) a contract of insurance which is entered into with—

(i) a UK resident company connected with the CFC, or

(ii) a non-UK resident company connected with the CFC acting through a UK permanent establishment, or

(b) a contract of insurance which—

(i) is entered into with a UK resident person, and

(ii) is linked (directly or indirectly) to the provision of goods or services to the UK resident person by a UK connected company.

(3) In subsection (2)(b)(ii)—

"services" does not include services provided as part of insurance business, and

"UK connected company" means—

(a) a UK resident company connected with the CFC, or

(b) a non-UK resident company connected with the CFC acting through a UK permanent establishment.

371CG Does Chapter 8 apply?

(1) Chapter 8 (solo consolidation) applies for a CFC's accounting period if (and only if) condition A or B is met.

(2) Condition A is that, at any time during the accounting period—

(a) the CFC is a subsidiary undertaking which is the subject of a solo consolidation waiver under section BIPRU 2.1 of the **[**[F3]PRA Handbook**]** , and

(b) the CFC's parent undertaking in relation to that waiver is a UK resident company.

(3) Condition B is that, at any time during the accounting period—

(a) the CFC is controlled (either alone or with other persons) by a UK resident bank which holds shares in the CFC,

(b) the UK resident bank must meet requirements of the **[**[F4]PRA Handbook**]** in relation to its capital,

(c) any fall in the value of the shares held in the CFC would be (wholly or mainly) ignored for the purpose of determining if the UK resident bank meets those requirements of the **[**[F4]PRA Handbook**]** , and

(d) the main purpose, or one of the main purposes, of the UK resident bank in holding the shares in the CFC is to obtain a tax advantage for itself or any company connected with it.

(4) In this section—

[[F5]"the PRA Handbook" means the Handbook made by the Prudential Regulation Authority under FISMA 2000 (as that Handbook has effect from time to time), and**]**

"UK resident bank" means a UK resident person carrying on banking business.

(5) The Treasury may by regulations amend this Chapter or Chapter 8 as they consider appropriate to take account of—

(a) any changes to the **[**[F6]PRA Handbook**]** , or

(b) any relevant document published by the **[**[F7]Financial Conduct Authority or the Prudential Regulation Authority**]** from time to time.

(6) "Relevant document" means—

(a) a document which replaces the **[**[F8]PRA Handbook**]** , or

(b) a document which changes or replaces a document falling within paragraph (a) or a document which is a relevant document by virtue of this paragraph.

Textual Amendments

F3 Words in s. 371CG(2)(a) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments) Order 2013 (S.I. 2013/636), art. 1(2), **Sch. para. 13(5)(a)**

F4 Words in s. 371CG(3) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments) Order 2013 (S.I. 2013/636), art. 1(2), **Sch. para. 13(5)(b)**

F5 Words in s. 371CG(4) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments) Order 2013 (S.I. 2013/636), art. 1(2), **Sch. para. 13(5)(c)**

F6 Words in s. 371CG(5)(a) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments) Order 2013 (S.I. 2013/636), art. 1(2), **Sch. para. 13(5)(d)(i)**

F7 Words in s. 371CG(5)(b) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments) Order 2013 (S.I. 2013/636), art. 1(2), **Sch. para. 13(5)(d)(ii)**

F8 Words in s. 371CG(6)(a) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments) Order 2013 (S.I. 2013/636), art. 1(2), **Sch. para. 13(5)(e)**

CHAPTER 4

THE CFC CHARGE GATEWAY: PROFITS ATTRIBUTABLE TO UK ACTIVITIES

Modifications etc. (not altering text)

C4 Pt. 9A Ch. 4 applied (with modifications) by 2009 c. 4, s. 18HB (as substituted (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 20 para. 6**)

371DA Introduction to Chapter

(1) Take the steps set out in section 371DB(1) to determine the CFC's profits falling within this Chapter for the purposes of step 2 in section 371BB(1) (the CFC charge gateway).

(2) In this Chapter references to the CFC's assumed total profits are to those profits excluding its non-trading finance profits and property business profits (if any).

(3) For the purposes of this Chapter—

(a) "the OECD Report" means the Report on the Attribution of Profits to Permanent Establishments of the Organisation for Economic Co-operation and Development ("OECD") dated 22 July 2010,

(b) terms used which are also used in the OECD Report have the same meaning as they have in the OECD Report,

(c) "the CFC group" means the CFC taken together with the companies with which it is connected as those companies may change from time to time,

(d) "the provisional Chapter 4 profits" has the meaning given at step 7 in section 371DB(1),

(e) "the relevant assets and risks" has the meaning given at step 1 in section 371DB(1), subject to any exclusions at step 2 or 6,

(f) "SPF" means a significant people function or a key entrepreneurial risk-taking function,

(g) an SPF is a "UK SPF" so far as the SPF is carried out in the United Kingdom—

(i) by the CFC, otherwise than through a UK permanent establishment, or

(ii) by a company connected with the CFC, and

(h) an SPF is a "non-UK SPF" so far as it is not a UK SPF.

(4) The Treasury may by regulations amend this Chapter as they consider appropriate to take account of any relevant document published by OECD from time to time.

(5) "Relevant document" means—

(a) a document which replaces, updates or supplements the report mentioned in subsection (3)(a), or

(b) a document which replaces, updates or supplements a document falling within paragraph (a) or a document which is a relevant document by virtue of this paragraph.

371DB The steps

(1) Here are the steps referred to in section 371DA(1).

Status: *Point in time view as at 17/07/2014.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 9A. (See end of Document for details)*

The steps are to be taken in accordance with the principles set out in the OECD Report (so far as relevant).

Step 1 Identify the assets which the CFC has or has had, and the risks which the CFC bears or has borne, and from which amounts included in the CFC's assumed total profits have arisen. The identified assets and risks are called "the relevant assets and risks"

Step 2 Exclude from the relevant assets and risks any asset or risk to which subsection (2) applies (subject to subsections (3) and (4)).

Step 3 Identify the SPFs carried out by the CFC group which are relevant to—

(a) the economic ownership of the assets included in the relevant assets and risks, or

(b) the assumption and management of the risks included in the relevant assets and risks.

For this purpose, assume that the CFC group is a single company.

Step 4 Determine the extent to which the SPFs identified at step 3 are UK SPFs and the extent to which they are non-UK SPFs. If none of the SPFs is a UK SPF to any extent, then no profits fall within this Chapter and no further steps are to be taken.

Step 5 Assume that the UK SPFs determined at step 4 are carried out by a permanent establishment which the CFC has in the United Kingdom and, accordingly, determine the extent to which the assets and risks included in the relevant assets and risks would be attributed to the permanent establishment. For this purpose, assume that the non-UK SPFs determined at step 4 are all carried out by the CFC itself (if that is not otherwise the case).

Step 6 Exclude from the relevant assets and risks any asset or risk, or any assets or risks taken together, to which section 371DC applies.

Step 7 Re-determine the CFC's assumed total profits on the basis that the CFC—

(a) does not hold, or has not held, the assets included in the relevant assets and risks, and

(b) does not bear, or has not borne, the risks included in the relevant assets and risks,

so far as they would be attributed to the permanent establishment mentioned at step 5."The provisional Chapter 4 profits" are the CFC's assumed total profits so far as they are left out of the re-determined profits.

Step 8 Exclude from the provisional Chapter 4 profits any amounts which are required to be excluded by section 371DD, 371DE or 371DF. The remaining profits (if any) fall within this Chapter.

(2) This subsection applies to an asset or risk if the CFC's assumed total profits are only negligibly higher than what they would be if the CFC—

(a) did not hold, or had not held, the asset to any extent at all, or

(b) did not bear, or had not borne, the risk to any extent at all.

(3) The total number of assets and risks which may be excluded at step 2 in subsection (1) is limited as follows.

(4) As well as applying to each asset and risk separately, subsection (2) must also apply to all the assets and risks included in the total number taken together.

371DC Exclusion: UK activities a minority of total activities

(1) For the purposes of step 6 in section 371DB(1), this section applies to an asset or risk included in the relevant assets and risks if amount A is no more than 50% of amount B.

(2) Amount A is the total of—

(a) the gross amounts (that is, the amounts before deduction of expenses or transfers to or from reserves) of the CFC's income which would not have become receivable during the accounting period had the CFC—

(i) not held the asset, or

(ii) not borne the risk,

so far as it would be attributed to the permanent establishment mentioned at step 5 in section 371DB(1), and

(b) the additional expenses which the CFC would have incurred during the accounting period had the CFC—

(i) not held the asset, or

(ii) not borne the risk,

so far as it would be so attributed.

(3) Amount B is the total of—

(a) the gross amounts (that is, the amounts before deduction of expenses or transfers to or from reserves) of the CFC's income which would not have become receivable during the accounting period had the CFC—

(i) not held the asset to any extent at all, or

(ii) not borne the risk to any extent at all, and

(b) the additional expenses which the CFC would have incurred during the accounting period had the CFC—

(i) not held the asset to any extent at all, or

(ii) not borne the risk to any extent at all.

(4) Subsection (5) applies if it is not reasonably practicable to separate a number of assets or risks included in the relevant assets and risks for the purpose of determining amounts A and B in relation to each of those assets or risks separately.

(5) In subsections (1) to (3) references to an asset or risk are to be read as references to those assets or risks taken together.

371DD Exclusion: economic value

(1) Subsection (2) applies if—

(a) an asset or risk is included in the relevant assets and risks,

(b) the SPFs which are relevant to the economic ownership of the asset, or the assumption and management of the risk, are wholly or partly UK SPFs as determined at step 4 in section 371DB(1), and

(c) as a result of that determination, an amount is included in the provisional Chapter 4 profits.

(2) The amount is to be excluded from the provisional Chapter 4 profits if—

(a) the net economic value to the CFC group which results from the holding of the asset, or the bearing of the risk, exceeds what that value would have been had

Status: *Point in time view as at 17/07/2014.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 9A. (See end of Document for details)*

the asset been held, or the risk been borne, solely by UK resident companies connected with the CFC, and

(b) the relevant non-tax value is a substantial proportion of the excess value mentioned in paragraph (a).

(3) "Net economic value" does not include any value which derives (directly or indirectly) from the reduction or elimination of any liability of any person to tax or duty imposed under the law of any territory outside the United Kingdom.

(4) "The relevant non-tax value" is the excess value mentioned in subsection (2)(a) so far as it does not derive (directly or indirectly) from the reduction or elimination of any liability of any person to tax or duty imposed under the law of the United Kingdom.

(5) Subsection (6) applies if—

(a) there are SPFs which are relevant to the economic ownership of a number of assets, or the assumption and management of a number of risks, included in the relevant assets and risks, and

(b) it is not reasonably practicable to separate those assets or risks for the purpose of determining the extent to which the SPFs are relevant to the economic ownership of each of those assets, or the assumption and management of each of those risks, separately.

(6) In subsections (1) and (2) references to an asset or risk are to be read as references to those assets or risks taken together.

371DE Exclusion: independent companies' arrangements

(1) Subsection (2) applies if—

(a) an asset or risk is included in the relevant assets and risks,

(b) the SPFs which are relevant to the economic ownership of the asset, or the assumption and management of the risk, are wholly or partly UK SPFs as determined at step 4 in section 371DB(1),

(c) as a result of that determination, an amount is included in the provisional Chapter 4 profits, and

(d) the UK SPFs are carried out by companies connected with the CFC under arrangements made between the CFC and those companies.

(2) The amount is to be excluded from the provisional Chapter 4 profits if it is reasonable to suppose that, were the SPFs which are UK SPFs not to be carried out by companies connected with the CFC, the CFC would enter into arrangements with companies not connected with the CFC which—

(a) would be structured in the same way as the arrangements mentioned in subsection (1)(d), and

(b) would, in relation to the CFC's business, have the same commercial effect as those arrangements.

(3) Subsection (4) applies if—

(a) there are SPFs which are relevant to the economic ownership of a number of assets, or the assumption and management of a number of risks, included in the relevant assets and risks, and

(b) it is not reasonably practicable to separate those assets or risks for the purpose of determining the extent to which the SPFs are relevant to the economic

ownership of each of those assets, or the assumption and management of each of those risks, separately.

(4) In subsection (1) references to an asset or risk are to be read as references to those assets or risks taken together.

371DF Exclusion: trading profits (the basic rule)

(1) All trading profits are to be excluded from the provisional Chapter 4 profits if the following conditions are met—
  (a) the business premises condition (see section 371DG),
  (b) the income condition (see section 371DH),
  (c) the management expenditure condition (see section 371DI),
  (d) the IP condition (see section 371DJ), and
  (e) the export of goods condition (see section 371DK).

(2) Trading profits are also to be excluded from the provisional Chapter 4 profits in accordance with section 371DI(7) and (8) (so far as applicable).

(3) This section is subject to section 371DL (anti-avoidance).

371DG Exclusion: trading profits (business premises condition)

(1) This section applies for the purposes of section 371DF(1)(a).

(2) The business premises condition is met if, at all times during the accounting period, the CFC has in the territory in which it is resident for the accounting period premises—
  (a) which are, or are intended to be, occupied and used with a reasonable degree of permanence, and
  (b) from which the CFC's activities in that territory are wholly or mainly carried on.

(3) "Premises" means—
  (a) an office, shop, factory or other building or part of a building,
  (b) a mine, an oil or gas well, a quarry or other place of extraction of natural resources, or
  (c) a building site or the site of a construction or installation project, but only if the building work or project has a duration of at least 12 months.

371DH Exclusion: trading profits (income condition)

(1) This section applies for the purposes of section 371DF(1)(b).

(2) The income condition is met if no more than 20% of the CFC's relevant trading income derives (directly or indirectly) from—
  (a) UK resident persons, or
  (b) UK permanent establishments of non-UK resident companies.

(3) For the purposes of subsection (2) the CFC's "relevant trading income" is its trading income, excluding any income arising from the sale in the United Kingdom of goods produced by the CFC in the territory in which it is resident for the accounting period.

Status: *Point in time view as at 17/07/2014.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 9A. (See end of Document for details)*

(4) Subsection (5) applies instead of subsection (2) if, at any time during the accounting period, the CFC's main business is banking business in relation to which the CFC is regulated in the territory in which it is resident for the accounting period.

(5) The income condition is met if the CFC's relevant UK trading income is no more than 10% of the CFC's trading income.

(6) The CFC's "relevant UK trading income" is its trading income so far as it derives (directly or indirectly) from—
   (a) UK resident persons, or
   (b) UK permanent establishments of non-UK resident companies,

   but excluding interest received from UK resident companies which are connected or associated with the CFC.

(7) Neither subsection (2)(a) nor subsection (6)(a) covers income deriving (directly or indirectly) from a UK resident company if—
   (a) the company has made an election under section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments), and
   (b) an expense corresponding to the income is brought into account for the purpose of determining any exemption adjustment in relation to the company under that section.

371DI Exclusion: trading profits (management expenditure condition)

(1) This section applies for the purposes of section 371DF(1)(c).

(2) The management expenditure condition is met if the UK related management expenditure is no more than 20% of the total related management expenditure.

(3) "The total related management expenditure" is the total of the following expenditure incurred during the accounting period by the CFC—
   (a) expenditure incurred in the employment of any member of the CFC's staff who carries out relevant management functions,
   (b) expenditure incurred in the engagement (directly or indirectly) of any individual who is not a member of the CFC's staff but who carries out relevant management functions in consequence of an arrangement between the individual and the CFC, and
   (c) expenditure incurred in the engagement (directly or indirectly) of any company related to the CFC so far as the expenditure represents expenditure incurred by the related company in—
      (i) the employment of any member of the related company's staff who carries out relevant management functions, or
      (ii) the engagement by the related company (directly or indirectly) of any individual who is not a member of the related company's staff but who carries out relevant management functions in consequence of an arrangement between the individual and the related company.

(4) "The UK related management expenditure" is the total related management expenditure so far as it relates to members of staff or other individuals who carry out relevant management functions in the United Kingdom.

(5) A person carries out a "relevant management function" if the person manages or controls any assets or risks included in the relevant assets and risks.

(6) This covers (for example) a person who formulates plans or makes decisions in relation to—
  (a) the acquisition, creation, development or exploitation of such assets, or
  (b) the taking on, or bearing, of such risks.

(7) Subsection (8) applies if—
  (a) the conditions mentioned in section 371DF(1)(a), (b), (d) and (e) are met but the management expenditure condition is not met,
  (b) there is an asset or risk which is included in the relevant assets and risks and to which any part of the total related management expenditure relates,
  (c) the 50% condition is met in relation to that asset or risk, and
  (d) trading profits arising from that asset or risk are included in the provisional Chapter 4 profits.

(8) The trading profits are to be excluded from the provisional Chapter 4 profits.

(9) The 50% condition is met in relation to an asset or risk if the UK related management expenditure so far as relating to the asset or risk is no more than 50% of the total related management expenditure so far as relating to the asset or risk.

(10) Subsection (11) applies if—
  (a) any part of the total related management expenditure relates to a number of assets or risks included in the relevant assets and risks, and
  (b) it is not reasonably practicable to separate those assets or risks for the purpose of determining the extent to which the total related management expenditure relates to each of those assets or risks separately.

(11) Subsections (7) to (9) apply in relation to those assets or risks taken together and references to an asset or risk are to be read accordingly.

371DJ Exclusion: trading profits (IP condition)

(1) This section applies for the purposes of section 371DF(1)(d).

(2) The IP condition is met unless—
  (a) the CFC's assumed total profits include amounts arising from intellectual property held by the CFC (“the exploited IP”),
  (b) all or parts of the exploited IP were—
    (i) transferred (directly or indirectly) to the CFC by persons related to the CFC at times during the relevant period, or
    (ii) otherwise derived (directly or indirectly) at times during that period out of or from intellectual property held at times during that period by persons related to the CFC,
  (c) as a result of those transfers or other derivations, the value of the intellectual property held by those persons related to the CFC, taken together, has been significantly reduced from what it would otherwise have been, and
  (d) if only parts of the exploited IP were so transferred or derived, the significance condition is met.

(3) The significance condition is met if—

Status: *Point in time view as at 17/07/2014.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 9A. (See end of Document for details)*

(a) the parts of the exploited IP ("the UK derived IP") which were transferred or otherwise derived as mentioned in subsection (2)(b) are, taken together, a significant part of the exploited IP, or

(b) as a result of the transfers or other derivations of the UK derived IP, the CFC's assumed total profits are significantly higher than what they would otherwise have been.

(4) In relation to a non-UK resident person who is related to the CFC, in this section references to the transfer or holding of intellectual property by a person related to the CFC are limited to, as the case may be—

(a) the transfer of intellectual property which before the transfer was held by the non-UK resident person (wholly or partly) for the purposes of a permanent establishment which the person has in the United Kingdom, or

(b) the holding of intellectual property by the non-UK resident person (wholly or partly) for those purposes.

(5) "The relevant period" means the period covering the accounting period and the 6 years before the accounting period.

371DK Exclusion: trading profits (export of goods condition)

(1) This section applies for the purposes of section 371DF(1)(e).

(2) The export of goods condition is met if no more than 20% of the CFC's trading income arises from goods exported from the United Kingdom, excluding goods exported from the United Kingdom to the territory in which the CFC is resident for the accounting period.

371DL Exclusion: trading profits (anti-avoidance)

(1) This section applies if—

(a) a condition mentioned in section 371DF(1) is met, or

(b) the 50% condition mentioned in section 371DI is met in relation to an asset or risk (or a number of assets or risks taken together),

but it is reasonable to suppose that that would not be the case apart from an arrangement falling within subsection (3).

(2) The condition is to be taken not to be met or (as the case may be) not to be met in relation to the asset or risk (or the assets or risks taken together).

(3) An arrangement falls within this subsection if—

(a) the arrangement involves the CFC group organising (or reorganising) a significant part of its business in a particular way, and

(b) the main purpose, or one of the main purposes, of that organising (or reorganising) is to secure that—

(i) one or more of the conditions mentioned in section 371DF(1) are met, or

(ii) the 50% condition mentioned in section 371DI is met in relation to one or more assets or risks.

CHAPTER 5

THE CFC CHARGE GATEWAY: NON-TRADING FINANCE PROFITS

Modifications etc. (not altering text)

C5 Pt. 9A Ch. 5 applied (with modifications) by 2009 c. 4, s. 18HC (as substituted (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 20 para. 6**)

371EA The basic rule

(1) The CFC's profits falling within this Chapter for the purposes of step 2 in section 371BB(1) (the CFC charge gateway) are its non-trading finance profits so far as they fall within any of sections 371EB to 371EE.

(2) In this Chapter references to the CFC's non-trading finance profits are to be read in accordance with section 371CB(2) and, so far as applicable, section 371CB(8).

371EB UK activities

(1) To determine the extent to which the CFC's non-trading finance profits fall within this section, take steps 1 to 5 and 7 in section 371DB(1) as if references in section 371DB to the CFC's assumed total profits were references to its non-trading finance profits.

(2) Non-trading finance profits fall within this section so far as they would be included in the provisional Chapter 4 profits as determined on the basis mentioned in subsection (1).

371EC Capital investment from the UK

(1) Non-trading finance profits fall within this section so far as they arise from relevant UK funds or other assets.

(2) Subsection (3) applies in relation to any profits which (apart from subsection (3)) would fall within this section if—

(a) an amount of expenditure incurred by the CFC in managing the relevant UK funds or other assets itself was brought into account in calculating the profits, and

(b) it is reasonable to suppose that the amount of expenditure is less than the fee which a company not connected with the CFC would charge the CFC for carrying out the same management activities.

(3) There is to be deducted from the profits an amount representing what it is reasonable to suppose the difference between the amount of expenditure and the fee would be.

(4) "Relevant UK funds or other assets" means—

(a) funds or other assets which represent, or derive (directly or indirectly) from, any capital contribution to the CFC made (directly or indirectly) by a UK connected company (whether in relation to an issue of shares in the CFC or otherwise),

Status: *Point in time view as at 17/07/2014.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 9A. (See end of Document for details)*

(b) funds or other assets which represent, or derive (directly or indirectly) from, any amounts included in the CFC's chargeable profits for any earlier accounting period in relation to which the CFC charge is charged,

(c) funds or other assets which represent, or derive (directly or indirectly) from, any amounts which, by virtue of section 174 (transfer pricing: claims by disadvantaged person), are left out of account in determining the CFC's assumed total profits for the accounting period or any earlier accounting period, or

(d) funds or other assets—

(i) which represent, or derive (directly or indirectly) from, any funds or other assets received by the CFC (directly or indirectly) from a UK connected company, and

(ii) which are not covered by paragraphs (a) to (c).

(5) In subsection (4)(d)(i) the reference to funds or other assets received by the CFC does not include funds or other assets received—

(a) in exchange for goods or services provided by the CFC, or

(b) by way of a loan.

(6) "UK connected company" means—

(a) a UK resident company connected with the CFC, or

(b) a non-UK resident company connected with the CFC acting through a UK permanent establishment.

371ED Arrangements in lieu of dividends etc to UK resident companies etc

(1) Non-trading finance profits fall within this section so far as they arise from an arrangement [F9]... in relation to which the following condition is met.

(2) The condition is that—

(a) the arrangement is made by the CFC (directly or indirectly)—

(i) with a UK resident company connected with the CFC, or

(ii) with a non-UK resident company connected with the CFC for the purposes of a UK permanent establishment of the non-UK resident company, and

(b) it is reasonable to suppose—

(i) that the arrangement is made as an alternative to the CFC paying dividends or making any other distribution to the other company (directly or indirectly), and

(ii) that the main reason, or one of the main reasons, for that is a reason relating to a liability, or potential liability, of any person to tax or duty imposed under the law of any territory.

Textual Amendments

F9 Words in s. 371ED(1) omitted (retrospective to 1.1.2013) by virtue of Finance Act 2013 (c. 29), **Sch. 47 paras. 3**, 21

371EE Leases to UK resident companies etc

(1) Non-trading finance profits fall within this section so far as they arise from a relevant finance lease in relation to which the following condition is met.

(2) The condition is that—

(a) the lease is made by the CFC (directly or indirectly)—

(i) with a UK resident company connected with the CFC, or

(ii) with a non-UK resident company connected with the CFC for the purposes of a UK permanent establishment of the non-UK resident company, and

(b) it is reasonable to suppose—

(i) that the lease is made as an alternative to the other company purchasing (directly or indirectly) the asset **[**[F10]("the relevant asset") which is the subject of the lease or making (directly or indirectly) an arrangement which would fall within subsection (3)**]** , and

(ii) that the main reason, or one of the main reasons, for that is a reason relating to a liability, or potential liability, of any person to tax or duty imposed under the law of any territory.

[[F11](3) An arrangement would fall within this subsection if—

(a) the arrangement would meet one or both of the following requirements—

(i) it would not be a relevant finance lease;

(ii) it would not involve the CFC, and

(b) under the arrangement the other company would (directly or indirectly) purchase rights to use the relevant asset.**]**

Textual Amendments

F10 Words in s. 371EE(2)(b)(i) substituted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), **Sch. 47 paras. 4(2)**, 21

F11 S. 371EE(3) inserted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), **Sch. 47 paras. 4(3)**, 21

CHAPTER 6

THE CFC CHARGE GATEWAY: TRADING FINANCE PROFITS

371FA The basic rule

(1) Take the following steps to determine the CFC's profits falling within this Chapter for the purposes of step 2 in section 371BB(1) (the CFC charge gateway).

This is subject to regulations under section 371FD or 371FE.

Step 1 Determine if, during the accounting period, the CFC's free capital exceeds what it is reasonable to suppose its free capital would be were it a company which is not the 51% subsidiary of any other company. If there is excess free capital, "the step 1 amount" is—

(a) the excess free capital, or

(b) if less, the CFC's free capital so far as deriving (directly or indirectly) from UK connected capital contributions.

Step 2 This step applies only if the CFC carries on insurance business during the accounting period; if it does not, go straight to step 3. Determine if, during the accounting period when the CFC is carrying on insurance business, the CFC's free assets exceeds what it is reasonable to suppose its free assets would be were it a company which is not the 51% subsidiary of any other company. If there is excess free assets, "the step 2 amount" is—

(a) the excess free assets, or

(b) if less, the CFC's free assets so far as deriving (directly or indirectly) from UK connected capital contributions.

Step 3 If no excesses are determined at steps 1 and 2, no profits fall within this Chapter. Otherwise, the profits falling within this Chapter are the CFC's trading finance profits so far as it is reasonable to suppose that those profits arise from the investment or other use of the step 1 amount or the step 2 amount (or both

(2) For the purposes of step 1 in subsection (1) the CFC's "free capital" is the funding it has for its business so far as the funding does not give rise to debits which are brought into account in determining the CFC's non-trading finance profits or trading finance profits.

(3) For the purposes of step 2 in subsection (1) the CFC's "free assets" is the amount by which the value of its assets exceeds its loan capital.

(4) Subsections (2) and (3) are subject to sections 371FB and 371FC and subsection (3) is also subject to subsection (6).

(5) Subsection (6) applies if—

(a) the CFC, acting outside its insurance business, gives a guarantee against losses of an insurance business of another company which is connected with the CFC,

(b) the guarantee is necessary for the purpose of meeting regulatory requirements applicable to the other company's insurance business,

(c) in consequence of having given the guarantee, the CFC is required by regulatory requirements applicable to its insurance business to hold more assets than it would otherwise be required to hold, and

(d) during the accounting period, the CFC holds assets solely for the purpose of meeting that requirement for more assets.

(6) The value of the assets held by the CFC as mentioned in subsection (5)(d) is to be deducted from the CFC's free assets.

(7) For the purposes of this section the "value" of an asset is the amount which it is reasonable to suppose the CFC would obtain for the transfer of all the CFC's rights in respect of the asset from a person not connected with the CFC.

Modifications etc. (not altering text)

C6 S. 371FA(1) excluded (with effect in accordance with reg. 1(2) of the amending S.I.) by The Controlled Foreign Companies (Excluded Banking Business Profits) Regulations 2012 (S.I. 2012/3041), regs. 1(2), **3(2)**

371FB Qualifying loan relationships

(1) Subsection (2) applies if, during the CFC's accounting period, the CFC is the ultimate debtor in relation to a qualifying loan relationship (within the meaning of Chapter 9) of another CFC ("the creditor CFC").

(2) E% of the principal outstanding during the CFC's accounting period on the loan which is the subject of the qualifying loan relationship is to be added to the CFC's free capital or free assets (as the case may be).

(3) "E%" is given by the following formula—

$$100\ \% \times EP\ P$$

where—

EP is the total amount of the profits of the qualifying loan relationship which are exempt, and

P is the total amount of the profits of the qualifying loan relationship.

(4) For the purposes of subsection (3)—

(a) references to the profits of the qualifying loan relationship are to the profits of the qualifying loan relationship for accounting periods of the creditor CFC which fall wholly or partly in the CFC's accounting period,

(b) the profits of the qualifying loan relationship for an accounting period of the creditor CFC are to be determined in accordance with Chapter 9,

(c) the steps in subsection (5) are to be taken to determine the amount of the profits of the qualifying loan relationship for an accounting period of the creditor CFC which are "exempt", and

(d) the profits of the qualifying loan relationship for an accounting period of the creditor CFC which falls only partly in the CFC's accounting period, and the amount of those profits which are exempt, are to be apportioned between—

(i) the part of the creditor CFC's accounting period which falls in the CFC's accounting period, and

(ii) the part which does not,

with only those profits, and the amount of exempt profits, apportioned to the part mentioned in sub-paragraph (i) being included in P or EP (as the case may be).

(5) Here are the steps referred to in subsection (4)(c).

The steps are to be taken separately in relation to each chargeable company which makes a claim under Chapter 9 in relation to the creditor CFC's accounting period.

The amount of the profits of the qualifying loan relationship for the creditor CFC's accounting period which are exempt is the total of the amounts given by step 2.

Step 1 Determine the amount of the profits of the qualifying loan relationship for the accounting period which, in the case of the chargeable company, are exempt under Chapter 9.

Step 2 Multiply the amount determined at step 1 by P% (as defined in section 371BC(3), ignoring sections 371BG(3)(a) and 371BH(3)(b)).

Status: *Point in time view as at 17/07/2014.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 9A. (See end of Document for details)*

371FC Loans from foreign permanent establishments of UK resident companies

(1) Subsection (2) applies if—

(a) there is a company ("C") which has made an election under section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments),

(b) during a relevant accounting period of C which begins on or after 1 January 2013, C has a creditor relationship which, applying the assumptions set out in section 18H(3) of CTA 2009 in relation to C for the relevant accounting period, would be a qualifying loan relationship (within the meaning of Chapter 9 of this Part) of C in relation to which the CFC would be the ultimate debtor,

(c) in the application of section 18H(2) of CTA 2009 for the relevant accounting period, C makes a claim under Chapter 9 of this Part (as applied by section 18H(2)), and

(d) the relevant accounting period falls wholly or partly in the CFC's accounting period.

(2) 75% of the principal outstanding during the CFC's accounting period on the loan which is the subject of the qualifying loan relationship is to be added to the CFC's free capital or free assets (as the case may be).

(3) Terms used in this section which are defined in section 18A of CTA 2009 have the meaning given by that section.

371FD Exclusion: banking business

(1) The HMRC Commissioners may by regulations provide that, if specified conditions are met, step 3 in section 371FA(1) is not to apply in relation to the CFC's trading finance profits so far as they arise from banking business, or banking business of a specified description, carried on by the CFC.

(2) Regulations under subsection (1) may (in particular) make provision by reference to—

(a) the territory in which a CFC is resident or any territory in which its banking business is regulated or carried on, or

(b) the regulatory requirements imposed from time to time in any territory in relation to banking business.

371FE Exclusion: insurance business

(1) The HMRC Commissioners may by regulations provide that, if specified conditions are met, step 3 in section 371FA(1) is not to apply in relation to the CFC's trading finance profits so far as they arise from insurance business, or insurance business of a specified description, carried on by the CFC.

(2) In subsection (1) "insurance business" does not include insurance business so far as consisting of the effecting or carrying out of contracts of insurance covered by section 371GA(2) (UK insurance contracts), including the investment of premiums received from such contracts.

(3) Regulations under subsection (1) may (in particular) make provision by reference to—

(a) the territory in which a CFC is resident or any territory in which its insurance business is regulated or carried on, or

(b) the regulatory requirements imposed from time to time in any territory in relation to insurance business.

CHAPTER 7

THE CFC CHARGE GATEWAY: CAPTIVE INSURANCE BUSINESS

Modifications etc. (not altering text)

C7 Pt. 9A Ch. 7 applied (with modifications) by 2009 c. 4, s. 18HD (as substituted (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 20 para. 6**)

371GA The basic rule

(1) The CFC's profits falling within this Chapter for the purposes of step 2 in section 371BB(1) (the CFC charge gateway) are any amounts included in its assumed total profits so far as they—

(a) arise from the CFC's insurance business,

(b) fall within subsection (2), and

(c) fall within subsection (7) where applicable.

(2) An amount falls within this subsection if it derives (directly or indirectly) from—

(a) a contract of insurance which is entered into with—

(i) a UK resident company connected with the CFC, or

(ii) a non-UK resident company connected with the CFC acting through a UK permanent establishment, or

(b) a contract of insurance which—

(i) is entered into with a UK resident person, and

(ii) is linked (directly or indirectly) to the provision of goods or services to the UK resident person by a UK connected company.

(3) In subsection (2)(b)(ii)—

"services" does not include services provided as part of insurance business, and

"UK connected company" means—

(a) a UK resident company connected with the CFC, or

(b) a non-UK resident company connected with the CFC acting through a UK permanent establishment.

(4) Subsection (2)(a)(i) does not cover a premium paid under a contract of insurance if—

(a) the UK resident company has made an election under section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments), and

(b) the premium is wholly brought into account for the purpose of determining any exemption adjustment in relation to the company under that section.

(5) Subsection (2)(a) covers a contract of reinsurance only so far as the original contract of insurance would fall within subsection (2)(a).

(6) Subsection (7) applies in relation to an amount if—

(a) the CFC is resident in an EEA state for the accounting period, and

(b) the amount does not arise from the activities of a permanent establishment which the CFC has in a territory which is not an EEA state.

(7) An amount falls within this subsection so far as it derives (directly or indirectly) from a contract of insurance if—

(a) the insured has no significant UK non-tax reason for entering into the contract of insurance, or

(b) if the contract of insurance is a contract of reinsurance, the original insured has no significant UK non-tax reason for entering into the original contract of insurance.

(8) "UK non-tax reason" means a reason other than one relating to a liability, or potential liability, of any person to tax or duty imposed under the law of the United Kingdom.

(9) In this section "original contract of insurance", in relation to a contract of reinsurance which is one in a chain of contracts of reinsurance, means the original contract of insurance reinsured by the first contract in the chain; and in subsection (7)(b) the reference to the original insured is to be read accordingly.

CHAPTER 8

THE CFC CHARGE GATEWAY: SOLO CONSOLIDATION

371HA The basic rule

(1) The CFC's profits falling within this Chapter for the purposes of step 2 in section 371BB(1) (the CFC charge gateway) are any amounts included in its assumed total profits which are not also included in the CFC's relevant profits amount.

(2) The CFC's "relevant profits amount" is what the relevant profits amount would be for the purposes of Chapter 3A of Part 2 of CTA 2009 (see section 18A(6) of that Act) in relation to the CFC were that amount to be determined as if—

(a) the CFC were a permanent establishment in a territory outside the United Kingdom of the UK resident company mentioned in section 371CG(2)(b) or the UK resident bank mentioned in section 371CG(3), and

(b) the CFC's accounting period were a relevant accounting period of that UK resident company or UK resident bank for the purposes of that Chapter.

CHAPTER 9

EXEMPTIONS FOR PROFITS FROM QUALIFYING LOAN RELATIONSHIPS

Modifications etc. (not altering text)

C8 Pt. 9A Ch. 9 applied (with modifications) by 2009 c. 4, s. 18HE (as substituted (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 20 para. 6**)

Status: *Point in time view as at 17/07/2014.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 9A. (See end of Document for details)*

371IA The basic rule

(1) This Chapter applies if—
- (a) apart from this Chapter, Chapter 5 (non-trading finance profits) would apply for a CFC's accounting period,
- (b) the CFC's non-trading finance profits include qualifying loan relationship profits, and
- (c) the business premises condition set out in section 371DG is met.

(2) A chargeable company ("company C") in relation to the accounting period may make a claim to an officer of Revenue and Customs for step 2 in section 371BB(1) (the CFC charge gateway) to be taken, in the case of company C only, subject to this Chapter.

(3) If company C makes a claim, in the case of company C only, the CFC's qualifying loan relationship profits pass through the CFC charge gateway so far as (and only so far as) they are not exempt under this Chapter.

(4) The CFC's "qualifying loan relationship profits" are the profits of all its qualifying loan relationships taken together.

(5) The extent to which those profits are "exempt" is to be determined—
- (a) firstly, by applying either section 371IB or section 371ID to each of the CFC's qualifying loan relationships, and
- (b) secondly, by applying section 371IE (if relevant).

(6) Section 371IF sets out how to determine the profits of a qualifying loan relationship.

(7) Sections 371IG to 371II define "qualifying loan relationship" etc.

(8) Section 371IJ contains provision about claims under this Chapter.

(9) In this Chapter references to the CFC's non-trading finance profits are to those profits excluding any profits—
- (a) falling within section 371CB(3) or (4) or Chapter 8 (solo consolidation), or
- (b) arising from a relevant finance lease.

(10) In this Chapter—
- (a) "loan relationship" has the meaning given by section 302(1) of CTA 2009 (and does not include anything which, although not falling within section 302(1), is treated for any purpose as if it were a loan relationship), and
- (b) other terms used which are defined in Part 5 of CTA 2009 are to be read accordingly.

(11) See section 371CB(8) which deals with the interaction between this Chapter and section 371CB and Chapter 5 in the case of a chargeable company which makes a claim under this Chapter.

371IB Loans funded out of qualifying resources

(1) This section applies to a qualifying loan relationship if company C's claim under this Chapter states that this section is to apply to the qualifying loan relationship.

(2) X% of the profits of the qualifying loan relationship are exempt if company C's claim establishes—

Status: *Point in time view as at 17/07/2014.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 9A. (See end of Document for details)*

(a) that, at all times during the relevant period, at least X% of the principal outstanding on the relevant loan (as that may vary from time to time during the relevant period) is funded by the CFC wholly out of qualifying resources, and

(b) that the ultimate debtor in relation to the qualifying loan relationship (see section 371IG(2) to (7)) is resident at all times during the relevant period in one territory only and that its territory of residence does not change at any time during the relevant period.

(3) "X%" is the percentage specified in company C's claim for the purposes of this section in relation to the qualifying loan relationship (which may be 100%).

(4) "The relevant period" means—

(a) the accounting period, or

(b) if for any part of the accounting period no principal is outstanding on the relevant loan, the part of the accounting period during which there is principal outstanding.

(5) "The relevant loan" means the loan which is the subject of the qualifying loan relationship.

(6) "Qualifying resources" means—

(a) profits of the CFC's business so far as it consists of the making of loans to relevant members of the CFC group which are used solely for the purposes of the business of the CFC group in the relevant territory, or

(b) funds or other assets received by the CFC in relation to shares held by the CFC in, or issued by the CFC to, members of the CFC group.

(7) Funds or other assets received by the CFC fall within subsection (6)(b) only so far as they derive (directly or indirectly) from—

(a) profits of the business of the CFC group in the relevant territory,

(b) the qualifying value of relevant pre-acquisition funds or other assets (see section 371IC), or

(c) an issue of shares which meets the following requirements—

(i) the shares are shares in a member of the CFC group ("the parent member") which is not the 75% subsidiary of any company,

(ii) the shares are ordinary shares which are not redeemable, and

(iii) the shares are issued to persons who are not members of the CFC group.

(8) Subsection (9) applies if the qualifying loan relationship is made under, or is otherwise connected (directly or indirectly) with, an arrangement under which a member of the CFC group incurs a debt in the United Kingdom to—

(a) a non-UK resident person, or

(b) a UK resident person who is not a member of the CFC group.

(9) It is to be assumed for the purposes of subsection (2) that, at all times during the relevant period, the amount of funds or other assets—

(a) out of which the principal outstanding on the relevant loan is funded by the CFC, and

(b) which are not qualifying resources,

is no less than the amount of the debt mentioned in subsection (8).

F12 **[** (9A) Subsection (9) does not apply if the debt incurred by the member of the CFC group as mentioned in subsection (8) represents the principal on a loan made to the member to which subsection (9B) or (9D) applies.

(9B) This subsection applies to a loan if the member repays it within 48 hours of the loan being made.

(9C) But subsection (9B) does not apply to a loan if the repayment of the loan within the 48 hours occurs under, or is connected (directly or indirectly) with, an arrangement the main purpose, or one of the main purposes, of which is to ensure that subsection (9) does not apply because of—

(a) the loan, or

(b) any other debt which a member of the CFC group incurs (or is expected to incur) in the United Kingdom.

(9D) This subsection applies to a loan if—

(a) there is an issue of shares which meets the requirements of subsection (7)(c)(i) to (iii),

(b) the loan was made before the issue of shares but with the expectation that it would be repaid by the member out of funds deriving (directly or indirectly) from the issue of shares,

(c) the loan is repaid by the member out of such funds within the period of 6 months beginning with the day on which the loan was made, and

(d) the loan—

(i) was made by a person who was not a member of the CFC group, and

(ii) was not made (wholly or partly nor directly or indirectly) out of funds or other assets provided by a member of the CFC group.**]**

(10) For the purposes of this section and section 371IC—

(a) subject to subsections (11) and (12), "the CFC group", as at any time, means the CFC taken together with the companies with which it is connected at that time,

(b) a member of the CFC group is "relevant" if it is resident in the relevant territory and no other territory,

(c) "the relevant territory" means the territory of residence of the ultimate debtor mentioned in subsection (2)(b),

(d) references to the business of the CFC group in the relevant territory do not include the making of loans to persons resident outside the relevant territory,

(e) references to the profits of the business of the CFC group in the relevant territory do not include—

(i) profits arising (directly or indirectly) from funds or other assets received by relevant members of the CFC group in relation to shares held by them in members of the CFC group which are not relevant members, or

(ii) so far as not covered by sub-paragraph (i), profits arising (directly or indirectly) from the business of the CFC group in any territory outside the relevant territory, and

(f) section 931U of CTA 2009 (definitions of "ordinary share" and "redeemable") applies as it applies for the purposes of Part 9A of CTA 2009 (company distributions).

(11) If the CFC is controlled by one UK resident company only ("the controller"), in relation to any time before the CFC came to be controlled by the controller, except in subsection (6), references to the CFC group include references to the controller taken together with any companies with which it is connected at that time.

(12) If the CFC is controlled by two or more UK resident companies which are all connected with each other ("the controllers"), in relation to any time—

(a) before which the CFC came to be controlled by the controllers, and

(b) at which the controllers (or those of the controllers which exist at that time) are all connected with each other,

except in subsection (6), references to the CFC group include references to the controllers (or those of the controllers which exist) taken together with any other companies with which they are all connected at that time.

Textual Amendments

F12 Ss. 371IB(9A)-(9D) inserted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), **Sch. 47 paras. 19**, 21

371IC What is the "qualifying value" of "relevant pre-acquisition funds or other assets"?

(1) This section applies for the purposes of section 371IB(7)(b).

(2) It applies if—

(a) a member of the CFC group acquires shares in a company ("the target company") from persons who are not members of that group ("the unconnected persons"),

(b) in consideration for the acquisition of the shares, a member of the CFC group ("the parent member") which is not the 51% subsidiary of any company issues shares to the unconnected persons, and

(c) the value of the consideration given for the acquisition of the shares by the parent member and any other members of the CFC group represents wholly or partly the value or a part of the value of any funds or other assets held by the target company.

(3) Those funds or other assets are "relevant pre-acquisition funds or other assets" and, subject to what follows, their value or the part of their value represented by the value of the consideration is their "qualifying value".

(4) The qualifying value is to be reduced by Y% if one or both of the following paragraphs applies—

(a) the issue of shares by the parent member to the unconnected persons represents only part of the consideration given for the acquisition of the shares in the target company;

(b) in connection with the acquisition of the shares in the target company, an extraordinary distribution is made to persons holding shares in the parent member.

(5) "Y%" is given by the following formula—

100 % × B A + B

where—

A is the value of the consideration which is in the form of the issue of shares by the parent member to the unconnected persons, and

B is, as the case may be—

(a) the value of the consideration which is not in the form of the issue of shares by the parent member to the unconnected persons,

(b) the value of the extraordinary distribution, or

(c) the total of the values given by paragraphs (a) and (b).

371ID The 75% exemption

(1) This section applies to a qualifying loan relationship if section 371IB does not apply to the qualifying loan relationship.

(2) 75% of the profits of the qualifying loan relationship are exempt.

371IE Matched interest

(1) This section applies if—

(a) there are profits of qualifying loan relationships ("the leftover profits") which are not exempt after either section 371IB or section 371ID has been applied to each qualifying loan relationship,

(b) the relevant corporation tax accounting period (as defined in section 371BC(3)) in relation to company C is a relevant accounting period of company C in relation to a period of account of the worldwide group,

(c) the CFC's accounting period ends in that period of account, and

(d) apart from this section—

(i) the charging of a sum on company C at step 5 in section 371BC(1) would cause section 314A (financing income amounts of chargeable companies) to apply in the case of company C, and

(ii) the relevant finance profits (see section 314A(1)(d)) would include **[**[F13]some or all of**]** the leftover profits.

(2) All the leftover profits are exempt if, ignoring the relevant amounts, the tested income amount for the period of account is equal to or exceeds the tested expense amount for that period.

(3) Otherwise, Z% of the leftover profits are exempt if the relevant amounts would cause the tested income amount for the period of account to exceed the tested expense amount for that period.

(4) "Z%" is given by the following formula—

$$100\ \% \times E\ I + R$$

where—

E is the amount of the excess which would be caused by the relevant amounts,

I is the amount of any increase in the tested income amount which would be caused by the relevant amounts, and

R is the amount of any reduction in the tested expense amount which would be caused by the relevant amounts.

(5) "The relevant amounts" are—

(a) the financing income amount for the period of account which company C would have as a result of the application of section 314A as mentioned in subsection (1)(d) so far as it would include the leftover profits, and

(b) any other financing income amounts for the period of account corresponding to the amount given by paragraph (a) which members of the worldwide group who make claims under this Chapter in relation to any CFC would have.

(6) For the purposes of subsection (5)(a) assume that company C's financing income amount would include P% of the leftover profits.

(7) "P%" has the meaning given by section 371BC(3), subject to sections 371BG(3)(a) and 371BH(3)(b).

F14 (7A) **[** In subsection (6) the reference to the leftover profits is to those profits so far as they would be included in the relevant finance profits (see section 314A(1)(d)).**]**

(8) Subject to what follows, terms used in this section which are defined in Part 7 (tax treatment of financing costs and income) have the same meaning as they have in Part 7.

(9) In subsections (2) to (4) references to the tested income amount or the tested expense amount are to that amount determined without regard to any debits, credits or other amounts arising from UK banking business or insurance business.

(10) But subsection (9) does not apply for the purpose of determining any financing income amount under section 314A or affect the way in which any such amount is to be taken into account in determining the tested income amount or the tested expense amount.

(11) "UK banking business or insurance business" means banking business or insurance business carried on by—

(a) a UK resident company, or

(b) a non-UK resident company acting through a UK permanent establishment.

(12) Part 7 has effect for the purposes of this section with the following modifications.

(13) In section 261 (application of Part 7) the following are to be omitted—

(a) in subsection (1), the words from "for which" to the end, and

(b) subsections (2) to (5).

(14) Section 337(1)(a) (which limits "the worldwide group" to "large" groups) is to be omitted.

Textual Amendments

F13 Words in s. 371IE(1)(d)(ii) inserted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), **Sch. 47 paras. 20(2)**, 21

F14 S. 371IE(7A) inserted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), **Sch. 47 paras. 20(3)**, 21

371IF Determining the profits of a qualifying loan relationship

Take the following steps to determine the profits of a qualifying loan relationship for the purposes of this Chapter.

Step 1 Determine the credits from the qualifying loan relationship which are brought into account in determining the CFC's non-trading finance profits. The result is "the step 1 credits".

Step 2 Determine the credits and debits which are brought into account in determining the CFC's non-trading finance profits so far as they—

(a) are from any derivative contract or other arrangement (other than a qualifying loan relationship) entered into by the CFC as a hedge of risk in connection with the qualifying loan relationship, and

(b) are attributable to the hedge of risk.

If the credits exceed the debits add the excess to the step 1 credits and if the debits exceed the credits subtract the deficit from the step 1 credits. The result is "the step 2 credits".

Step 3 Allocate to the qualifying loan relationship a just and reasonable proportion of the credits from the CFC's relevant debtor relationships which are brought into account in determining the CFC's non-trading finance profits (so far as not reflected in the step 2 credits). Add the credits to the step 2 credits. The result is "the step 3 credits". A debtor relationship of the CFC is "relevant" if the loan which is the subject of it is used by the CFC to fund the loan which is the subject of the qualifying loan relationship

Step 4 Allocate to the qualifying loan relationship a just and reasonable proportion of the credits and debits which are brought into account in determining the CFC's non-trading finance profits so far as they—

(a) are from any derivative contract or other arrangement (other than a qualifying loan relationship or a relevant debtor relationship) entered into by the CFC as a hedge of risk in connection with a relevant debtor relationship, and

(b) are attributable to the hedge of risk.

If the credits exceed the debits add the excess to the step 3 credits and if the debits exceed the credits subtract the deficit from the step 3 credits. The result is "the step 4 credits".

Step 5 Allocate to the qualifying loan relationship a just and reasonable proportion of—

(a) the debits from the CFC's loan relationships which are brought into account in determining the CFC's non-trading finance profits (so far as not reflected in the step 4 credits), and

(b) any amounts set off under Chapter 16 of Part 5 of CTA 2009 (non-trading deficits) against amounts which, apart from the set off, would be included in the CFC's non-trading finance profits.

Reduce the step 4 credits accordingly to give the profits of the qualifying loan relationship.

371IG What is a "qualifying loan relationship"?

(1) In this Chapter "qualifying loan relationship" means a creditor relationship of the CFC—

Status: *Point in time view as at 17/07/2014.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 9A. (See end of Document for details)*

(a) the ultimate debtor in relation to which is a qualifying company, and
(b) which is not prevented from being a qualifying loan relationship by section 371IH.

(2) In this Chapter "the ultimate debtor", in relation to a creditor relationship of the CFC, means the debtor in relation to the creditor relationship.

This is subject to what follows.

(3) Subsection (4) or (5) (as the case may be) applies if—
(a) there is a loan ("loan A") which is the subject of a creditor relationship of the CFC,
(b) loan A, or a part of loan A, is made and used to fund (directly or indirectly) another loan ("loan B") to a person ("P"), and
(c) loan B, or a part of loan B, is not made and used to fund (directly or indirectly) a further loan to any person.

(4) If all of loan A is made and used to fund (directly or indirectly) loan B, the ultimate debtor in relation to the CFC's creditor relationship mentioned in subsection (3)(a) is P.

(5) If only part of loan A is made and used to fund (directly or indirectly) loan B—
(a) that part of loan A is to be treated for the purposes of this Chapter as a separate loan giving rise to a separate creditor relationship of the CFC, and
(b) the ultimate debtor in relation to that separate creditor relationship is P.

(6) If the requirement of subsection (3)(c) is met in relation to a part of loan B only, in subsections (4) and (5) references to loan B are to be read as references to that part of loan B only.

(7) But neither subsection (4) nor subsection (5) applies if—
(a) the debtor ("D") in relation to the CFC's creditor relationship is a qualifying company the main business of which is banking business or insurance business,
(b) the use of loan A, or the part of loan A, as mentioned in subsection (3)(b) occurs in the ordinary course of D's banking business or insurance business (as the case may be), and
(c) P is not a UK resident qualifying company.

(8) In this section "qualifying company" means a company which—
(a) is connected with the CFC, and
(b) is controlled by the UK resident person or persons who control the CFC.

371IH Exclusions from definition of "qualifying loan relationship"

(1) If the ultimate debtor in relation to a creditor relationship of the CFC is a non-UK resident company, the creditor relationship cannot be a qualifying loan relationship so long as some or all of the company's debits—
(a) are being brought into account for the purposes of Chapter 4 of Part 2 of CTA 2009 (UK permanent establishments of non-UK resident companies) in determining the company's profits which are attributable to a UK permanent establishment, or

(b) are being brought into account for the purposes of Part 3 of ITTOIA 2005 (property income) in determining the company's profits of a UK property business.

(2) If the ultimate debtor in relation to a creditor relationship of the CFC is a UK resident company, the creditor relationship can be a qualifying loan relationship only so long as—

(a) an election under section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments) is in effect in relation to the company, and

(b) all the company's debits are being brought into account for the purpose of determining exemption adjustments in relation to the company under that section.

(3) If the ultimate debtor in relation to a creditor relationship of the CFC is another CFC, the creditor relationship cannot be a qualifying loan relationship so long as—

(a) some or all of the other CFC's debits are relevant to the application of Chapters 3 to 8 or Chapter 12 in the case of the other CFC, and

(b) as a result of that, the CFC charge is not being charged in relation to the other CFC's accounting periods or any sums charged are less than what they would otherwise have been.

(4) In subsections (1) to (3) references to the debits of the company which is the ultimate debtor in relation to a creditor relationship of the CFC are references to—

(a) the ultimate debtor's debits in relation to the loan which is the subject of the CFC's creditor relationship, or

(b) if the ultimate debtor is determined in accordance with section 371IG(4) or (5), the ultimate debtor's debits in relation to loan B.

(5) A creditor relationship of the CFC cannot be a qualifying loan relationship if it is, or is connected (directly or indirectly) to, an arrangement the main purpose, or one of the main purposes, of which is for the ultimate debtor in relation to the creditor relationship to provide (directly or indirectly) funding for—

(a) a loan to another person, or

(b) so far as not covered by paragraph (a), an arrangement intended to produce for any person a return in relation to any amount which it is reasonable to suppose would be a return by reference to the time value of that amount of money.

(6) Subsection (5) does not apply if—

(a) the main business of the ultimate debtor is banking business or insurance business, and

(b) the funding for the loan or arrangement would be provided in the ordinary course of the ultimate debtor's banking business or insurance business (as the case may be).

(7) A creditor relationship of the CFC cannot be a qualifying loan relationship if—

(a) the main business of the ultimate debtor in relation to the creditor relationship is banking business or insurance business, and

(b) the creditor relationship is, or is connected (directly or indirectly) to, an arrangement the main purpose, or one of the main purposes, of which is for the ultimate debtor to provide (directly or indirectly) funding for a loan or arrangement as mentioned in subsection (5)(a) or (b) in order to obtain a tax advantage for the ultimate debtor.

Status: *Point in time view as at 17/07/2014.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 9A. (See end of Document for details)*

(8) A creditor relationship of the CFC cannot be a qualifying loan relationship if the loan which is the subject of the creditor relationship is made to any extent (other than a negligible one) out of funds received by the CFC (directly or indirectly)—

(a) from a relevant UK connected company other than by way of a loan, or

(b) as a result of an arrangement which gives rise to a deduction in the calculation of the profits of a trade of a relevant UK connected company (apart from the ultimate debtor) for the purposes of Part 3 of CTA 2009 (trading income).

(9) For the purposes of subsection (8) a company is "relevant UK connected" if—

(a) the company is a UK resident company connected with the CFC,

(b) the company's main business is banking business or insurance business, and

(c) the company's banking business or insurance business (as the case may be) is a trade.

[Subsection (9B) applies to a creditor relationship of a CFC if—

F15(9A) (a) a creditor relationship ("the UK creditor relationship") of a UK connected company is made where the debtor is a non-UK resident company connected with the UK connected company,

(b) subsequently, an arrangement ("the relevant arrangement") is made directly or indirectly in connection with the UK creditor relationship, and

(c) the main purpose, or one of the main purposes, of the relevant arrangement is to secure that—

(i) the relevant UK credits of a UK connected company for a corporation tax accounting period of the company are lower than they would be if the relevant arrangement had not been made, or

(ii) the relevant UK debits of a UK connected company for a corporation tax accounting period of the company are greater than they would be if the relevant arrangement had not been made.

(9B) The CFC's creditor relationship cannot be a qualifying loan relationship if it is, or is connected (directly or indirectly) to, the relevant arrangement.

(9C) Subsection (9D) applies for the purposes of subsection (9A)(c)(i) and (ii) in determining what the relevant UK credits or debits of a UK connected company for a corporation tax accounting period would be if the relevant arrangement had not been made.

(9D) Assume that, at all times after the relevant time, the UK creditor relationship remains in place on the same terms as it had at the relevant time.

(9E) In subsections (9A) to (9D)—

"corporation tax accounting period" means an accounting period for corporation tax purposes,

"the relevant time" means the time immediately before—

(a) the time when the relevant arrangement is made, or

(b) if earlier, the time when the UK creditor relationship ends,

"relevant UK credits", in relation to a UK connected company, means credits which the company has under Part 5 or 7 of CTA 2009,

"relevant UK debits", in relation to a UK connected company, means debits which the company has under Part 5 or 7 of CTA 2009, and

"UK connected company" means a UK resident company which—

(a) is connected with the CFC, or
(b) was connected with a company with which the CFC is connected.**]**

(10) A creditor relationship of the CFC cannot be a qualifying loan relationship if—
(a) the CFC receives relevant UK funds or other assets for the purpose of funding the loan which is the subject of the CFC's creditor relationship,
(b) the provision of the relevant UK funds or other assets is itself funded (wholly or partly and directly or indirectly) by a loan made to a UK connected company by—
(i) a non-UK resident person, or
(ii) a UK resident person who is not connected with the CFC,
(c) the relevant loan is **[**[F16]used to any extent (other than a negligible one)**]** to repay wholly or partly another loan made to the ultimate debtor by a person not connected with the ultimate debtor, and
(d) the events mentioned in paragraphs (a) to (c) take place under, or are otherwise connected (directly or indirectly) with, an arrangement the main purpose, or one of the main purposes, of which is to obtain a tax advantage for any person.

(11) In subsection (10)—
(a) "relevant UK funds or other assets" and "UK connected company" have the same meaning as in section 371EC, and
(b) in paragraph (c) "the relevant loan" means—
(i) the loan which is the subject of the CFC's creditor relationship, or
(ii) if the ultimate debtor is determined in accordance with section 371IG(4) or (5), loan B.

(12) In subsections (4)(b) and (11)(b)(ii) references to loan B do not include any part of loan B—
(a) which loan A is not made and used to fund, or
(b) in relation to which the requirement of section 371IG(3)(c) is not met.

Textual Amendments

F15 Ss. 371IH(9A)-(9E) inserted (with effect in accordance with s. 293(2) of the amending Act) by Finance Act 2014 (c. 26), **s. 293(1)**

F16 Words in s. 371IH(10)(c) substituted (with effect in accordance with s. 294(2) of the amending Act) by Finance Act 2014 (c. 26), **s. 294(1)**

371II Power to amend definitions

The HMRC Commissioners may by regulations amend this Chapter—
(a) so as to amend the definition of "qualifying resources" for the purposes of section 371IB, or
(b) so as to amend the definition of "qualifying loan relationship" or "ultimate debtor" for the purposes of this Chapter.

Status: *Point in time view as at 17/07/2014.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 9A. (See end of Document for details)*

371IJ Claims

(1) A claim under this Chapter must be made by being included in company C's company tax return for the relevant corporation tax accounting period (as defined in section 371BC(3)).

(2) The claim may be included in the return originally made or by amendment.

(3) The claim may be amended or withdrawn by company C only by amending the return.

(4) A claim under this Chapter may be made, amended or withdrawn at any time up to whichever is the last of the following dates—

(a) the first anniversary of the filing date for company C's company tax return for the relevant corporation tax accounting period under paragraph 14 of Schedule 18 to FA 1998;

(b) if notice of enquiry is given into that return under paragraph 24 of that Schedule, 30 days after the enquiry is completed;

(c) if after such an enquiry an officer of Revenue and Customs amends the return under paragraph 34(2) of that Schedule, 30 days after notice of the amendment is issued;

(d) if an appeal is brought against such an amendment, 30 days after the date on which the appeal is finally determined.

(5) A claim under this Chapter may be made, amended or withdrawn at a later time if an officer of Revenue and Customs allows it.

(6) In any event, if after a claim under this Chapter is made there is a change of circumstances affecting the tested income amount or the tested expense amount mentioned in section 371IE(2), the claim may be amended at any time within the period of 12 months after the change of circumstances for the purpose of taking account of the change of circumstances.

(7) The time limits otherwise applicable to amendment of a company tax return do not apply to an amendment to the extent that it makes, amends or withdraws a claim under this Chapter within the time allowed by or under this section.

(8) In subsection (4) references to an enquiry into a company tax return do not include an enquiry restricted to a previous amendment making, amending or withdrawing a claim under this Chapter.

(9) An enquiry is so restricted if—

(a) the scope of the enquiry is limited as mentioned in paragraph 25(2) of Schedule 18 to FA 1998, and

(b) the amendment giving rise to the enquiry consisted of the making, amending or withdrawing of a claim under this Chapter.

CHAPTER 10

THE EXEMPT PERIOD EXEMPTION

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.

(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

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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.

(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
  - (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.

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CHAPTER 11

THE EXCLUDED TERRITORIES EXEMPTION

Modifications etc. (not altering text)

C9 Pt. 9A Chs. 11-14 applied (with modifications) by 2009 c. 4, s. 18I-18ID (as substituted (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 20 para. 6**)

371KA Introduction to Chapter

This Chapter sets out an exemption called "the excluded territories exemption" for the purposes of section 371BA(2)(b).

371KB The basic rule

(1) The excluded territories exemption applies for a CFC's accounting period if—

(a) the CFC is resident (see section 371KC) in an excluded territory for the accounting period,

(b) the total of the following amounts is no more than the threshold amount for the accounting period (see section 371KD)—

(i) the CFC's category A income (if any) for the accounting period (see sections 371KE and 371KF),

(ii) the CFC's category B income (if any) for the accounting period (see section 371KG),

(iii) the CFC's category C income (if any) for the accounting period (see section 371KH), and

(iv) the CFC's category D income (if any) for the accounting period (see section 371KI),

(c) the IP condition is met (see section 371KJ), and

(d) the CFC is not, at any time during the accounting period, involved in an arrangement the main purpose, or one of the main purposes, of which is to obtain a tax advantage for any person.

(2) In this Chapter "excluded territory" means a territory specified as such in regulations made by the HMRC Commissioners.

(3) The HMRC Commissioners may also by regulations, in relation to CFCs resident in a specified excluded territory or to other specified cases, do one or more of the following—

(a) provide that one or both of the requirements set out in subsection (1)(b) and (c) does not have to be met in order for the excluded territories exemption to apply;

(b) modify one or both of those requirements, including by modifying any provision of this Chapter mentioned in subsection (1)(b) or (c);

(c) specify further requirements which must be met in order for the excluded territories exemption to apply.

(4) If an amount is included in more than one of the categories of income mentioned in subsection (1)(b)(i) to (iv), the amount is to be counted only once in determining if the threshold amount is exceeded.

371KC How to determine the territory in which a CFC is resident

(1) For the purposes of this Chapter the territory in which a CFC is resident for an accounting period is to be determined in accordance with this section; and in this Chapter "the CFC's territory" means that territory as so determined.

(2) The CFC is taken to be resident in the territory determined in accordance with section 371TA.

(3) But section 371TA(1)(b) is to be applied only if, at all times during the accounting period, the CFC or persons with interests in the CFC are liable under the law of the territory in question to tax on the CFC's income.

(4) If, as a result of subsection (3), no territory of residence can be determined, the excluded territories exemption cannot apply for the accounting period.

371KD What is "the threshold amount"?

(1) The threshold amount for a CFC's accounting period is—
  (a) 10% of the CFC's accounting profits for the accounting period, or
  (b) if more, £50,000.

(2) If the accounting period is less than 12 months, the amount specified in subsection (1)(b) is to be reduced proportionately.

(3) In this Chapter references to a CFC's accounting profits for an accounting period are to be read ignoring section 371VD(7) and (8).

371KE Category A income: the basic rule

(1) A CFC's category A income for an accounting period consists of any gross amounts (that is, amounts before deduction of expenses or transfers to or from reserves) of any relevant income to which subsection (3), (4) or (5) applies. This is subject to section 371KF.

(2) "Relevant income" means any income of the CFC which—
  (a) is brought into account in determining the CFC's accounting profits for the accounting period, or
  (b) is not so brought into account but arises in the accounting period.

(3) This subsection applies to any relevant income (apart from any dividend or other distribution of a company) so far as it is exempt from tax in the CFC's territory.

(4) This subsection applies to any relevant income so far as the tax which falls to be paid in respect of the relevant income in the CFC's territory is at a reduced rate by virtue of a provision having effect under the law of that territory the purpose of which is (wholly or mainly) to encourage (directly or indirectly) investment in that territory.

(5) This subsection applies to any relevant income if—
  (a) any tax falls to be paid in respect of the relevant income in the CFC's territory,

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(b) under the law of that territory, the CFC, any person who has an interest in the CFC or any person connected with the CFC is entitled to any repayment of tax or any payment in respect of a credit for tax, and

(c) that repayment or payment—

(i) is directly or indirectly in respect of the whole or part of the tax mentioned in paragraph (a), but

(ii) is not a form of relief in respect of losses incurred by the CFC.

371KF Category A income: permanent establishments in excluded territories

(1) This section applies if—

(a) a CFC's category A income for an accounting period would include (apart from this section) the gross amount of any relevant income which arises from the activities of a permanent establishment ("PE") which the CFC has in a territory outside the CFC's territory, and

(b) the territory in which PE is established is an excluded territory.

(2) The gross amount of that relevant income is to be included in the CFC's category A income only so far as it would also have been included had the references in section 371KE(3) to (5) to the CFC's territory instead been references to the territory in which PE is established.

371KG Category B income

(1) A CFC's category B income for an accounting period consists of any notional interest which—

(a) is deducted from any of the CFC's relevant income for tax purposes under the law of the CFC's territory or any territory in which the CFC has a permanent establishment, but

(b) is not deducted in determining the CFC's assumed taxable total profits for the accounting period.

(2) But the CFC's category B income is not to exceed its relevant non-local income.

(3) "Notional interest" means an amount representing a notional interest expense or other financing charge calculated by reference to any of the CFC's equity or debt.

(4) "Relevant income" has the same meaning as in section 371KE.

(5) "Relevant non-local income" means the gross amount (that is, the amount before deduction of expenses or transfers to or from reserves) of any non-trading income—

(a) which is included in the CFC's relevant income, and

(b) which is received (directly or indirectly) from—

(i) a person resident outside the CFC's territory, or

(ii) a permanent establishment which a person resident in the CFC's territory (apart from the CFC itself) has in a territory outside the CFC's territory.

371KH Category C income

A CFC's category C income for an accounting period is the total of the following amounts—

(a) amounts included in the CFC's accounting profits for the period which fall within section 371VD(4)(a) (whether or not those amounts would have been included in those profits apart from section 371VD(4)(a)), and

(b) amounts included in those profits by virtue only of section 371VD(4)(b).

371KI Category D income

(1) A CFC's category D income for an accounting period consists of the gross amounts (that is, the amounts before deduction of expenses or transfers to or from reserves) of any income which—

(a) is brought into account in determining the CFC's accounting profits for the accounting period, and

(b) is to be included in the CFC's category D income in accordance with subsection (3) or (4).

(2) Subsection (3) applies if—

(a) income arises from any provision made or imposed by means of an arrangement as between the CFC and any company connected with the CFC,

(b) in the CFC's territory, the income is reduced by an amount ("the relevant amount") for tax purposes on the basis that the income is more than what it would have been had the company connected with the CFC not been connected with the CFC, and

(c) there is not in any territory a corresponding increase for tax purposes in the income of a company connected with the CFC.

(3) The relevant amount is to be included in the CFC's category D income.

(4) Income is to be included in the CFC's category D income so far as the tax which falls to be paid in respect of the income in the CFC's territory is at a reduced rate by virtue of a ruling or other decision or an arrangement made in relation to the CFC by a governmental authority in that territory.

371KJ The IP condition

(1) This section applies for the purposes of section 371KB(1)(c).

(2) The IP condition is met unless—

(a) the CFC's assumed total profits for the accounting period include amounts arising from intellectual property held by the CFC ("the exploited IP"),

(b) all or parts of the exploited IP were—

(i) transferred (directly or indirectly) to the CFC by persons related to the CFC at times during the relevant period, or

(ii) otherwise derived (directly or indirectly) at times during that period out of or from intellectual property held at times during that period by persons related to the CFC,

(c) as a result of those transfers or other derivations, the value of the intellectual property held by those persons related to the CFC, taken together, has been significantly reduced from what it would otherwise have been, and

(d) if only parts of the exploited IP were so transferred or derived, the significance condition is met.

(3) The significance condition is met if—

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(a) the parts of the exploited IP ("the UK derived IP") which were transferred or otherwise derived as mentioned in subsection (2)(b) are, taken together, a significant part of the exploited IP, or

(b) as a result of the transfers or other derivations of the UK derived IP, the CFC's assumed total profits for the accounting period are significantly higher than what they would otherwise have been.

(4) In relation to a non-UK resident person who is related to the CFC, in this section references to the transfer or holding of intellectual property by a person related to the CFC are limited to, as the case may be—

(a) the transfer of intellectual property which before the transfer was held by the non-UK resident person (wholly or partly) for the purposes of a permanent establishment which the person has in the United Kingdom, or

(b) the holding of intellectual property by the non-UK resident person (wholly or partly) for those purposes.

(5) "The relevant period" means the period covering the accounting period and the 6 years before the accounting period.

CHAPTER 12

THE LOW PROFITS EXEMPTION

371LA Introduction to Chapter

This Chapter sets out an exemption called "the low profits exemption" for the purposes of section 371BA(2)(b).

371LB The basic rule

(1) The low profits exemption applies for a CFC's accounting period if subsection (2), (3), (4) or (5) applies.

(2) This subsection applies if the CFC's accounting profits for the accounting period are no more than £50,000.

(3) This subsection applies if the CFC's assumed taxable total profits for the accounting period are no more than £50,000.

(4) This subsection applies if—

(a) the CFC's accounting profits for the accounting period are no more than £500,000, and

(b) the amount of those profits representing non-trading income is no more than £50,000.

(5) This subsection applies if—

(a) the CFC's assumed taxable total profits for the accounting period are no more than £500,000, and

(b) the amount of those profits representing non-trading income is no more than £50,000.

(6) If the accounting period is less than 12 months, the amounts specified in subsections (2), (3), (4)(a) and (b) and (5)(a) and (b) are to be reduced proportionately.

371LC Anti-avoidance

(1) The low profits 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) in consequence of the arrangement, the low profits exemption would (apart from this section) apply for the relevant accounting period, and
- (c) the main purpose, or one of the main purposes, of the arrangement is to secure that the low profits exemption applies—
  - (i) for the relevant accounting period, or
  - (ii) for that period and one or more other accounting periods of the CFC.

(3) Condition B is that, at any time during the relevant accounting period, the CFC's business is, wholly or mainly, the provision of UK intermediary services.

(4) For the purposes of subsection (3) the CFC provides "UK intermediary services" if—
- (a) a UK resident individual ("the service provider") personally performs, or is under an obligation personally to perform, services in the United Kingdom for a person ("the client"), and
- (b) the services are provided not under a contract directly between the service provider and the client but under an arrangement involving the CFC.

(5) The low profits exemption does not apply for a CFC's accounting period by virtue of section 371LB(2) or (4) if condition C is met.

(6) Condition C is that, in determining the CFC's assumed taxable total profits for the accounting period, Part 21B of CTA 2010 (group mismatch schemes) has effect so as to exclude an amount from being brought into account as a debit or credit for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts).

CHAPTER 13

THE LOW PROFIT MARGIN EXEMPTION

371MA Introduction to Chapter

This Chapter sets out an exemption called "the low profit margin exemption" for the purposes of section 371BA(2)(b).

371MB The basic rule

(1) The low profit margin exemption applies for a CFC's accounting period if the CFC's accounting profits for the period are no more than 10% of the CFC's relevant operating expenditure.

Status: *Point in time view as at 17/07/2014.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 9A. (See end of Document for details)*

(2) In this section references to the CFC's accounting profits are to those profits as determined before any deduction for interest.

(3) The CFC's "relevant operating expenditure" is its operating expenditure brought into account in determining its accounting profits for the accounting period, excluding—

(a) the cost of goods purchased by the CFC, other than goods used by the CFC in the territory in which it is resident for the accounting period, and

(b) any expenditure which gives rise, directly or indirectly, to income of a person related to the CFC.

371MC Anti-avoidance

The low profit margin exemption does not apply for a CFC's accounting period ("the relevant accounting period") if—

(a) an arrangement is entered into at any time,

(b) in consequence of the arrangement, the low profit margin exemption would (apart from this section) apply for the relevant accounting period, and

(c) the main purpose, or one of the main purposes, of the arrangement is to secure that the low profit margin exemption applies—

(i) for the relevant accounting period, or

(ii) for that period and one or more other accounting periods of the CFC.

CHAPTER 14

THE TAX EXEMPTION

371NA Introduction to Chapter

This Chapter sets out an exemption called "the tax exemption" for the purposes of section 371BA(2)(b).

371NB The basic rule

(1) Take the following steps to determine if the tax exemption applies for a CFC's accounting period.

Step 1 Applying section 371TB, determine the territory ("the CFC's territory") in which the CFC is resident for the accounting period. If no territory of residence can be determined by applying section 371TB, the tax exemption cannot apply and no further steps are to be taken.

Step 2 Determine the amount of tax ("the local tax amount") which is paid in the CFC's territory in respect of the CFC's local chargeable profits arising in the accounting period (applying section 371NC so far as relevant). If the local tax amount is determined under designer rate tax provisions (see section 371ND), the tax exemption cannot apply and step 3 is not to be taken.

Step 3 In accordance with section 371NE, determine the amount of the corresponding UK tax for the accounting period. The tax exemption applies if the local tax amount is at least 75% of the corresponding UK tax.

(2) Subsection (3) applies if an amount of tax is paid in the CFC's territory by a person (whether or not the CFC) in respect of any of the CFC's local chargeable profits arising in the accounting period taken together with other amounts.

(3) For the purposes of step 2 in subsection (1) the amount of tax is to be apportioned between the CFC's local chargeable profits in question and the other amounts on a just and reasonable basis.

(4) In this Chapter references to the CFC's local chargeable profits are to its profits as determined for tax purposes under the law of the CFC's territory, ignoring any capital gains or losses.

371NC Reductions to "the local tax amount"

(1) This section applies for the purposes of step 2 in section 371NB(1).

(2) The local tax amount is to be reduced to what it would have been—
- (a) had any income, or any income and expenditure (where the income exceeds the expenditure), to which subsection (3) applies not been brought into account in determining the CFC's local chargeable profits arising in the accounting period in respect of which tax is paid in the CFC's territory, and
- (b) had any expenditure to which subsection (4) applies been brought into account in determining those profits.

(3) This subsection applies to any income, or any income and expenditure, of the CFC—
- (a) which is brought into account in determining the CFC's local chargeable profits arising in the accounting period in respect of which tax is paid in the CFC's territory, but
- (b) which does not fall to be brought into account in determining the CFC's assumed taxable total profits for the accounting period.

(4) This subsection applies to any expenditure of the CFC—
- (a) which is not brought into account in determining the CFC's local chargeable profits arising in the accounting period in respect of which tax is paid in the CFC's territory, but
- (b) which does fall to be brought into account in determining the CFC's assumed taxable total profits for the accounting period.

(5) Subsection (6) applies if—
- (a) in the CFC's territory any tax falls to be paid in respect of the CFC's local chargeable profits arising in the accounting period,
- (b) under the law of that territory, any repayment of tax, or any payment in respect of a credit for tax, is made to any person, and
- (c) that repayment or payment is directly or indirectly in respect of the whole or part of the tax mentioned in paragraph (a).

(6) The local tax amount is to be reduced (or further reduced after any reduction under subsection (2)) by the amount of that repayment or payment.

371ND What are "designer rate tax provisions"?

(1) For the purposes of step 2 in section 371NB(1) "designer rate tax provisions" means provisions—

Status: *Point in time view as at 17/07/2014.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 9A. (See end of Document for details)*

(a) which appear to the HMRC Commissioners to be designed to enable companies to exercise significant control over the amount of tax which they pay, and
(b) which are specified in regulations made by the HMRC Commissioners.

(2) Regulations under subsection (1) may make different provision for different cases or with respect to different territories.

371NE How to determine "the corresponding UK tax"

(1) For the purposes of step 3 in section 371NB(1) "the corresponding UK tax" is the amount of corporation tax which, applying the corporation tax assumptions, would be charged in respect of the CFC's assumed taxable total profits for the accounting period.

(2) In determining that amount of corporation tax—
(a) ignore any relief from corporation tax attributable to the local tax amount which would be given to the CFC by virtue of Part 2 (double taxation relief) in respect of any income, and
(b) deduct from what would otherwise be that amount of corporation tax—
(i) any amount which, applying the corporation tax assumptions, would be set off against corporation tax on the CFC's assumed taxable total profits by virtue of section 967 of CTA 2010 (cases in which a company receives a payment bearing income tax), and
(ii) any amount of income tax or corporation tax actually charged in respect of any income included in the CFC's assumed taxable total profits.

(3) In subsection (2)(b) the references to an amount being set off or an amount actually charged do not include so much of any such amount as has been or falls to be repaid to the CFC whether on the making of a claim or otherwise.

CHAPTER 15

RELEVANT INTERESTS IN A CFC

Introduction

371OA Application of Chapter

This Chapter applies for the purpose of determining the persons who have "relevant interests" in a CFC for the purposes of step 1 in section 371BC(1).

371OB Provision about interpretation

(1) This section applies for the purposes of this Chapter.

(2) A person's interest in a company is an "indirect" interest so far as the person has the interest by virtue of having an interest in another company; and references to a "direct" interest in a company are to be read accordingly.

(3) An interest held by an open-ended investment company within the meaning of Chapter 2 of Part 13 of CTA 2010 (see sections 613 and 615) is treated as held by the company's shareholders in proportion to their shareholdings.

(4) An interest held by the trustees of an authorised unit trust is treated as held by the persons who have rights under the trust in proportion to their rights.

(5) An interest held by a bare trustee or nominee (including by virtue of subsection (3) or (4)) is treated as held by the person or persons for whom the bare trustee or nominee holds the interest.

(6) "Bare trustee" means a person acting as trustee for—
- (a) a person absolutely entitled as against the trustee,
- (b) two or more persons who are so entitled,
- (c) a person who would be so entitled but for being a minor or otherwise lacking legal capacity, or
- (d) two or more persons who would be so entitled but for all or any of them being a minor or otherwise lacking legal capacity.

(7) Subsection (8) applies in a case not covered by subsection (5) if—
- (a) an interest is held in a fiduciary or representative capacity (including by virtue of subsection (3) or (4)), and
- (b) there are one or more identifiable beneficiaries.

(8) The interest is taken to be held by that beneficiary or, as the case may be, apportioned between those beneficiaries on a just and reasonable basis.

What is a "relevant interest" in a CFC?

371OC "Relevant interests" of UK resident companies

(1) A UK resident company's interest in a CFC is a "relevant interest", except so far as subsection (2) applies to it.

(2) This subsection applies to the interest so far as it is an indirect interest which the UK resident company has by virtue of having an interest in another UK resident company.

371OD "Relevant interests" of persons related to UK resident companies

(1) This section applies if, by virtue of section 371OC, a UK resident company ("UKRC") has a relevant interest in a CFC.

(2) A related person's interest in the CFC is a "relevant interest", except so far as subsection (4) or (5) applies to it.

(3) "Related person" means a person, other than a UK resident company, who is connected or associated with UKRC.

(4) This subsection applies to the related person's interest so far as it is an indirect interest which the related person has by virtue of having an interest in a UK resident company or another related person.

(5) This subsection applies to the interest so far as it is the same as UKRC's relevant interest in the CFC by virtue of UKRC having an interest in the related person.

Status: *Point in time view as at 17/07/2014.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 9A. (See end of Document for details)*

371OE Other "relevant interests"

(1) This section applies if a person ("P") has a direct interest in a CFC which is not a relevant interest by virtue of section 371OC or 371OD.

(2) P's direct interest is a "relevant interest", except so far as subsection (3) applies to it.

(3) This subsection applies to P's direct interest so far as it is the same as another person's relevant interest in the CFC by virtue of the other person having an interest in P.

(4) In subsection (3) the reference to another person's relevant interest is to another person's relevant interest by virtue of section 371OC or 371OD.

CHAPTER 16

CREDITABLE TAX OF A CFC

371PA What is "creditable tax"?

(1) For the purposes of step 2 in section 371BC(1) a CFC's creditable tax for an accounting period is the total of—
   (a) the amount of any relief from corporation tax attributable to any foreign tax which, applying the corporation tax assumptions, would be given to the CFC by virtue of Part 2 (double taxation relief) in respect of any income included or represented in the CFC's chargeable profits for the accounting period,
   (b) any amount of relevant income tax which, applying the corporation tax assumptions, would be set off against corporation tax on the CFC's chargeable profits for the accounting period by virtue of section 967 of CTA 2010 (cases in which a company receives a payment bearing income tax),
   (c) any amount of income tax or corporation tax actually charged in respect of any income included or represented in the CFC's chargeable profits for the accounting period, and
   (d) any amount of a foreign CFC charge paid in respect of any income included or represented in the CFC's chargeable profits for the accounting period.

(2) In subsection (1)(a) "foreign tax" means—
   (a) the local tax amount, or
   (b) any tax under the law of a relevant foreign territory.

(3) In subsection (1)(b) "relevant income tax" means income tax which the CFC bears by deduction on a payment so far as the payment is included or represented in the CFC's chargeable profits.

(4) In subsection (1)(d) "foreign CFC charge" means a charge under the law of a relevant foreign territory (by whatever name known) which is similar to the CFC charge.

(5) In subsection (1)(b) to (d) references to an amount being set off, an amount actually charged or an amount paid do not include so much of any such amount as has been or falls to be repaid to the CFC or any other person whether on the making of a claim or otherwise.

(6) "Relevant foreign territory" means a territory outside the United Kingdom other than the territory in which the CFC is resident for the accounting period.

CHAPTER 17

APPORTIONMENT OF A CFC'S CHARGEABLE PROFITS AND CREDITABLE TAX

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.

(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.

(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)—

(a) apply subsection (2) separately in relation to each holding (reading references to the relevant shares accordingly), and

(b) 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—

$$P \times H\ A$$

where—

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).

CHAPTER 18

CONTROL ETC

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.

Status: *Point in time view as at 17/07/2014.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 9A. (See end of Document for details)*

(2) Section 371RC sets 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.

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)

C10 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).

Status: *Point in time view as at 17/07/2014.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 9A. (See end of Document for details)*

(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)

C11 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 undertaking.

(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 subsidiary undertakings (if any).

(5) "Parent undertaking" and "subsidiary undertaking" are to be read in accordance with Financial Reporting Standard 2 issued in July 1992 by the Accounting Standards Board, 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 Financial Reporting Standard 2 (but see section 371RF(3)).

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).

CHAPTER 19

ASSUMED TAXABLE TOTAL PROFITS, ASSUMED TOTAL PROFITS AND THE CORPORATION TAX ASSUMPTIONS

Overview

371SA Overview of Chapter

This Chapter explains the concepts of "assumed taxable total profits" and "assumed total profits" (see section 371SB) and "the corporation tax assumptions" (see section 371SC) which are referred to in this Part.

Status: *Point in time view as at 17/07/2014.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 9A. (See end of Document for details)*

"Assumed taxable total profits" and "assumed total profits"

371SB What are "assumed taxable total profits" and "assumed total profits"?

(1) For the purposes of this Part a CFC's "assumed taxable total profits" for an accounting period are what, applying the corporation tax assumptions, would be the CFC's taxable total profits of the accounting period for corporation tax purposes.

(2) "Taxable total profits" has the meaning given by section 4(2) of CTA 2010 (calculation of taxable total profits).

(3) But, for this purpose, in section 4(3) of CTA 2010—
  (a) step 1 is to be applied subject to subsections (4) to (6) below, and
  (b) step 2 is to be ignored.

(4) Any income which accrues during the accounting period to the trustees of a settlement in relation to which the CFC is a settlor or a beneficiary is to be added to the income determined at step 1.

(5) If there is more than one settlor or beneficiary in relation to the settlement, the income is to be apportioned between the CFC and the other settlors or beneficiaries on a just and reasonable basis.

(6) If by virtue of subsection (4) any income ("the settlement income") is added to the income determined at step 1, any dividend or other distribution which derives from the settlement income is to be excluded from the income determined at step 1.

(7) Subsection (8) applies if there is any income which, by virtue of subsection (4), would (apart from subsection (8)) be included in—
  (a) the chargeable profits for an accounting period of a CFC which is a beneficiary in relation to a settlement, and
  (b) the chargeable profits for an accounting period of a CFC which is a settlor in relation to the settlement.

(8) If the CFC charge is charged in relation to the beneficiary's accounting period, the income is not to be included in the settlor's chargeable profits.

(9) For the purposes of this Part a CFC's "assumed total profits" for an accounting period are its assumed taxable total profits for the period before taking step 2 in section 4(2) of CTA 2010.

"The corporation tax assumptions"

371SC What are "the corporation tax assumptions"?

(1) In this Part "the corporation tax assumptions" means the assumptions set out in sections 371SD to 371SR.

(2) The corporation tax assumptions are to be applied in determining the following for an accounting period ("the relevant accounting period") of a CFC—
  (a) the CFC's assumed taxable total profits in accordance with section 371SB(1),
  (b) the corresponding UK tax in accordance with section 371NE, and
  (c) the CFC's creditable tax in accordance with Chapter 16.

371SD UK residence etc

(1) Assume—

(a) that the CFC is UK resident at all times during the relevant accounting period,

(b) if the relevant accounting period is not the CFC's first accounting period, that the CFC has been UK resident from the beginning of the CFC's first accounting period, and

(c) except where the CFC ceases to be a CFC at the end of the relevant accounting period, that the CFC will continue to be UK resident until it ceases to be a CFC,

and that the CFC is, has been and will continue to be within the charge to corporation tax, and that its accounting periods (as determined in accordance with section 371VB) are accounting periods for corporation tax purposes, accordingly.

(2) Subsection (1)—

(a) does not require it to be assumed that there is any change in the place or places at which the CFC carries on its activities, and

(b) requires (in particular) that it be assumed that the CFC does not get the benefit of section 1279 of CTA 2009 (exemption for profits from securities free of tax to residents abroad).

(3) If the CFC is (actually) UK resident immediately before the beginning of its first accounting period, assume that its UK residence from the beginning of that accounting period (as assumed in accordance with subsection (1)) is not continuous with its (actual) UK residence before the beginning of that accounting period.

(4) Except where the relevant accounting period is the CFC's first accounting period, assume that a determination of the CFC's assumed taxable total profits has been made for all previous accounting periods back to (and including) the CFC's first accounting period.

(5) Subsection (4) applies (in particular) for the purpose of applying any relief which is relevant to two or more accounting periods.

(6) In this section references to the CFC's first accounting period are to the CFC's accounting period which begins when it becomes a CFC.

371SE Close company

Assume that the CFC is not a close company.

371SF Claims and elections

(1) In relation to any relief under the Corporation Tax Acts which is dependent upon the making of a claim or election, assume the CFC—

(a) to have made that claim or election which would give the maximum amount of relief, and

(b) to have made that claim or election within any applicable time limit.

(2) Subsection (1) does not cover (so far as it would otherwise do so) a claim or election under—

(a) section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments),

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(b) section 1275 of CTA 2009 (relief for unremittable income),

(c) section 9A of CTA 2010 (designated currency of a UK resident investment company), or

(d) regulations made under paragraph 16 of Schedule 8 to FA 2006 (election for lease to be treated as long funding lease).

(3) Subsection (1) is also subject to section 371SK(5).

371SG Disapplication of assumption in section 371SF(1)

(1) This section applies if a notice is given to an officer of Revenue and Customs requesting that the CFC be assumed—

(a) not to have made for the relevant accounting period a specified claim or election otherwise covered by section 371SF(1),

(b) to have made for the relevant accounting period a specified claim or election, being different from one assumed by section 371SF(1) but being one which (subject to compliance with any applicable time limit) could have been made by a company within the charge to corporation tax, or

(c) to have disclaimed or required the postponement, in whole or in part, of a specified allowance for the relevant accounting period if (subject to compliance with any applicable time limit) a company within the charge to corporation tax could have disclaimed the allowance or required such a postponement (as the case may be).

(2) In determining for the purposes of section 371BA(3) the CFC's assumed total profits and the amounts to be relieved against those profits at step 2 in section 4(2) of CTA 2010—

(a) the assumption set out in the notice under subsection (1) is to be applied so far as relevant, and

(b) the assumption set out in section 371SF(1) is to be disapplied to the extent necessary as a consequence.

(3) In determining the CFC's creditable tax—

(a) the assumption set out in the notice under subsection (1) is to be applied so far as relevant, and

(b) the assumption set out in section 371SF(1) is to be disapplied to the extent necessary as a consequence.

(4) The claims which may be specified in a notice under subsection (1) by virtue of paragraph (b) include claims under the provision mentioned in section 371SF(2)(b) or 371SK(5).

(5) A notice under subsection (1)—

(a) may be given only by a company or companies determined under subsection (6) or (7), and

(b) must be given—

(i) within 20 months after the end of the relevant accounting period, or

(ii) within such longer period as an officer of Revenue and Customs may allow.

(6) A company may give a notice if—

(a) the company would be a chargeable company were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period, and

(b) the percentage of the CFC's chargeable profits which would be apportioned to the company at step 3 in section 371BC(1) would represent more than half of X%.

(7) Two or more companies may together give a notice if—

(a) the companies would all be chargeable companies were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period, and

(b) the percentage of the CFC's chargeable profits which would be apportioned to the companies, taken together, at step 3 in section 371BC(1) would represent more than half of X%.

(8) In subsections (6) and (7) "X%" means the total percentage of the CFC's chargeable profits which would be apportioned to chargeable companies at step 3 in section 371BC(1) were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period.

371SH Elections under section 9A of CTA 2010

(1) This section applies if—

(a) during the relevant accounting period or any earlier accounting period of the CFC, a notice is given to an officer of Revenue and Customs requesting that the CFC be assumed to have made an election under section 9A of CTA 2010 (designated currency of a UK resident investment company) in the form specified in the notice, and

(b) the time at which the notice is given is a time at which, applying the corporation tax assumptions apart from this section, the CFC would have been able to make an election under that section in the form specified in the notice (see, in particular, section 9A(2)).

(2) Assume—

(a) that an election under section 9A of CTA 2010 has been made by the CFC in the form specified in the notice under subsection (1) at the time in question, and

(b) that, accordingly, sections 9A and 9B of that Act apply to determine the effect (if any) of that election.

(3) Subsection (2)(b) does not apply if—

(a) a notice is given to an officer of Revenue and Customs revoking the notice under subsection (1), and

(b) the time at which the notice revoking the notice under subsection (1) is given is a time at which, applying the corporation tax assumptions apart from this section and the assumption in subsection (2)(a), the CFC would have been able to revoke its assumed election under section 9A of CTA 2010.

(4) A notice under subsection (1) or (3) may be given only by a company or companies determined under subsection (5) or (6).

(5) A company may give a notice if—

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(a) the company would be likely to be a chargeable company in relation to the applicable accounting period were section 371BC (charging the CFC charge) to apply in relation to that period, and

(b) the percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to the company at step 3 in section 371BC(1) would represent more than half of X%.

(6) Two or more companies may together give a notice if—

(a) the companies would all be likely to be chargeable companies in relation to the applicable accounting period were section 371BC (charging the CFC charge) to apply in relation to that period, and

(b) the percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to the companies, taken together, at step 3 in section 371BC(1) would represent more than half of X%.

(7) In subsections (5) and (6) (and this subsection)—

"the applicable accounting period" means the accounting period of the CFC during which the notice under subsection (1) or (3) (as the case may be) is given, and

"X%" means the total percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to chargeable companies at step 3 in section 371BC(1) were section 371BC (charging the CFC charge) to apply in relation to the applicable accounting period.

371SI Modification of sections 6 and 7 of CTA 2010

(1) This section applies if—

(a) in accordance with section 371SH, the CFC is assumed to have made an election under section 9A of CTA 2010, but

(b) applying the corporation tax assumptions apart from this section, section 6 or 7 of CTA 2010 could not apply in relation to the CFC for a period of account because the CFC does not prepare its accounts in accordance with generally accepted accounting practice.

(2) If sterling is the CFC's designated currency for the period of account, assume that section 6 of CTA 2010 applies in relation to the CFC as if the words "in accordance with generally accepted accounting practice" were—

(a) omitted from subsection (1A)(a), and

(b) in subsection (2), inserted after "its accounts in sterling".

(3) If the CFC's designated currency for the period of account is a currency other than sterling, assume that section 7 of CTA 2010 applies in relation to the CFC as if the words "in accordance with generally accepted accounting practice" were—

(a) omitted from subsection (1A)(a), and

(b) at step 1 in subsection (2), inserted after "that currency".

371SJ Elections for leases to be treated as long funding leases

(1) This section applies if—

(a) a notice is given to an officer of Revenue and Customs requesting that the CFC be assumed to have made a long funding lease election in the form specified in the notice, and

(b) the time at which the notice is given is a time at which, applying the corporation tax assumptions apart from this section, the CFC would have been able to make a long funding lease election in the form specified in the notice.

(2) Assume—

(a) that a long funding lease election has been made by the CFC in the form specified in the notice under subsection (1) at the time in question, and

(b) that, accordingly, regulation 2(5) of the 2007 Regulations applies to determine the effect (if any) of that election.

(3) Subsection (2)(b) does not apply if—

(a) a notice is given to an officer of Revenue and Customs withdrawing the notice under subsection (1), and

(b) the time at which the notice withdrawing the notice under subsection (1) is given is a time at which, applying the corporation tax assumptions apart from this section and the assumption in subsection (2)(a), the CFC would have been able to withdraw its assumed long funding lease election.

(4) A notice under subsection (1) or (3) may be given only by a company or companies determined under subsection (5) or (6).

(5) A company may give a notice if—

(a) the company would be likely to be a chargeable company in relation to the applicable accounting period were section 371BC (charging the CFC charge) to apply in relation to that period, and

(b) the percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to the company at step 3 in section 371BC(1) would represent more than half of X%.

(6) Two or more companies may together give a notice if—

(a) the companies would all be likely to be chargeable companies in relation to the applicable accounting period were section 371BC (charging the CFC charge) to apply in relation to that period, and

(b) the percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to the companies, taken together, at step 3 in section 371BC(1) would represent more than half of X%.

(7) In this section—

(a) "the 2007 Regulations" means the Long Funding Leases (Elections) Regulations 2007 (S.I. 2007/304),

(b) terms defined in the 2007 Regulations have the same meaning as they have in the 2007 Regulations,

(c) "the applicable accounting period" means the CFC's accounting period in which falls the effective date specified in the notice under subsection (1), and

(d) "X%" means the total percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to chargeable companies at step 3 in section 371BC(1) were section 371BC (charging the CFC charge) to apply in relation to the applicable accounting period.

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(8) The Treasury may by regulations amend this section as they consider appropriate to take account of any regulations made by them from time to time under paragraph 16 of Schedule 8 to FA 2006 (elections for leases to be treated as long funding leases).

371SK Intangible fixed assets

(1) This section applies for the purpose of applying Part 8 of CTA 2009 (intangible fixed assets).

(2) Assume that any intangible fixed asset acquired or created by the CFC before its first accounting period was acquired or created by the CFC at the beginning of that accounting period at a cost equal to its value recognised for accounting purposes at that time.

(3) In subsection (2) references to the CFC's first accounting period are to the CFC's accounting period which begins when it becomes a CFC.

(4) The assumption in subsection (2) does not affect the determination of the question whether Part 8 of CTA 2009 applies to an asset in accordance with section 882 of that Act (application of Part 8 to assets created or acquired on or after 1 April 2002).

(5) Assume also that the CFC—
  (a) has not claimed any relief under Chapter 7 of Part 8 of CTA 2009 (roll-over relief in case of reinvestment), or
  (b) made any provisional declaration of entitlement to such relief.

(6) Subsection (5) is subject to section 371SG(4).

371SL Group relief etc

(1) Assume that the CFC is neither a member of a group of companies nor a member of a consortium for the purposes of any provision of the Tax Acts.

(2) Subsection (3) applies if—
  (a) under Part 5 of CTA 2010 (group relief) the CFC actually surrenders any relief which is allowed to another company by way of group relief, but
  (b) applying the corporation tax assumptions apart from subsection (3), the relief would reduce the CFC's assumed taxable total profits for the relevant accounting period.

(3) Assume that the relief is to be ignored in determining the CFC's assumed taxable total profits for the relevant accounting period.

371SM Capital allowances

(1) This section applies if, before the CFC's first accounting period, the CFC incurred any capital expenditure on the provision of plant or machinery for the purposes of its trade.

(2) For the purposes of Part 2 of CAA 2001 (plant and machinery allowances) assume that the plant or machinery—
  (a) was provided for purposes wholly other than those of the trade, and
  (b) was not brought into use for the purposes of the trade until the beginning of the CFC's first accounting period,

and that section 13 of CAA 2001 (use for qualifying activity of plant or machinery provided for other purposes) applies accordingly.

(3) In this section references to the CFC's first accounting period are to the CFC's accounting period which begins when it becomes a CFC.

(4) This section is to be read as if it were contained in Part 2 of CAA 2001.

371SN Unremittable overseas income

(1) For the purposes of Part 18 of CTA 2009 (unremittable overseas income) assume that in section 1274(1)(a), (3) and (4) of that Act references to the United Kingdom are references to the relevant territories.

(2) "The relevant territories" means—
- (a) the United Kingdom,
- (b) the territory in which the CFC is taken to be resident for the relevant accounting period as determined under Chapter 20, and
- (c) any other territory in which the CFC is in fact resident at any time during the relevant accounting period.

371SO Tax advantages

(1) This section applies if there is an arrangement or other conduct a purpose of which is to obtain a tax advantage within section 1139(2)(da) of CTA 2010 by obtaining by any means what would, applying the corporation tax assumptions apart from this section, be a tax advantage within section 1139(2)(a) to (d) of that Act.

(2) So far as they would not otherwise do so, the Corporation Tax Acts are to be assumed to apply in relation to the arrangement or other conduct in the same way as they would apply were the purpose of obtaining a tax advantage within section 1139(2)(da) of CTA 2010 the purpose of obtaining an actual tax advantage within section 1139(2)(a) to (d) of that Act by the means in question.

371SP Disguised interest: application of Chapter 2A of Part 6 of CTA 2009

(1) This section applies if—
- (a) applying the corporation tax assumptions apart from this section, Chapter 2A of Part 6 of CTA 2009 (disguised interest) would, but for section 486D(1) of that Act, apply in relation to a return produced for the CFC by an arrangement to which the CFC is a party, and
- (b) it is reasonable to assume that the main purpose, or one of the main purposes, of the CFC being a party to the arrangement is to obtain a tax advantage within section 1139(2)(da) of CTA 2010 for any person by obtaining what would, applying the corporation tax assumptions apart from this section, be a relevant tax advantage in relation to the CFC.

(2) Chapter 2A of Part 6 of CTA 2009 is to be assumed to apply in relation to the return.

(3) In subsection (1)(b) the reference to obtaining what would be a relevant tax advantage is to be read in accordance with section 486D(4) of CTA 2009.

(4) This section is without prejudice to the generality of section 371SO.

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371SQ Shares accounted for as liabilities: application of section 521C of CTA 2009

(1) This section applies if—

(a) applying the corporation tax assumptions apart from this section, section 521C of CTA 2009 (shares accounted for as liabilities) would, but for section 521C(1)(f) of that Act, apply to a share held by the CFC, and

(b) the main purpose, or one of the main purposes, for which the CFC holds the share is to obtain a tax advantage within section 1139(2)(da) of CTA 2010 for any person by obtaining what would, applying the corporation tax assumptions apart from this section, be a relevant tax advantage in relation to the CFC.

(2) Section 521C of CTA 2009 is to be assumed to apply to the share.

(3) In subsection (1)(b) the reference to obtaining what would be a relevant tax advantage is to be read in accordance with section 521E(4) of CTA 2009.

(4) This section is without prejudice to the generality of section 371SO.

371SR Double taxation relief: counteraction notices

(1) This section applies if it is reasonable to suppose that, applying the corporation tax assumptions apart from this section, each of conditions A to D of section 82 (double taxation relief: conditions to be met for giving of counteraction notice) would or might be met in relation to the CFC in relation to the relevant accounting period.

(2) Assume that such adjustments are to be made as are necessary for counteracting what, applying the corporation tax assumptions apart from this section, would be the effects of the scheme or arrangement in question in the relevant accounting period that would be referable to the purpose referred to in condition B of section 82.

CHAPTER 20

RESIDENCE OF CFCS

371TA The basic rule

(1) For the purposes of this Part a CFC is taken to be resident for an accounting period ("the relevant accounting period") in—

(a) the territory determined by applying section 371TB, or

(b) if no territory can be determined by applying that section—

(i) if subsection (2) applies, the territory in which the CFC is taken to be resident under the double taxation arrangements in question, or

(ii) otherwise, the territory in which the CFC is incorporated or formed.

(2) This subsection applies if the CFC is incorporated or formed in the United Kingdom but is taken to be non-UK resident by virtue of section 18 of CTA 2009 (companies treated as non-UK resident under double taxation arrangements).

(3) This section is subject to section 371KC and step 1 in section 371NB(1).

371TB How to determine the territory in which the CFC is resident

(1) The CFC is taken to be resident in the territory under the law of which, at all times during the relevant accounting period, the CFC is liable to tax by reason of domicile, residence or place of management.

(2) If there are two or more territories (each of which is called an "eligible territory") falling within subsection (1), the CFC is taken to be resident in only one of the eligible territories.

(3) To determine that territory, go through the following subsections.

If two or more subsections apply, the earlier or earliest subsection takes precedence.

(4) If an election or designation under subsection (8) or (9) has effect for the relevant accounting period by virtue of section 371TC(9)(b), the CFC is taken to be resident in the eligible territory which is the subject of the election or designation.

(5) If, at all times during the relevant accounting period, the CFC's place of effective management is situated in one of the eligible territories only, the CFC is taken to be resident in that territory.

(6) If—

(a) at all times during the relevant accounting period, the CFC's place of effective management is situated in two or more of the eligible territories, and

(b) immediately before the end of the relevant accounting period, over 50% of the amount of the CFC's assets is situated in one of those eligible territories,

the CFC is taken to be resident in the territory in which over 50% of the amount of the CFC's assets is situated.

For this purpose, the amount of the CFC's assets is determined by reference to their market value immediately before the end of the relevant accounting period.

(7) If, immediately before the end of the relevant accounting period, over 50% of the amount of the CFC's assets is situated in one of the eligible territories, the CFC is taken to be resident in that territory.

For this purpose, the amount of the CFC's assets is determined by reference to their market value immediately before the end of the relevant accounting period.

(8) If, in accordance with section 371TC(1), an election specifying an eligible territory is made, the CFC is taken to be resident in that territory.

(9) If an officer of Revenue and Customs designates an eligible territory on a just and reasonable basis (see section 371TC(6) to (8)), the CFC is taken to be resident in that territory.

371TC Elections and designations about residence

(1) An election under section 371TB(8)—

(a) may be made only by a company or companies determined under subsection (2) or (3),

(b) must be made by notice to an officer of Revenue and Customs,

(c) must be made no later than 12 months after the end of the relevant accounting period,

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(d) must state, in relation to each company making the election, the percentage of the CFC's chargeable profits for the relevant accounting period which would be likely to be apportioned to the company at step 3 in section 371BC(1) were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period,

(e) must be signed on behalf of each company making the election, and

(f) is irrevocable.

(2) A company may make an election if it is likely that, were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period, the company would be a chargeable company whose apportioned percentage of the CFC's chargeable profits for the relevant accounting period would represent more than half of X%.

(3) Two or more companies may together make an election if it is likely that, were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period, the companies would all be chargeable companies whose apportioned percentage of the CFC's chargeable profits for the relevant accounting period would, taken together, represent more than half of X%.

(4) In subsections (2) and (3) "X%" means the total percentage of the CFC's chargeable profits for the relevant accounting period which would be likely to be apportioned to chargeable companies were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period.

(5) In subsections (2) to (4) references to apportioned percentages of the CFC's chargeable profits for the relevant accounting period are to the percentages apportioned at step 3 in section 371BC(1).

(6) A designation under section 371TB(9) is irrevocable.

(7) An officer of Revenue and Customs must give notice of a designation to each company which the officer considers would be likely to be a chargeable company were the CFC charge to be charged in relation to the relevant accounting period.

(8) The notice must specify—

(a) the date on which the designation was made,

(b) the CFC's name,

(c) the relevant accounting period, and

(d) the territory designated.

(9) An election or designation has effect in relation to—

(a) the relevant accounting period, and

(b) each successive accounting period of the CFC until subsection (10) applies to an accounting period,

regardless of any change in the persons who have interests in the CFC or any change in those interests.

(10) This subsection applies to an accounting period ("the later period") if—

(a) one or more of the territories which were eligible territories in relation to the relevant accounting period does not fall within section 371TB(1) in relation to the later period, or

(b) some other territory also falls within section 371TB(1) in relation to the later period.

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CHAPTER 21

MANAGEMENT

371UA Introduction to Chapter

(1) The HMRC Commissioners are responsible for the management of the CFC charge, including the collection of sums charged.

(2) In this Chapter—

"closure notice" means a notice under paragraph 32 of Schedule 18 to FA 1998 (completion of enquiry and statement of conclusions),

"discovery assessment" means a discovery assessment or discovery determination under paragraph 41 of that Schedule (including an assessment by virtue of paragraph 52 of that Schedule), and

"the Taxes Acts" has the same meaning as in TMA 1970.

371UB Application of the Taxes Acts to the CFC charge

(1) The provision of step 5 in section 371BC(1) relating to the charging of a sum as if it were an amount of corporation tax is to be taken as applying all enactments applying generally to corporation tax.

(2) This is subject to—

(a) the provisions of the Taxes Acts, and

(b) any necessary modifications.

(3) The enactments referred to in subsection (1) include—

(a) those relating to returns of information and the supply of accounts, statements and reports,

(b) those relating to the assessing, collecting and receiving of corporation tax,

(c) those conferring or regulating a right of appeal, and

(d) those concerning administration, penalties, interest on unpaid tax and priority of tax in cases of insolvency under the law of any part of the United Kingdom.

(4) In particular, TMA 1970 is to have effect as if—

(a) any reference to corporation tax included a reference to a sum charged at step 5 in section 371BC(1) as if it were an amount of corporation tax, and

(b) any reference to profits of a company included, in the case of a chargeable company in relation to a CFC's accounting period, references to the percentage of the CFC's chargeable profits in respect of which the company is charged at step 5 in section 371BC(1).

(5) Nothing in—

(a) paragraph 10 of Schedule 18 to FA 1998 (claims or elections in company tax returns), or

(b) Schedule 1A to TMA 1970 (claims or elections not included in returns),

applies to an election under section 371TB(8).

371UC Just and reasonable apportionments

(1) This section applies if—

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(a) an apportionment of a CFC's chargeable profits and creditable tax is to be made in accordance with section 371QC(2), and

(b) a company tax return is made or amended using for the apportionment a particular basis adopted by the company making the return.

(2) An officer of Revenue and Customs may determine that another basis is to be used for the apportionment; and matters are then to proceed as if that were the only basis allowed by the Taxes Acts.

(3) The officer's determination may be questioned on an appeal against an amendment of the company's tax return made under paragraph 30 or 34 of Schedule 18 to FA 1998.

(4) But it may be questioned only on the ground that the basis of apportionment determined by the officer is not just and reasonable.

371UD Relief against sum charged

(1) Subsection (2) applies if (apart from subsection (2)) a chargeable company in relation to a CFC's accounting period is entitled, or on the making of a claim would be entitled, to a deduction in respect of a relevant allowance for the relevant corporation tax accounting period.

(2) The company may make a claim under this subsection for relief in respect of the relevant allowance.

(3) If the company makes a claim, the relief is given by setting off the relevant sum against the sum charged on the company at step 5 in section 371BC(1).

(4) "The relevant sum" is the sum equal to corporation tax at the appropriate rate on so much of the relevant allowance as is specified in the claim.

(5) So much of the relevant allowance as is specified in the claim is to be taken for the purposes of the Tax Acts as having been allowed as a deduction in accordance with the appropriate provision of those Acts.

(6) No other relief is available against a sum charged on a company at step 5 in section 371BC(1).

(7) In this section—

(a) "the appropriate rate" and "the relevant corporation tax accounting period" have the meaning given by section 371BC(3), and

(b) "relevant allowance" means—

(i) any loss to which section 37 or 62(1) to (3) of CTA 2010 applies,

(ii) any qualifying charitable donation,

(iii) any expenses of management to which section 1219(1) of CTA 2009 applies,

(iv) any adjusted BLAGAB management expenses for the purposes of section 73 of FA 2012,

(v) any excess to which section 260(3) of CAA 2001 applies,

(vi) any amount available to the company by way of group relief, or

(vii) any non-trading deficit on the company's loan relationships.

(8) But, in relation to a sum charged on a company by virtue of section 371BH(2), in this section—

(a) "the appropriate rate" means the rate given by section 371BH(3)(a), and
(b) "relevant allowance" means any adjusted BLAGAB management expenses for the purposes of section 73 of FA 2012.

371UE Appeals affecting more than one person

(1) This section applies if—
(a) a relevant appeal involves any question concerning the application of this Part in relation to a particular person, and
(b) the resolution of that question is likely to affect the liability under this Part of any other person in relation to the CFC concerned.

(2) Each of the following is a "relevant appeal"—
(a) an appeal under paragraph 34(3) of Schedule 18 to FA 1998 against an amendment of a company tax return, and
(b) an appeal under paragraph 48 of that Schedule against a discovery assessment.

(3) The appeal is to be conducted as follows.

(4) Each of the persons whose liability under this Part is likely to be affected by the resolution of the question is entitled to be a party to the proceedings.

(5) The tribunal must determine the question separately from any other questions in the proceedings.

(6) The tribunal's determination on the question is to have effect as if made in an appeal to which each of those persons was a party.

371UF Recovery of sum charged from other UK resident companies

(1) This section applies if a sum charged on a company ("the defaulting company") at step 5 in section 371BC(1) as if it were an amount of corporation tax is not fully paid before the date on which it is due and payable in accordance with the Taxes Acts.

(2) An officer of Revenue and Customs may give a notice of liability to another UK resident company which holds or has held (directly or indirectly) the whole or any part of the same interest in the CFC concerned as is or was held by the defaulting company.

(3) If such a notice is given to a company ("the responsible company"), the following are payable by the responsible company—
(a) the whole or, as the case may be, the corresponding part of the sum charged so far as it is unpaid as at the time the notice is given,
(b) the whole or, as the case may be, the corresponding part of any unpaid interest due on the sum charged as at the time the notice is given, and
(c) any interest accruing on the sum charged after the notice is given so far as referable to the sum payable by the responsible company under paragraph (a).

(4) Subsection (5) applies if any sum payable by the responsible company under subsection (3) is not fully paid by the end of the period of 3 months starting with the date on which the notice is given.

(5) Without affecting the right of recovery from the responsible company, the outstanding amount may be recovered from the defaulting company.

Status: *Point in time view as at 17/07/2014.*
Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 9A. (See end of Document for details)*

CHAPTER 22

SUPPLEMENTARY PROVISION

371VA Definitions

In this Part—

"accounting period", in relation to a CFC, is to be read in accordance with section 371VB,

"accounting profits", in relation to a CFC, is to be read in accordance with sections 371VC and 371VD,

"arrangement" includes—

(a) any agreement, scheme, transaction or understanding (whether or not legally enforceable), and

(b) a series of arrangements or a part of an arrangement,

"assumed taxable total profits", in relation to a CFC, is to be read in accordance with section 371SB(1) to (6),

"assumed total profits", in relation to a CFC, is to be read in accordance with section 371SB(9), subject to section 371DA(2),

"banking business" means the business of—

(a) banking, deposit-taking, money-lending or debt-factoring, or

(b) any activity similar to an activity falling within paragraph (a),

"CFC" is to be read in accordance with section 371AA(3), subject to sections 371RC and 371RE(2) and regulations under section 371RF(4),

"the CFC charge" is to be read in accordance with section 371AA(1),

"chargeable company", in relation to a CFC's accounting period, means a company which is a chargeable company for the purposes of step 4 in section 371BC(1),

"chargeable profits", in relation to a CFC, is to be read in accordance with section 371BA(3),

"company" is to be read subject to section 371VE,

"company tax return" means a return required to be made under Schedule 18 to FA 1998,

"contract of insurance" has the meaning given by article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001,

"control" is to be read in accordance with sections 371RB and 371RE, subject to section 371RF,

"the corporation tax assumptions" is to be read in accordance with section 371SC,

"creditable tax", in relation to a CFC, is to be read in accordance with section 371PA,

"the HMRC Commissioners" means the Commissioners for Her Majesty's Revenue and Customs,

"insurance business" means the business of effecting or carrying out of contracts of insurance, including the investment of premiums received,

"intellectual property" means—

(a) any patent, trade mark, registered design, copyright or design right, or

(b) any licence or other right in relation to anything falling within paragraph (a),

"interest", as in an interest in a company, is to be read in accordance with section 371VH,

"the local tax amount", in relation to a CFC, means the amount of tax determined at step 2 in section 371NB(1),

"non-trading finance profits" is to be read in accordance with section 371VG,

"non-trading income" means income which is not trading income,

"property business profits" is to be read in accordance with section 371VI,

[[F17]"relevant finance lease" is to be read in accordance with section 371VIA,**]**

"relevant interest" is to be read in accordance with Chapter 15,

"tax advantage" has the meaning given by section 1139 of CTA 2010,

"trading finance profits" is to be read in accordance with section 371VG,

"trading income", in relation to a CFC, means income brought into account in determining the CFC's trading profits for the accounting period in question,

"trading profits", in relation to a CFC, means any profits included in the CFC's assumed total profits for the accounting period in question on the basis that they would be chargeable to corporation tax under Part 3 of CTA 2009 (trading income),

"UK connected capital contribution", in relation to a CFC, means any capital contribution to the CFC made (directly or indirectly) by a UK resident company connected with the CFC (whether in relation to an issue of shares in the CFC or otherwise), and

"UK permanent establishment", in relation to a non-UK resident company, means a permanent establishment which the company has in the United Kingdom and through which it carries on a trade in the United Kingdom.

Textual Amendments

F17 Words in s. 371VA substituted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), **Sch. 47 paras. 6**, 21

371VB Accounting periods

(1) This section applies for the purposes of this Part.

(2) An accounting period of a CFC begins—

(a) when the CFC becomes a CFC, or

(b) immediately after the end of the previous accounting period of the CFC, if the CFC is still a CFC.

(3) An accounting period of a CFC comes to an end on the occurrence of any of the following—

(a) the CFC ceasing to be a CFC,

(b) the CFC becoming, or ceasing to be, liable to tax in a territory by reason of domicile, residence or place of management,

(c) the CFC ceasing to have any source of income at all, or

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Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 9A. (See end of Document for details)*

(d) a company which has a relevant interest in the CFC ceasing to have any relevant interest in the CFC at all or ceasing to be within the charge to corporation tax.

(4) Without affecting subsections (2) and (3), sections 10(1)(a) to (d), (i) and (j) and (5), 11(1) and (2) and 12 of CTA 2009 (corporation tax accounting periods) apply as they apply for corporation tax purposes.

(5) Subsection (6) applies if it appears to an officer of Revenue and Customs that the beginning or end of a CFC's accounting period is uncertain.

(6) An officer of Revenue and Customs may by notice specify as an accounting period of the CFC such period not exceeding 12 months as the officer considers appropriate.

(7) Subsection (8) applies if after the giving of a notice under subsection (6)—

(a) further facts come to the knowledge of an officer of Revenue and Customs, and

(b) as a result of that, it appears to an officer of Revenue and Customs that any accounting period specified in the notice is not the true accounting period.

(8) An officer of Revenue and Customs must by notice amend the notice under subsection (6) so as to specify what appears to the officer to be the true accounting period.

(9) A notice under subsection (6) or (8) must be given to each company which the officer of Revenue and Customs considers would be likely to be a chargeable company were the CFC charge to be charged in relation to the CFC's accounting period in question.

371VC Accounting profits

(1) This section and section 371VD (with which this section needs to be read) apply for the purposes of this Part.

(2) A CFC's accounting profits for an accounting period are its pre-tax profits for the period.

(3) If financial statements for the CFC are prepared for the accounting period in accordance with an acceptable accounting practice, the CFC's pre-tax profits are to be determined by reference to the amounts disclosed in those statements (subject to subsections (4) and (5)).

(4) Subsection (5) applies if—

(a) the CFC's financial statements for the accounting period (or any aspect of them) are not prepared in accordance with an acceptable accounting practice, or

(b) no financial statements are prepared at all for the CFC for the accounting period within 12 months after the end of that period.

(5) The CFC's pre-tax profits are to be determined by reference to the amounts which would have been disclosed had financial statements for the accounting period been prepared for the CFC in accordance with—

(a) the acceptable accounting practice in accordance with which financial statements for the CFC are normally prepared, or

(b) if paragraph (a) cannot be applied, international accounting standards.

(6) Each of the following is an "acceptable accounting practice"—
  (a) international accounting standards,
  (b) UK generally accepted accounting practice, and
  (c) accounting practice which is generally accepted in the territory in which the CFC is resident for the accounting period.

(7) In this section references to amounts disclosed in financial statements include amounts comprised in amounts so disclosed.

(8) If the CFC's accounting profits (or any amounts included in them) are determined in a currency other than sterling, they are to be translated into their sterling equivalent using the average rate of exchange for the accounting period calculated from daily spot rates.

371VD Adjustments to accounting profits

(1) This section applies for the purpose of determining a CFC's accounting profits for an accounting period.

(2) The following are to be ignored in determining the profits—
  (a) any dividend or other distribution which is not brought into account in determining the CFC's assumed total profits for the accounting period on the basis that it would be exempt for the purposes of Part 9A of CTA 2009 (company distributions),
  (b) any property business profits or property business losses, and
  (c) any capital profits or losses.

(3) In subsection (2)(b) "property business losses" means any losses of a UK property business or overseas property business of the CFC; such losses are to be determined in a way corresponding to the way in which property business profits are determined.

(4) The profits are to include—
  (a) any amount which accrues during the accounting period to the trustees of a settlement in relation to which the CFC is a settlor or beneficiary, and
  (b) the CFC's share of any income which accrues during the accounting period to a partnership of which the CFC is a partner, as determined by apportioning that income between the partners on a just and reasonable basis.

(5) If there is more than one settlor or beneficiary in relation to a settlement covered by subsection (4)(a), the income is to be apportioned between the CFC and the other settlors or beneficiaries on a just and reasonable basis.

(6) In subsection (4)(b) "partnership" includes an entity established under the law of a territory outside the United Kingdom of a similar character to a partnership; and "partner" is to be read accordingly.

(7) Part 4 (transfer pricing) applies as it applies in relation to the determination of the CFC's assumed taxable total profits for the accounting period.

(8) But subsection (7) is to be ignored if the difference made in the amount of the profits as a result of its application would not be more than £50,000.

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371VE Cell companies etc

(1) This Part applies in relation to unincorporated cells and incorporated cells as if they were non-UK resident companies.

(2) An "unincorporated cell" is an identifiable part (by whatever name known) of a non-UK resident company which meets the following condition.

(3) The condition is that, under the law under which the non-UK resident company is incorporated or formed, under the articles of association or other document regulating the non-UK resident company or under any arrangement entered into by or in relation to the non-UK resident company—
- (a) assets and liabilities of the non-UK resident company may be wholly or mainly allocated to the part of the company in question,
- (b) liabilities so allocated are to be met wholly or mainly out of assets so allocated, and
- (c) there are members of the non-UK resident company who have rights in relation to the company's assets which cover only or mainly assets so allocated.

(4) Subsection (1) does not affect the status of the non-UK resident company mentioned in subsection (2) as a company for the purposes of this Part; but its assets and liabilities are to be apportioned between it and the unincorporated cell (and any other unincorporated cells which are part of the company) on a just and reasonable basis.

(5) An "incorporated cell" is an entity (by whatever name known) established under the articles of association or other document regulating a non-UK resident company—
- (a) which, under the law under which the non-UK resident company is incorporated or formed, has a legal personality distinct from that of the non-UK resident company, but
- (b) which is not itself a company (ignoring this section).

(6) Subsection (1) does not affect the status of the non-UK resident company mentioned in subsection (5) as a company for the purposes of this Part.

(7) The Treasury may by regulations provide for this Part to apply in relation to—
- (a) parts of companies falling within specified descriptions, or
- (b) other entities falling within specified descriptions which are not themselves companies (ignoring this section),

as if they were non-UK resident companies.

(8) Regulations under subsection (7) may add to, repeal or otherwise amend subsections (1) to (6).

371VF Connected persons etc

(1) This section applies for the purposes of this Part.

(2) The following provisions of CTA 2010 apply—
- (a) section 882(2) to (7) ("associated" persons), and
- (b) section 1122 ("connected" persons).

(3) A person is "related" to a CFC if—
- (a) the person is connected or associated with the CFC,

(b) at least 25% of the CFC's chargeable profits would be apportioned to the person at step 3 in section 371BC(1) were that step required to be taken in relation to the accounting period in question, or

(c) if the CFC is a CFC by virtue of section 371RC, the person is connected or associated with either or both of the controllers.

371VG Finance profits

(1) In this Part "non-trading finance profits", in relation to a CFC, means any amounts—

(a) which are included in the CFC's assumed total profits for the accounting period in question on the basis that they would be chargeable to corporation tax under—

(i) section 299 of CTA 2009 (charge to tax on non-trading profits from loan relationships), or

(ii) Part 9A of that Act (company distributions), or

[[F18](b) which are included in the CFC's assumed total profits for the accounting period in question and which—

(i) arise from a relevant finance lease, but

(ii) are not trading profits.**]**

(2) Subsection (1) is subject to subsection (3) and sections 371CB(2) and (8), 371CE(2) and 371IA(9).

(3) Any credits or debits which are to be brought into account in determining the CFC's property business profits for the accounting period in question in accordance with section 371VI(2) are not to be brought into account in determining the CFC's non-trading finance profits.

(4) In this Part "trading finance profits", in relation to a CFC, means any amounts included in the CFC's assumed total profits for the accounting period in question—

(a) which are trading profits by virtue of section 297, 573 or 931W of CTA 2009, or

(b) which are trading profits arising from [F19]... a relevant finance lease.

(5) Subsection (4) is subject to section 371CE(2).

Textual Amendments

F18 S. 371VG(1)(b) substituted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), **Sch. 47 paras. 7(2)**, 21

F19 Words in s. 371VG(4)(b) omitted (retrospective to 1.1.2013) by virtue of Finance Act 2013 (c. 29), **Sch. 47 paras. 7(3)**, 21

371VH Interests in companies

(1) This section applies for the purposes of this Part.

(2) The following persons have an "interest" in a company—

(a) any person who has, or is entitled to acquire, share capital or voting rights in the company,

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Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, PART 9A. (See end of Document for details)*

(b) any person who has, or is entitled to acquire, a right to receive or participate in distributions of the company,

(c) any person who is entitled—

(i) to direct how income or assets of the company are to be applied,

(ii) to have such income or assets applied on the person's behalf, or

(iii) otherwise to secure that such income or assets will be applied (directly or indirectly) for the person's benefit, and

(d) any other person who, either alone or together with other persons, has control of the company.

(3) In subsection (2) references to a person being entitled to do anything cover cases in which—

(a) a person is presently entitled to do it at a future date, or

(b) a person will at a future date be entitled to do it.

(4) In subsection (2)(c) references to a person being entitled to do anything also cover cases in which it is reasonable to suppose that a person is presently able, or will at a future date become able, to do the thing (even though the person presently has, or will have, no entitlement to do the thing).

(5) Subsection (6) applies if a person's entitlement (or supposed ability) to do anything mentioned in subsection (2)(c) is (or would be) contingent upon a default of the company or any other person under any agreement.

(6) The person is not to have an interest in the company under subsection (2)(c) by virtue of that entitlement (or supposed ability) unless the default has occurred.

(7) Rights which a person has as a loan creditor of a company are to be ignored for the purposes of subsection (2).

(8) In subsection (7)—

"loan creditor" has the meaning given by section 453 of CTA 2010, but ignoring subsection (4) of that section, and

"rights" does not include any rights excluded from subsection (7) by subsection (10).

(9) Subsection (10) applies if, in accordance with generally accepted accounting practice, a loan creditor divides its rights and liabilities under a loan relationship to which it is a party as mentioned in section 415(1) of CTA 2009 (loan relationships with embedded derivatives).

F20 …

(10) Any rights falling within section 415(1)(b) of CTA 2009 are to be excluded from subsection (7).

F21 **[** (10A) For the purposes of subsection (9), if for any relevant period accounts for a loan creditor are not prepared in accordance with international accounting standards or UK generally accepted accounting practice, any question relating to generally accepted accounting practice is to be determined in relation to the loan creditor for that period by reference to generally accepted accounting practice in relation to accounts prepared in accordance with international accounting standards.**]**

(11) Subsections (12) and (13) apply if—

(a) apart from subsection (12), a person has, or two or more persons together have, an interest in a company ("company 1"), and

(b) company 1 has an interest in another company ("company 2").

(In paragraph (b) "interest" includes an interest by virtue of subsection (12).)

(12) The person or persons mentioned in subsection (11)(a) are to be taken to have an interest in company 2 (and references to a person's interest in a company are to be read accordingly).

(13) For the purposes of references to one person's interest in a company being the same as another person's interest—

(a) the person mentioned in subsection (11)(a), or

(b) each of the persons so mentioned,

is to be taken as having, to the extent of that person's interest in company 1, the same interest as company 1 has in company 2.

(14) If two or more persons jointly have an interest in a company otherwise than in a fiduciary or representative capacity, they are taken to have the interest in equal shares.

Textual Amendments

F20 Words in s. 371VH(9) omitted (retrospective to 1.1.2013) by virtue of Finance Act 2013 (c. 29), **Sch. 47 paras. 8(2)**, 21

F21 S. 371VH(10A) inserted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), **Sch. 47 paras. 8(3)**, 21

371VI Property business profits

(1) Subject to what follows, in this Part "property business profits", in relation to a CFC, means any profits included in the CFC's assumed total profits for the accounting period in question on the basis that they would be chargeable to corporation tax under Part 4 of CTA 2009 (property income).

(2) Any credits or debits—

(a) which are brought into account under Part 5 of CTA 2009 in determining the CFC's assumed total profits for the accounting period, and

(b) which fall within subsection (3) or (5),

are to be brought into account in determining the CFC's property business profits.

(3) Credits and debits fall within this subsection so far as they are from a debtor relationship of the CFC where the loan which is the subject of the debtor relationship—

(a) is made and used solely for the purposes of a relevant property business, and

(b) is not used to any extent for the purpose of funding (directly or indirectly)—

(i) a loan to any other person, or

(ii) so far as not covered by sub-paragraph (i), an arrangement intended to produce for any person a return in relation to any amount which it is reasonable to suppose would be a return by reference to the time value of that amount of money.

(4) In subsection (3) "debtor relationship" has the meaning given by section 302(6) of CTA 2009 (and does not include anything which, although not falling within

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section 302(1) of that Act, is treated for any purpose as if it were a debtor relationship); and "loan" is to be read accordingly.

(5) Credits and debits fall within this subsection so far as they—

(a) are from any derivative contract or other arrangement entered into by the CFC as a hedge of risk in connection with a relevant property business, and

(b) are attributable to that hedge of risk.

(6) "Relevant property business" means a UK property business or overseas property business of the CFC, profits of which are included in the CFC's property business profits apart from subsection (2).

[F22 371VIA Relevant finance leases

(1) In this Part "relevant finance lease" means an arrangement falling within subsection (2) or (3).

(An arrangement which is a loan relationship of any company does not fall within either of those subsections.)

(2) An arrangement falls within this subsection if—

(a) it provides for an asset to be leased or otherwise made available by a person ("the lessor") to another person, and

(b) in accordance with generally accepted accounting practice, it falls (or would fall) to be treated in the accounts of the lessor, or of a person connected with the lessor, as a finance lease or a loan.

(3) A hire-purchase, conditional sale or other arrangement relating to an asset falls within this subsection if it does not fall within subsection (2) but is of a similar character to an arrangement which would fall within that subsection.

(4) If for any relevant period accounts for a person are not prepared in accordance with international accounting standards or UK generally accepted accounting practice, any question relating to generally accepted accounting practice is to be determined for the purposes of this section in relation to that person for that period by reference to generally accepted accounting practice in relation to accounts prepared in accordance with international accounting standards.

(5) In this section "accounts", in relation to a company, includes accounts relating to two or more companies of which that company is one.**]**

Textual Amendments

F22 S. 371VIA inserted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), **Sch. 47 paras. 9**, 21

371VJ Regulations

Regulations under this Part may contain incidental, supplemental, consequential and transitional provision and savings.**]**

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Changes to legislation:
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