Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

[F1 PART 9A

CONTROLLED FOREIGN COMPANIES

[F1 CHAPTER 3

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

Textual Amendments

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

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)

C1 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—

(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.

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 **[**[F2](see section 371CEA)**]**, 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).

[F3](4) . . . .

[F3](5) . . . .

(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 Words in s. 371CE(2)(a) inserted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 21(2)(a)**

F3 S. 371CE(4)(5) omitted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by virtue of Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 21(2)(b)**

[F4 371CEA Section 371CE: meaning of "group treasury company"

(1) This section makes provision for determining whether the CFC is a group treasury company in the accounting period for the purposes of section 371CE.

(2) The CFC is a group treasury company in the accounting period if—

(a) it is a member of a worldwide group in relation to a period of account in which the accounting period wholly or partly falls,

(b) throughout the accounting period—

(i) all, or substantially all, of the activities undertaken by it consist of treasury activities undertaken for the group, and

(ii) all, or substantially all, of its assets and liabilities relate to such activities, and

(c) at least 90% of its relevant income for the accounting period is group treasury revenue.

(3) For the purposes of this section a company undertakes treasury activities for the group if it does one or more of the following in relation to, or on behalf of, the group or any of its members—

(a) managing surplus deposits of money or overdrafts,

(b) making or receiving deposits of money,

(c) lending money,

(d) subscribing for or holding shares in a company which is a UK group company undertaking treasury activities for the group at least 90% of whose relevant income is group treasury revenue for its relevant accounting period,

(e) investing in debt securities, and

(f) hedging assets, liabilities, income or expenses.

(4) For the purposes of this section "group treasury revenue", in relation to a company, means revenue—

(a) arising from the treasury activities that the company undertakes for the group, and

(b) accounted for as such under generally accepted accounting practice,

before any deduction (whether for expenses or otherwise).

(5) But revenue consisting of a dividend or other distribution is not group treasury revenue of the company unless it is from a company that meets the conditions in subsection (3)(d).

(6) In this section—

"debt security" has the same meaning as in the Handbook made by the Financial Conduct Authority or Prudential Regulation Authority under the Financial Services and Markets Act 2000 (as the Handbook in question has effect from time to time),

"period of account" has the same meaning as in Part 10,

"relevant accounting period" has the same meaning as in Part 10,

"relevant income", in relation to a company, means income—

(a) arising from the activities of the company, and

(b) accounted for as such under generally accepted accounting practice,

before any deduction (whether for expenses or otherwise),

"UK group company" has the same meaning as in Part 10, and

"worldwide group" has the same meaning as in Part 10.**]**

Textual Amendments

F4 S. 371CEA inserted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 21(3)**

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 **[**[F5]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 **[**[F6]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 **[**[F6]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—

[[F7]"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 **[**[F8]PRA Handbook**]** , or

(b) any relevant document published by the **[**[F9]Financial Conduct Authority or the Prudential Regulation Authority**]** from time to time.

(6) "Relevant document" means—

(a) a document which replaces the **[**[F10]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

F5 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)**

F6 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)**

F7 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)**

F8 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)**

F9 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)**

F10 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)**

Changes to legislation:
There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Chapter 3.