Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

[F1PART 9A

CONTROLLED FOREIGN COMPANIES

[F1CHAPTER 6

THE CFC CHARGE GATEWAY: TRADING FINANCE PROFITS

Textual Amendments

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

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)

C1 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—

$$\frac{100\% \times EP}{P}$$

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)).

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.**]**

Changes to legislation:
There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Chapter 6.