Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

[F1PART 9A

CONTROLLED FOREIGN COMPANIES

[F1CHAPTER 11

THE EXCLUDED TERRITORIES EXEMPTION

Textual Amendments

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

Modifications etc. (not altering text)

C1 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,
(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—

(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.**]**

Changes to legislation:
There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Chapter 11.