

## **1 Controlled foreign companies and foreign permanent establishments**

Schedule 1 makes –

- (a) provision for and in connection with a charge on UK resident companies which have certain interests in non-UK resident companies controlled by UK resident persons, and
- (b) provision about foreign permanent establishments of UK resident companies.

## SCHEDULES

### SCHEDULE 1

Section 1

#### CONTROLLED FOREIGN COMPANIES AND FOREIGN PERMANENT ESTABLISHMENTS

#### PART 1

#### CONTROLLED FOREIGN COMPANIES

#### 1 After Part 9 of TIOPA 2010 insert –

#### **“PART 9A**

#### CONTROLLED FOREIGN COMPANIES

#### **CHAPTER 1**

#### INTRODUCTION

#### *Overview*

#### **371AA Overview of Part**

- (1) A charge (“the CFC charge”) is charged, in accordance with this Part, on UK resident companies which have certain interests in CFCs.
- (2) A “CFC” is a non-UK resident company which is controlled by a UK resident person or persons (see sections 371AB to 371AE).
- (3) Chapter 2 sets out the basic details of the CFC charge and is supplemented by Chapters 3 to 17.
- (4) Chapter 18 explains the concepts of “assumed taxable total profits”, “assumed total profits” and “the corporation tax assumptions” which are referred to in this Part.
- (5) Chapter 19 contains rules for determining the territory in which a CFC is resident for the purposes of this Part.
- (6) Chapter 20 contains provision about the management of the CFC charge, including the collection of sums charged.
- (7) Chapter 21 contains supplementary provision, including definitions of terms used in this Part.
- (8) 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 that Act.

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

*“Control”*

**371AB How to determine if a company is “controlled” by another person**

(1) This section sets out how to determine for the purposes of this Part if a company is “controlled” by another person or persons.

It is supplemented by sections 371AC to 371AE.

(2) 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.

(3) A person (“P”) “controls” a company (“C”) if P has rights which would—

- (a) if the whole of C's share capital were disposed of, entitle P to 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, entitle P to 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, entitle P to 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.

(4) In subsection (3)—

- (a) the reference to rights which P has does not include rights which P has as a relevant bank,
- (b) in paragraph (a) the reference to C's share capital is to C's share capital excluding any share capital held by relevant banks,
- (c) in determining for the purposes of paragraph (b) the percentage of the distributed amount which P would be entitled to 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
- (d) in determining for the purposes of paragraph (c) the percentage of C's assets which P would be entitled to 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 (3) and (4) references to P being entitled to receive any proceeds, amount or assets include references to P being entitled to secure that the proceeds, amount or assets will be applied (directly or indirectly) for P's benefit.
- (7) If two or more persons, taken together, meet the requirement of subsection (2) or (3) for controlling a company, those persons are taken to control the company.
- (8) A person ("P") "controls" a company ("C") if P is C's parent undertaking.
- (9) "Parent undertaking" is to be read in accordance with Financial Reporting Standard 2 (whether or not P actually prepares, or is required to prepare, consolidated financial statements in accordance with that Standard).
- (10) "Financial Reporting Standard 2" means Financial Reporting Standard 2 issued in July 1992 by the Accounting Standards Board, as from time to time modified, amended or revised.

#### **371AC The 40% rule**

- (1) This section applies to a non-UK resident company ("C") if –
- (a) in accordance with section 371AB(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) not more than 55%,
- of the holdings, rights and powers in respect of which the controllers fall to be taken as controlling C.

#### **371AD Rights and powers: supplementary provision**

- (1) Subsection (2) applies for the purpose of –
- (a) determining, in accordance with section 371AB, if a person, or two or more persons, control a company, or
  - (b) determining if condition X or Y in section 371AC 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).
- (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 371UB(2)(b)) is to be ignored.
- (7) In this section and sections 371AB and 371AC 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.

### **371AE Anti-avoidance**

- (1) This section applies to a non-UK resident company (“C”) which is not a CFC if it is reasonable to suppose that, apart from an arrangement falling within subsection (4), C would be a CFC.
- (2) C is to be taken to be a CFC.

- (3) The person or persons who it is reasonable to suppose would control C apart from the arrangement—
  - (a) are to be taken to control C, and
  - (b) are to have attributed to them all interests, rights and powers which it is reasonable to suppose would be attributed to them apart from the arrangement.
- (4) An arrangement falls within this subsection if the main purpose, or one of the main purposes, of the arrangement is to secure that C is not a CFC.

## CHAPTER 2

### THE CFC CHARGE

#### 371BA Charging the CFC charge

- (1) The CFC charge is charged in relation to every accounting period of a CFC (see section 371BB), except—
  - (a) where an exemption set out in Chapter 3, 4, 5 or 6 applies for an accounting period (subject to section 371BC), or
  - (b) as provided for at step 1, 2 or 5 in subsection (2).
- (2) Take the following steps to determine how the CFC charge is charged in relation to a CFC’s accounting period.

##### *Step 1*

In accordance with Chapter 7 (as supplemented by Chapters 8 to 13), determine the CFC’s chargeable profits for the accounting period.

If they are nil, the CFC charge is not charged and no further steps are to be taken.

##### *Step 2*

In accordance with Chapter 14, 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 falls within subsection (3), the CFC charge is not charged and no further steps are to be taken.

##### *Step 3*

In accordance with Chapter 15, determine the CFC’s creditable tax for the accounting period.

##### *Step 4*

In accordance with Chapter 16, apportion the CFC’s chargeable profits and creditable tax among the relevant persons.

##### *Step 5*

Take each relevant person falling within subsection (3) and determine if subsection (4) applies to the company.

If subsection (4) applies to the company then the company is a “chargeable company”.

If there are no chargeable companies, the CFC charge is not charged and step 6 is not to be taken.

##### *Step 6*

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 is subject to Chapter 17 (which gives exemptions for profits from qualifying loan relationships).

- (3) A relevant person falls within this subsection if the person is a company which is UK resident at a time during the accounting period when it has a relevant interest in the CFC.
- (4) This subsection applies to a company ("C") if the total of the following percentages is at least 25% –
  - (a) the percentage of the CFC's chargeable profits apportioned to C, and
  - (b) the percentages (if any) of those profits which are apportioned to relevant persons who, at any time during the accounting period, are connected or associated with C.
- (5) For the purpose of taking step 6 in subsection (2) in relation to a chargeable company –
  - "the appropriate rate" means –
    - (a) the rate of corporation tax applicable to the chargeable company'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 the chargeable company,

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

"the relevant corporation tax accounting period" means –

- (a) the chargeable company's accounting period for corporation tax purposes which ends at the same time as the CFC's accounting period, or
- (b) if the chargeable company has no accounting period for corporation tax purposes which ends at that time, its accounting period for those purposes during which the CFC's accounting period ends.

### **371BB What is a CFC's "accounting period"?**

- (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
  - (d) a company which has a relevant interest in the CFC (see Chapter 14) ceasing to have that interest 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.

### **371BC Exemptions not to apply in case of solo consolidation etc**

- (1) If subsection (2) or (3) applies in relation to a CFC, none of the exemptions set out in Chapters 3 to 6 can apply for the CFC’s accounting period in question.
- (2) This subsection applies if, at any time during a CFC’s 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 FSA Handbook, and
  - (b) the CFC’s parent undertaking in relation to that waiver is a UK resident company.

- (3) This subsection applies if, at any time during a CFC’s 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) any fall in the value of those shares would be (wholly or mainly) ignored for the purpose of determining if the UK resident bank meets the requirements of the FSA Handbook in relation to the bank’s capital, and
  - (c) the main purpose, or one of the main purposes, of the UK resident bank in holding the shares is to obtain a tax advantage for itself or any company connected with it.
- (4) In this section –
- “bank” means a person carrying on banking business, and
  - “the FSA Handbook” means the Handbook of Rules and Guidance made by the Financial Services Authority (as that Handbook has effect from time to time).

### CHAPTER 3

#### THE LOW PROFITS EXEMPTION

##### *Introduction*

#### **371CA Introduction to Chapter**

This Chapter sets out an exemption called “the low profits exemption” for the purposes of section 371BA(1)(a).

*Applying the low profits exemption by reference to accounting profits*

#### **371CB The basic rule**

- (1) The low profits exemption applies for a CFC’s accounting period if subsection (2) or (3) applies.
- (2) This subsection applies if the CFC’s accounting profits for the accounting period (see section 371CC) are not more than £50,000.
- (3) This subsection applies if –
  - (a) the CFC’s accounting profits for the accounting period are not more than £500,000, and
  - (b) the amount of those profits representing non-trading income is not more than £50,000.
- (4) If the accounting period is less than 12 months, the amounts specified in subsections (2) and (3)(a) and (b) are to be reduced proportionately.

#### **371CC What are “accounting profits”? (1)**

- (1) A CFC’s accounting profits for an accounting period are its pre-tax profits for the period.
- (2) 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 (3) and (4)).

- (3) Subsection (4) 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.
- (4) 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.
- (5) 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.
- (6) In this section references to amounts disclosed in financial statements include amounts comprised in amounts so disclosed.
- (7) 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.
- (8) This section needs to be read with section 371CD.

**371CD What are “accounting profits”? (2)**

- (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), and
  - (b) any capital gains or losses.
- (3) 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.

- (4) If there is more than one settlor or beneficiary in relation to a settlement covered by subsection (3)(a), the income is to be apportioned between the CFC and the other settlors or beneficiaries on a just and reasonable basis.
- (5) In subsection (3)(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.
- (6) Part 4 (transfer pricing) applies in relation to the determination of the profits as it applies in relation to the determination of the CFC’s assumed taxable total profits for the accounting period.
- (7) But subsection (6) 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.

### **371CE Anti-avoidance**

- (1) The low profits exemption does not apply for an accounting period (“the relevant accounting period”) of a CFC (“the relevant CFC”) by virtue of section 371CB if condition A, B, C or D 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 by virtue of section 371CB 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 relevant CFC.
- (3) Condition B is that –
  - (a) an arrangement is entered into at any time,
  - (b) in consequence of the arrangement, the relevant CFC’s accounting profits for the relevant accounting period are more than what they would otherwise have been,
  - (c) the main purpose, or one of the main purposes, of the arrangement is to secure that the low profits exemption applies for one or more accounting periods of one or more CFCs, and
  - (d) the relevant accounting period falls wholly or partly within that accounting period or those accounting periods.
- (4) In subsection (3)(c) the reference to one or more CFCs includes a reference to one or more permanent establishments which are assumed to be CFCs in accordance with section 18H(3) of CTA 2009 (and the reference to one or more accounting periods is to be read accordingly).

- (5) Condition C is that, in determining the relevant CFC’s assumed taxable total profits for the relevant 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).
- (6) Condition D is that, at any time during the relevant accounting period, the relevant CFC’s business is, wholly or mainly, the provision of UK intermediary services.
- (7) For the purposes of subsection (6) the relevant 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 relevant CFC.

*Applying the low profits exemption by reference to assumed taxable total profits*

### **371CF The basic rule**

- (1) The low profits exemption applies for a CFC’s accounting period if subsection (2) or (3) applies.
- (2) This subsection applies if the CFC’s assumed taxable total profits for the accounting period are not more than £50,000.
- (3) This subsection applies if –
  - (a) the CFC’s assumed taxable total profits for the accounting period are not more than £500,000, and
  - (b) the amount of those profits representing non-trading income is not more than £50,000.
- (4) If the accounting period is less than 12 months, the amounts specified in subsections (2) and (3)(a) and (b) are to be reduced proportionately.

### **371CG Anti-avoidance**

- (1) The low profits exemption does not apply for an accounting period (“the relevant accounting period”) of a CFC (“the relevant CFC”) by virtue of section 371CF if condition A, B or C 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 by virtue of section 371CF 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 relevant CFC.
- (3) Condition B is that—
  - (a) an arrangement is entered into at any time,
  - (b) in consequence of the arrangement, the relevant CFC’s assumed taxable total profits for the relevant accounting period are more than what they would otherwise have been,
  - (c) the main purpose, or one of the main purposes, of the arrangement is to secure that the low profits exemption applies for one or more accounting periods of one or more CFCs, and
  - (d) the relevant accounting period falls wholly or partly within that accounting period or those accounting periods.
- (4) In subsection (3)(c) the reference to one or more CFCs includes a reference to one or more permanent establishments which are assumed to be CFCs in accordance with section 18H(3) of CTA 2009 (and the reference to one or more accounting periods is to be read accordingly).
- (5) Condition C is that, at any time during the relevant accounting period, the relevant CFC’s business is, wholly or mainly, the provision of UK intermediary services.
- (6) For the purposes of subsection (5) the relevant 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 relevant CFC.

## CHAPTER 4

### THE LOW PROFIT MARGIN EXEMPTION

#### **371DA Introduction to Chapter**

This Chapter sets out an exemption called “the low profit margin exemption” for the purposes of section 371BA(1)(a).

#### **371DB 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.
- (2) In this section references to the CFC’s accounting profits for the accounting period are to be read in accordance with sections 371CC and 371CD; but, for this purpose—
  - (a) section 371CD(3) to (7) is to be ignored, and
  - (b) the profits are to be 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 for resale other than goods imported by the CFC into 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.

## CHAPTER 5

### THE EXCLUDED TERRITORIES EXEMPTION

#### **371EA Introduction to Chapter**

This Chapter sets out an exemption called “the excluded territories exemption” for the purposes of section 371BA(1)(a).

#### **371EB The basic rule**

- (1) The excluded territories exemption applies for a CFC’s accounting period if –
- (a) the CFC is resident (see section 371EC) in an excluded territory for the accounting period,
  - (b) the total of the following amounts is not more than the threshold amount for the accounting period (see section 371ED) –
    - (i) the CFC’s category A income (if any) for the accounting period (see sections 371EE and 371EF),
    - (ii) the CFC’s category B income (if any) for the accounting period (see sections 371EG to 371EI),
    - (iii) the CFC’s category C income (if any) for the accounting period (see section 371EJ), and
    - (iv) the CFC’s category D income (if any) for the accounting period (see section 371EK),
  - (c) the IP condition is met (see section 371EL), 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 –
- (a) specify further conditions which must be met, in all cases or only in specified cases, in order for the excluded territories exemption to apply for a CFC’s accounting period, or
  - (b) provide that, in specified cases, the excluded territories exemption is not to apply for a CFC’s accounting period even though the conditions set out in subsection (1)(a) to (d) are met,

and, for either of these purposes, the regulations may modify the application of any provision of this Chapter.

- (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.

**371EC 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 371SA.
- (3) But section 371SA(1)(b) is to be applied only if, throughout 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.

**371ED 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 in accordance with sections 371CC and 371CD, but ignoring section 371CD(6) and (7).

**371EE Category A income: the basic rule**

- (1) A CFC’s category A income for an accounting period consists of the gross amounts (that is, the amounts before deduction of expenses or reserves) of any relevant income to which subsection (3), (4) or (5) applies.  
This is subject to section 371EF.
- (2) “Relevant income” means any income –
  - (a) which is brought into account in determining the CFC’s accounting profits for the accounting period, and
  - (b) which –
    - (i) arises in the CFC’s territory, or
    - (ii) arises from the operations of a permanent establishment which the CFC has in a territory outside the CFC’s territory.
- (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.

#### **371EF 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 operations 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 371EE(3) to (5) to the CFC's territory instead been references to the territory in which PE is established.

#### **371EG Category B income: the basic rule**

Take the following steps to determine if a CFC has any category B income for an accounting period and, if it does, the amount of the category B income.

##### *Step 1*

Determine if the CFC has any relevant non-local income for the accounting period (subject to section 371EH).

If it does not, the CFC has no category B income and no further steps are to be taken.

##### *Step 2*

Determine the amount of tax which is paid in respect of the relevant non-local income in the CFC's territory.

##### *Step 3*

Make the relevant deductions from the relevant non-local income (but do not reduce it below nil).

The result is the net relevant non-local income.

*Step 4*

Determine the amount of the relevant corresponding UK tax.

If the amount of tax determined at step 2 is less than 75% of the relevant corresponding UK tax, the CFC's category B income is the net relevant non-local income.

If it is 75% or more, the CFC has no category B income.

**371EH Category B income: permanent establishments in excluded territories**

- (1) This section applies if—
  - (a) a CFC's relevant non-local income determined at step 1 in section 371EG would include (apart from this section) any income ("the PE income") received by 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 PE income is to be included in the relevant non-local income only if the tax which is paid in respect of the PE income in the territory in which PE is established is less than 75% of the relevant corresponding UK tax.

**371EI Category B income: definitions**

- (1) This section applies for the purposes of sections 371EG and 371EH.
- (2) "Relevant non-local income" means the gross amount (that is, the amount before deduction of expenses or reserves) of any non-trading income—
  - (a) which is brought into account in determining the CFC's accounting profits for the accounting period, 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.
- (3) "Relevant deduction", in relation to any relevant non-local income, means a deduction to be made from the income in determining the CFC's assumed total profits for the accounting period.
- (4) "The relevant corresponding UK tax" means 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.
- (5) In determining that amount of corporation tax—
  - (a) ignore any relief from corporation tax attributable to, as the case may be—
    - (i) the tax determined at step 2 in section 371EG, or
    - (ii) the tax mentioned in section 371EH(2),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 of relevant income tax 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.
- (6) In subsection (5)(b)–
- (a) in sub-paragraph (i) “relevant income tax” means income tax which the CFC bears by deduction on a payment so far as the payment is included in the CFC's assumed taxable total profits, and
  - (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.
- (7) For the purposes of subsections (4) to (6) the CFC's assumed taxable total profits for the accounting period are to be 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 represent, as the case may be–
    - (i) the net relevant non-local income determined at step 3 in section 371EG, or
    - (ii) the PE income mentioned in section 371EH less any relevant deductions from that income, and
  - (b) that amounts are to be relieved against the CFC's 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).

### **371EJ 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 371CD(3)(a) (whether or not those amounts would have been included in those profits apart from section 371CD(3)(a)), and
- (b) amounts included in those profits by virtue only of section 371CD(3)(b)).

### **371EK 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 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.

### **371EL The IP condition**

- (1) This section applies for the purposes of section 371EB(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.

## CHAPTER 6

### THE TAX EXEMPTION

#### **371FA Introduction to Chapter**

This Chapter sets out an exemption called “the tax exemption” for the purposes of section 371BA(1)(a).

#### **371FB 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 371SB, 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 371SB, 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 profits arising in the accounting period (applying section 371FC so far as relevant).

If the local tax amount is determined under designer rate tax provisions (see section 371FD), the tax exemption cannot apply and step 3 is not to be taken.

##### *Step 3*

In accordance with section 371FE, 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) In this Chapter references to the CFC’s profits arising in the accounting period are to its profits ignoring any capital gains or losses.

#### **371FC Reductions to “the local tax amount”**

- (1) This section applies for the purposes of step 2 in section 371FB(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 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 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 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 by the CFC in respect of the CFC's 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 a person other than the CFC, 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.

**371FD What are “designer rate tax provisions”?**

- (1) For the purposes of step 2 in section 371FB(1) “designer rate tax provisions” means provisions –
  - (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.

**371FE How to determine “the corresponding UK tax”**

- (1) For the purposes of step 3 in section 371FB(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 7

### CHARGEABLE PROFITS OF A CFC: MAIN PROVISION

#### **371GA Determining a CFC's chargeable profits**

- (1) This Chapter applies for the purpose of determining a CFC's chargeable profits for an accounting period for the purposes of step 1 in section 371BA(2).
- (2) The CFC's chargeable profits 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 fall within Chapters 8 to 12, subject to Chapter 13 (so far as applicable), 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).
- (3) Subsection (2) is subject to section 371RB(7) and (8).

## CHAPTER 8

### CHARGEABLE PROFITS OF A CFC: PROFITS ATTRIBUTABLE TO UK SPFS

#### **371HA The basic rule**

- (1) Take the following steps to determine the CFC's profits falling within this Chapter ("the Chapter 8 profits") for the purposes of section 371GA(2)(a).  
 Steps 1 to 3 below are to be taken in accordance with the principles set out in the OECD Report.

*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 for the accounting period have arisen.

*Step 2*

Determine the extent to which the SPFs which are relevant to the economic ownership of the assets identified at step 1, or to the assumption and management of the risks so identified, are 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 3*

Assume that the UK SPFs determined at step 2 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 identified at step 1 would be attributed to the permanent establishment.

*Step 4*

Re-determine the CFC's assumed total profits on the basis that the CFC –

- (a) does not hold, or has not held, the assets identified at step 1, and
- (b) does not bear, or has not borne, the risks so identified, so far as they would be attributed to the permanent establishment mentioned at step 3.

“The provisional Chapter 8 profits” are the CFC's assumed total profits so far as they exceed those profits as re-determined at this step.

*Step 5*

Exclude from the provisional Chapter 8 profits any amounts which are required to be excluded by section 371HB, 371HC, 371HD or 371HE.

The result is the Chapter 8 profits.

- (2) 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 have the same meaning as they have in the OECD Report,
  - (c) “SPF” means a significant people function or a key entrepreneurial risk-taking function, and
  - (d) an SPF is a “UK SPF” so far as the SPF is carried out in the United Kingdom –
    - (i) by a part of the CFC, except where the SPF is carried out as part of a trade by a permanent establishment which the CFC has in the United Kingdom, or
    - (ii) by a company connected with the CFC.

- (3) 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.
- (4) “Relevant document” means –
  - (a) a document which replaces, updates or supplements the report mentioned in subsection (2)(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.

**371HB Exclusion: split between UK SPFs and non-UK SPFs**

- (1) Subsection (2) applies if –
  - (a) an asset or risk is identified at step 1 in section 371HA(1),
  - (b) the SPFs which are relevant to the economic ownership of the asset, or the assumption and management of the risk, are partly UK SPFs as determined at step 2 in section 371HA(1), and
  - (c) as a result of that determination, an amount is included in the provisional Chapter 8 profits.
- (2) The amount is to be excluded from the provisional Chapter 8 profits if it is no more than the further amount which would have been added to those profits had step 4 in section 371HA(1) been taken on the basis that the CFC –
  - (a) does not hold, or has not held, the asset to any extent at all, or
  - (b) does not bear, or has not borne, the risk to any extent at all.
- (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, identified at step 1 in section 371HA(1), 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 subsections (1) and (2) references to an asset or risk are to be read as references to those assets or risks taken together.

**371HC Exclusion: substantial non-tax value**

- (1) Subsection (2) applies if –
  - (a) an asset or risk is identified at step 1 in section 371HA(1),
  - (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 2 in section 371HA(1), and
  - (c) as a result of that determination, an amount is included in the provisional Chapter 8 profits.
- (2) The amount is to be excluded from the provisional Chapter 8 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 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 CFC group” means the CFC taken together with the companies with which it is connected from time to time.
- (5) “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.
- (6) Subsection (7) 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, identified at step 1 in section 371HA(1), 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.
- (7) In subsections (1) and (2) references to an asset or risk are to be read as references to those assets or risks taken together.

**371HD Exclusion: arrangements which independent companies would have entered into**

- (1) Subsection (2) applies if –
  - (a) an asset or risk is identified at step 1 in section 371HA(1),
  - (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 2 in section 371HA(1),
  - (c) as a result of that determination, an amount is included in the provisional Chapter 8 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 8 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 identical to the arrangements mentioned in subsection (1)(d) with companies not connected with the CFC.

- (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, identified at step 1 in section 371HA(1), 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.

**371HE Exclusion: trading income (the basic rule)**

- (1) All amounts representing trading income are to be excluded from the provisional Chapter 8 profits if the following conditions are met—
- (a) the business premises condition (see section 371HF),
  - (b) the income condition (see section 371HG),
  - (c) the management expenditure condition (see section 371HH),
  - (d) the IP condition (see section 371HI), and
  - (e) the export of goods condition (see section 371HJ).
- (2) Amounts representing trading income are also to be excluded from the provisional Chapter 8 profits in accordance with section 371HH(8) (so far as applicable).
- (3) This section is subject to section 371HK (anti-avoidance).

**371HF Exclusion: trading income (business premises condition)**

- (1) This section applies for the purposes of section 371HE(1)(a).
- (2) The business premises condition is met if, throughout 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 operations 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.

**371HG Exclusion: trading income (income condition)**

- (1) This section applies for the purposes of section 371HE(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) permanent establishments which non-UK resident companies have in the United Kingdom.
- (3) For the purposes of subsection (2) the CFC’s “relevant trading income” is its trading income for the accounting period, 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.
- (4) Subsection (5) applies instead of subsection (2) if, at any time during the accounting period, a substantial part of the CFC’s 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 no more than 10% of the CFC’s relevant trading income derives (directly or indirectly) from—
  - (a) UK resident persons, or
  - (b) permanent establishments which non-UK resident companies have in the United Kingdom.
- (6) For the purposes of subsection (5) the CFC’s “relevant trading income” is its trading income for the accounting period, excluding interest received from UK resident companies which are connected or associated with the CFC.
- (7) Neither subsection (2)(a) nor subsection (5)(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.

**371HH Exclusion: trading income (management expenditure condition)**

- (1) This section applies for the purposes of section 371HE(1)(c).
- (2) The management expenditure condition is met if the UK related management expenditure is not more than 20% of the total related management expenditure.
- (3) “The total related management expenditure” is the total of—
  - (a) the expenditure incurred during the accounting period by the CFC in the employment of the CFC’s own staff, or the engagement of other persons related to the CFC, who carry out relevant management functions, and
  - (b) the expenditure incurred during the accounting period (so far as not reflected in paragraph (a)) by persons related to the CFC in the employment of their own staff who carry out relevant management functions.
- (4) “The UK related management expenditure” is the total related management expenditure so far as it is incurred in relation to staff, or to persons related to the CFC, who carry out relevant management functions in the United Kingdom.

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- (5) A person carries out a “relevant management function” if the person manages any assets or risks identified at step 1 in section 371HA(1).
  - (6) This covers (for example) a person who formulates plans or makes decisions in relation to –
    - (a) the creation, control, development or exploitation of such assets, or
    - (b) the assumption or control of such risks.
  - (7) Subsection (8) applies if –
    - (a) the conditions mentioned in section 371HE(1)(a), (b), (d) and (e) are met but the management expenditure condition is not met,
    - (b) the 50% condition is met in relation to an asset or risk identified at step 1 in section 371HA(1) to which any part of the total related management expenditure relates, and
    - (c) an amount representing trading income arising from the asset or risk is included in the provisional Chapter 8 profits.
  - (8) The amount representing trading income is to be excluded from the provisional Chapter 8 profits.
  - (9) The 50% condition is met in relation to an asset or risk if the UK related management expenditure which relates to the asset or risk is no more than 50% of the total related management expenditure which relates 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 a number of risks, and
    - (b) it is not reasonably practicable to separate those assets or risks for the purpose of determining the amount of the total related management expenditure which 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.

**371HI Exclusion: trading income (IP condition)**

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

**371HJ Exclusion: trading income (export of goods condition)**

- (1) This section applies for the purposes of section 371HE(1)(e).
- (2) The export of goods condition is met if no more than 20% of the CFC’s trading income for the accounting period 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.

**371HK Exclusion: trading income (anti-avoidance)**

- (1) This section applies if –
  - (a) a condition mentioned in section 371HE(1) is met, or
  - (b) the 50% condition mentioned in section 371HH 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) any 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 371HE(1) are met, or
  - (ii) the 50% condition mentioned in section 371HH is met in relation to one or more assets or risks.
- (4) “The CFC group” means the CFC taken together with the companies with which it is connected from time to time.

## CHAPTER 9

### CHARGEABLE PROFITS OF A CFC: NON-TRADING FINANCE PROFITS

#### **371IA The basic rule**

For the purposes of section 371GA(2)(a) the CFC’s profits falling within this Chapter are its non-trading finance profits for the accounting period so far as they fall within any of sections 371IB to 371ID.

#### **371IB UK SPFs**

Non-trading finance profits fall within this section so far as amounts representing those profits would have fallen within Chapter 8 but for their exclusion from the provisional Chapter 8 profits at step 5 in section 371HA(1).

#### **371IC 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) “Relevant UK funds or other assets” means –
  - (a) funds or other assets which derive (directly or indirectly) from an acquisition of shares in the CFC, or any other type of capital contribution to the CFC, made (directly or indirectly) by a UK connected company,
  - (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,
  - (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).
- (3) In subsection (2)(d)(i) the reference to funds or other assets received by the CFC does not include funds or other assets received in exchange for goods or services provided by the CFC.

- (4) “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 permanent establishment which the non-UK resident company has in the United Kingdom.

### **371ID UK loans**

- (1) Non-trading finance profits fall within this section so far as they arise from a loan in relation to which the following condition is met.
- (2) The condition is that –
- (a) the loan is made by the CFC (directly or indirectly) –
    - (i) to a UK resident company connected with the CFC, or
    - (ii) to a non-UK resident company connected with the CFC for the purposes of a permanent establishment which the non-UK resident company has in the United Kingdom, and
  - (b) it is reasonable to suppose that the main reason, or one of the main reasons, why the CFC made the loan, as opposed to providing the funds by way of a dividend or other distribution, is a reason relating to a liability, or potential liability, of any person to tax or duty imposed under the law of any territory.
- (3) “Loan” includes anything giving rise to a loan relationship and includes part of a loan.

## **CHAPTER 10**

### CHARGEABLE PROFITS OF A CFC: TRADING FINANCE PROFITS

#### **371JA The basic rule**

- (1) Take the following steps to determine the CFC’s profits falling within this Chapter (“the Chapter 10 profits”) for the purposes of section 371GA(2)(a).

This is subject to sections 371JB and 371JC.

#### *Step 1*

Determine if the CFC’s assumed total profits for the accounting period include any trading income (“the step 1 trading income”) which is trading income by virtue of section 297 (including as applied by section 481) or section 573 or 931W of CTA 2009 (which give precedence to Part 3 of that Act (trading income) over Parts 5 to 7 and 9A (loan relationships etc)).

If they do not, then no profits fall within this Chapter and no further steps are to be taken.

#### *Step 2*

Determine if, at any time during the accounting period, the CFC’s free capital exceeds what it is reasonable to suppose it would be were the CFC not controlled by any person.

If there is excess free capital, “the step 2 amount” is –

- (a) the excess free capital, or

- (b) if less, the CFC's free capital so far as it is attributable to UK connected capital contributions.

*Step 3*

This step applies only if the CFC carries on insurance business at any time during the accounting period; if it does not, go straight to step 4. Determine if, at any time during the accounting period when the CFC is carrying on insurance business, the CFC's free assets exceeds what it is reasonable to suppose it would be were the CFC not controlled by any person.

If there is excess free assets, "the step 3 amount" is –

- (a) the excess free assets, or  
 (b) if less, the CFC's free assets so far as it is attributable to UK connected capital contributions.

*Step 4*

If no excesses are determined at steps 2 and 3, no profits fall within this Chapter.

Otherwise, the Chapter 10 profits are the step 1 trading income so far as it is reasonable to suppose that the income arises from the investment or other use of the step 2 amount or the step 3 amount (or both).

- (2) For the purposes of step 2 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 to be brought into account under Part 5 of CTA 2009 (loan relationships) in respect of the CFC's loan relationships in determining the CFC's assumed total profits for the accounting period.
- (3) For the purposes of step 3 in subsection (1) the CFC's "free assets" is the amount by which –
- (a) the value of its assets, exceeds  
 (b) the total of its loan capital and technical provisions.
- (4) 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.
- (5) "Technical provision" means –
- (a) provision for unearned premiums,  
 (b) long term business provision,  
 (c) claims outstanding,  
 (d) provision for bonuses and rebates,  
 (e) provision for unexpired risks,  
 (f) technical provisions for linked liabilities, and  
 (g) deposits received from reinsurers,  
 but for the purposes of paragraphs (a) to (f) the amount to be brought into account is only the amount by which the gross amount exceeds the reinsurance amount.
- (6) For the purposes of steps 2 and 3 in subsection (1) "UK connected capital contributions" means the acquisition of shares in the CFC, or any other types of capital contributions to the CFC, made (directly or indirectly) by UK resident companies connected with the CFC.

### **371JB Exclusion: banking business**

The HMRC Commissioners may by regulations provide that, if specified conditions are met, this Chapter is not to apply in relation to the step 1 trading income so far as it arises from banking business, or banking business of a specified description, carried on by the CFC.

### **371JC Exclusion: insurance business**

- (1) The HMRC Commissioners may by regulations provide that, if specified conditions are met, this Chapter is not to apply in relation to the step 1 trading income so far as it arises 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 371KA(3), including the investment of premiums received from such contracts.

## **CHAPTER 11**

### **CHARGEABLE PROFITS OF A CFC: CAPTIVE INSURANCE BUSINESS**

#### **371KA The basic rule**

- (1) This Chapter applies for the purposes of section 371GA(2)(a) if, at any time during the accounting period, the main part of the CFC’s business is insurance business.
- (2) The CFC’s profits falling within this Chapter are any amounts included in its assumed total profits for the accounting period so far as they –
  - (a) arise from the CFC’s insurance business,
  - (b) fall within subsection (3), and
  - (c) fall within subsection (7) where applicable.
- (3) An amount falls within this subsection if it derives (directly or indirectly) from a contract of insurance entered into with –
  - (a) a UK resident company connected with the CFC,
  - (b) a non-UK resident company connected with the CFC acting through a permanent establishment which the non-UK resident company has in the United Kingdom, or
  - (c) a UK resident person in relation to the provision of goods or services to or by that person (excluding services provided as part of insurance business).
- (4) Subsection (3)(a) 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 (3)(a) and (b) covers a contract of reinsurance only so far as the original contract of insurance would fall within subsection (3)(a) and (b) (ignoring any other contracts of reinsurance which may lie between the original contract of insurance and the contract of reinsurance in question).
- (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 operations 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.

## CHAPTER 12

### CHARGEABLE PROFITS OF A CFC: SOLO CONSOLIDATION

#### **371LA The basic rule**

- (1) This Chapter applies for the purposes of section 371GA(2)(a) if –
  - (a) section 371BC(2) or (3) applies in relation to the accounting period, and
  - (b) the CFC’s assumed total profits for the accounting period exceed the CFC’s relevant profits amount for the period.
- (2) The profits falling within this Chapter is the excess mentioned in subsection (1)(b).
- (3) The CFC’s “relevant profits amount” for the accounting period 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 371BC(2)(b) or the UK resident bank mentioned in section 371BC(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 13

### CHARGEABLE PROFITS OF A CFC: AMOUNTS TO BE LEFT OUT

#### **371MA Application of Chapter**

This Chapter sets out amounts which are to be left out of the CFC's assumed total profits so far as falling within Chapters 8 to 12 ("the Chapters 8 to 12 profits") for the purposes of section 371GA(2)(a).

#### **371MB Profits from property business**

- (1) This section applies if –
  - (a) profits are included in the CFC's assumed total profits for the accounting period on the basis that they would be chargeable to corporation tax under Part 4 of CTA 2009 (property income), and
  - (b) any of those profits are, or an amount representing any of those profits is, included in the Chapters 8 to 12 profits.
- (2) The profits are, or the amount is, to be left out.

#### **371MC Incidental non-trading finance profits: the 5% rule**

- (1) This section applies if the total of the non-trading finance profits included or represented in the Chapters 8 to 12 profits is no more than 5% of the total of all profits falling within subsection (3) or (4) before deduction of interest or any tax or duty imposed under the law of any territory.
- (2) All non-trading finance profits and amounts representing such profits are to be left out.
- (3) The profits falling within this subsection are profits included in the CFC's assumed total profits for the accounting period on the basis that they would be chargeable to corporation tax under Part 3 of CTA 2009 (trading income) so far as they are not themselves included or represented in the Chapters 8 to 12 profits.
- (4) The profits falling within this subsection are profits included in the CFC's assumed total profits for the accounting period on the basis that they would be chargeable to corporation tax under Part 4 of CTA 2009 (property income).

#### **371MD Incidental non-trading finance profits: investment of funds held for purposes of trade or property business**

- (1) Non-trading finance profits, or amounts representing such profits, included in the Chapters 8 to 12 profits are to be left out 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 income from which is included or represented in the Chapters 8 to 12 profits.
- (2) Non-trading finance profits, or amounts representing such profits, included in the Chapters 8 to 12 profits are to be left out 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.

- (3) Neither subsection (1) nor subsection (2) applies in relation to funds –
- (a) held only or mainly because of a temporary or permanent prohibition on the CFC paying dividends or making other distributions imposed under the law of the territory in which the CFC is incorporated or formed,
  - (b) held with a view to paying dividends or making other distributions more than 12 months after the end of the accounting period,
  - (c) held with a view to acquiring shares in any company or making any other type of capital contribution to a company,
  - (d) held with a view to acquiring, developing or otherwise investing in land more than 12 months after the end of the accounting 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.

### **371ME Incidental non-trading finance profits: holding companies**

- (1) Non-trading finance profits, or amounts representing such profits, included in the Chapters 8 to 12 profits are to be left out if –
  - (a) throughout the accounting period, a substantial part of the CFC’s business is the holding of shares or securities in companies which are its 51% subsidiaries, and
  - (b) the group non-trading finance profits are no more than 5% of the CFC’s exempt distribution income.
- (2) “The group non-trading finance profits” means the total of –
  - (a) the CFC’s non-trading finance profits for the accounting period, and
  - (b) if at any time during the accounting period one or more of the CFC’s 51% subsidiaries are also CFCs (“CFC subsidiaries”), the total of the CFC subsidiaries’ relevant non-trading finance profits.
- (3) If a 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, its “relevant non-trading finance profits” are its non-trading finance profits for the relevant period so far as they are left out of its Chapters 8 to 12 profits for the relevant period under this section.
- (4) If a CFC subsidiary has an accounting period (“the relevant period”) which otherwise overlaps with the CFC’s accounting period, its “relevant non-trading finance profits” are a just and reasonable proportion its non-trading finance profits for the relevant period so far as they are left out of its Chapters 8 to 12 profits for the relevant period under this section.
- (5) The CFC’s “exempt distribution income” means the total of the dividends and other distributions which are not brought into

account in determining the CFC's assumed total profits for the accounting period on the basis that they would be exempt for the purposes of Part 9A of CTA 2009 (company distributions).

## CHAPTER 14

### RELEVANT INTERESTS IN A CFC

#### *Introduction*

#### **371NA 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 2 in section 371BA(2).

#### **371NB 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 a bare trustee or nominee is treated as held by the person or persons for whom the bare trustee or nominee holds the interest.
- (4) “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.
- (5) Subsection (6) applies in a case not covered by subsection (3) if –
  - (a) an interest is held in a fiduciary or representative capacity, and
  - (b) there are one or more identifiable beneficiaries.
- (6) 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?*

#### **371NC “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.

### **371ND “Relevant interests” of persons related to UK resident companies**

- (1) This section applies if, by virtue of section 371NC, 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.

### **371NE 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 371NC or 371ND.
- (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 371NC or 371ND.

## **CHAPTER 15**

### CREDITABLE TAX OF A CFC

#### **371OA What is “creditable tax”?**

- (1) For the purposes of step 3 in section 371BA(2) 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), and
  - (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.

- (2) In subsection (1)(a) “foreign tax” means –
  - (a) the local tax amount, or
  - (b) any tax under the law of a territory outside the United Kingdom other than the territory in which the CFC is resident for the accounting period.
- (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)(b) and (c) 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 16

### APPORTIONMENT OF A CFC’S CHARGEABLE PROFITS AND CREDITABLE TAX

#### *Introduction*

#### **371PA 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 4 in section 371BA(2).

#### **371PB Provision about interpretation**

- (1) This section applies for the purposes of this Chapter.
- (2) Section 371NB applies as it applies for the purposes of Chapter 14.
- (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?*

**371PC 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 371PD.
- (2) If not, the percentage of the chargeable profits and the percentage of the creditable tax to be apportioned to each relevant persons 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 throughout the accounting period, or
  - (b) non-UK resident throughout 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.

**371PD Apportionments to be made in proportion to shareholding**

- (1) If conditions X to Z in section 371PC 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 371PE and 371PF.

**371PE 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 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).

### **371PF 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 –

$$\frac{P \times H}{A}$$

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.

## **CHAPTER 17**

### **EXEMPTIONS FOR PROFITS FROM QUALIFYING LOAN RELATIONSHIPS**

#### *Introduction*

### **371QA Introduction to Chapter**

- (1) This Chapter provides for the adjustment in certain cases of a CFC’s chargeable profits and creditable tax for an accounting period for the purpose of determining the sum charged on a chargeable company (“company C”) at step 6 in section 371BA(2) in relation to the accounting period.

- (2) This Chapter does not affect P% or Q% as defined in section 371BA(5) in relation to company C.
- (3) Terms used in this Chapter which are defined in Part 5 of CTA 2009 (loan relationships) have the same meaning as they have in that Part, except where otherwise indicated.

*Exemptions for qualifying loan relationship profits*

**371QB The basic rule**

- (1) This section applies if –
  - (a) the CFC’s assumed total profits for the accounting period include qualifying loan relationship profits,
  - (b) the business premises condition set out in section 371HF is met, and
  - (c) company C makes a claim to an officer of Revenue and Customs for this Chapter to apply in relation to it.
- (2) The sum charged on company C (but no other company) is to be determined on the following basis –
  - (a) the CFC’s chargeable profits are to be re-determined as if section 371GA had effect with the modification set out in subsection (3), and
  - (b) the CFC’s creditable tax is to be re-determined by reference to the re-determined chargeable profits.
- (3) The modification referred to in subsection (2)(a) is that for paragraph (a) of subsection (2) of section 371GA there is substituted –
  - “(a) that the CFC’s assumed total profits for the accounting period are limited to –
    - (i) so much of the CFC’s assumed total profits, excluding its qualifying loan relationship profits, as fall within Chapters 8 to 12, subject to Chapter 13 (so far as applicable), and
    - (ii) so much of the CFC’s qualifying loan relationship profits as are not exempt under Chapter 17, and”.
- (4) The CFC’s “qualifying loan relationship profits” are the profits of 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 371QC or section 371QE to each of the CFC’s qualifying loan relationships, and
  - (b) secondly, by applying section 371QF (if relevant).
- (6) Section 371QG sets out how to determine the profits of a qualifying loan relationship.
- (7) Section 371QH defines “qualifying loan relationship”.

**371QC 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 –
  - (a) that, throughout 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 371QH(2) and (3)) is resident throughout 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's group which are used solely for the purposes of the business of the CFC's group in the relevant territory,
  - (b) sums or other assets deriving (directly or indirectly) from an issue of shares which meets the following requirements –
    - (i) the shares are shares in a member of the CFC's group which is not controlled by any person or persons,
    - (ii) the shares are issued under an offer of shares to existing shareholders in that member in proportion to their existing holdings, and
    - (iii) those existing shareholders are not connected with the member, or
  - (c) sums or other assets received by the CFC in relation to shares held by the CFC in relevant members of the CFC's group.
- (7) A sum or asset received by the CFC falls within subsection (6)(c) only so far as company C's claim establishes that it derives (directly or indirectly) from –
  - (a) profits of the business of the CFC's group in the relevant territory, or
  - (b) the qualifying value of relevant pre-acquisition sums or other assets (see section 371QD).
- (8) Subsection (9) applies if the qualifying loan relationship is made under, or is otherwise connected (directly or indirectly) with, an arrangement under which one or more members of the CFC's group take on debt in the United Kingdom.

- (9) It is to be assumed for the purposes of subsection (2) that, throughout the relevant period, the amount of sums 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).
- (10) For the purposes of this section and section 371QD –
- (a) “the CFC’s group” means the CFC taken together with the companies with which it is connected from time to time,
  - (b) a member of the CFC’s 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’s group in the relevant territory do not include the making of loans to persons resident outside the relevant territory, and
  - (e) references to the profits of that business do not include –
    - (i) profits arising (directly or indirectly) from sums or other assets received by relevant members of the CFC’s group in relation to shares held by them in members of the CFC’s 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’s group in any territory outside the relevant territory.

**371QD What is the “qualifying value” of “relevant pre-acquisition sums or other assets”?**

- (1) This section applies for the purposes of section 371QC(7)(b).
- (2) It applies if –
  - (a) a member of the CFC’s group acquires shares in a company (“the target company”) from persons not connected with the CFC wholly or partly in consideration for an issue of shares in the member to those persons, and
  - (b) the value of the consideration given by the member represents wholly or partly the value or a part of the value of any sums or other assets held by the target company.
- (3) Those sums or other assets are “relevant pre-acquisition sums 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 member of the CFC’s group acquires the shares in the target company only partly in consideration for the issue of shares in the member;
  - (b) in connection with the acquisition of the shares, an extraordinary distribution is made to persons holding shares in the member.

- (5) “Y%” is given by the following formula –

$$100\% - \frac{100\% \times A}{A + B}$$

where –

A is the value of the consideration which is in the form of the issue of shares in the member, 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 in the member,
- (b) the value of the extraordinary distribution, or
- (c) the sum of the values given by paragraphs (a) and (b).

### **371QE The 75% exemption**

- (1) This section applies to a qualifying loan relationship if section 371QC does not apply to the qualifying loan relationship.
- (2) 75% of the profits of the qualifying loan relationship, excluding profits falling within section 371IC, are exempt.
- (3) Section 371IC has effect for the purposes of this section as if –
  - (a) subsection (2)(b) and (c) were omitted, and
  - (b) references to a UK connected company were limited to companies the main business of which is banking business or insurance business.

### **371QF Matched interest**

- (1) This section applies if –
  - (a) there are profits of qualifying loan relationships (“leftover profits”) which are not exempt after either section 371QC or section 371QE has been applied to each qualifying loan relationship,
  - (b) the relevant corporation tax accounting period (as defined in section 371BA(5)) is a relevant accounting period of company C in relation to a period of account of the worldwide group, and
  - (c) apart from this section, the charging of the CFC charge would, by virtue of section 314A (finance income amounts of chargeable companies), result in company C having a finance income amount for the period of account which includes 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 –

$$\frac{100\% \times E}{I + R}$$

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 finance income amount for the period of account which company C would have as mentioned in subsection (1)(c) so far as it would include leftover profits, and
  - (b) any other finance 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) 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.
- (7) Part 7 has effect for the purposes of this section with the following modifications.
- (8) 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).
- (9) Debits, credits and other amounts arising from banking business or insurance business are to be ignored for the purpose of determining what any finance income amount, the tested income amount or the tested expense amount would be for a period of account of the worldwide group.
- (10) Section 337(a) (which limits “the worldwide group” to “large” groups) is to be omitted.

*Profits of qualifying loan relationships etc*

### **371QG Determining the profits of a qualifying loan relationship**

Take the following steps to determine the profits of a qualifying loan relationship.

*Step 1*

Determine the credits from the qualifying loan relationship which are brought into account in determining the CFC’s non-trading finance profits for the accounting period.

For this purpose, ignore any credits so far as arising from the investment of funds held by the CFC as mentioned in section 371MD(1) or (2) (subject to section 371MD(3)).

The result is “the step 1 credits”.

*Step 2*

Determine the credits (so far as not reflected in the step 1 credits) and debits which are brought into account in determining the CFC’s non-trading finance profits for the accounting period under Part 5 of CTA 2009 (including by virtue of section 574 of that Act) 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 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 debits from the CFC’s loan relationships (so far as not reflected in the step 2 credits) which are brought into account in determining the CFC’s non-trading finance profits for the accounting period (ignoring section 574 of CTA 2009).

Reduce the step 2 credits accordingly to give the profits of the qualifying loan relationship.

**371QH What is a “qualifying loan relationship”?**

- (1) “Qualifying loan relationship” means a loan relationship of the CFC –
  - (a) in relation to which the creditor is the CFC,
  - (b) in relation to which the ultimate debtor is a company connected with the CFC, and
  - (c) which is not prevented from being a qualifying loan relationship by any of subsections (4) to (10).
- (2) “The ultimate debtor”, in relation to a loan relationship of the CFC, means the debtor in relation to the loan relationship, subject to subsection (3).
- (3) If –
  - (a) the loan which is the subject of the loan relationship is made and used solely for the purpose of funding (directly or indirectly) a loan to a person (“P”) other than the debtor or the CFC,
  - (b) the loan to P is not made and used solely for the purpose of funding (directly or indirectly) a loan to any other person, and
  - (c) the loan to P gives rise to a loan relationship in relation to which P is the debtor,the “ultimate debtor” is P.
- (4) If the ultimate debtor in relation to a loan relationship of the CFC is a non-UK resident company, the loan 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 permanent establishment which the company has in the United Kingdom, 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.
- (5) If the ultimate debtor in relation to a loan relationship of the CFC is a UK resident company, the loan 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.
- (6) If the ultimate debtor in relation to a loan relationship of the CFC is itself a CFC, the loan relationship cannot be a qualifying loan relationship so long as—
  - (a) some or all of the company's debits are relevant to the application of Chapter 3 or Chapters 8 to 12, and
  - (b) as a result of that, the CFC charge is not being charged in relation to the company's accounting periods or any sums charged are less than what they would otherwise have been.
- (7) In subsections (4) to (6) references to the debits of the company which is the ultimate debtor in relation to a loan relationship of the CFC are references to its debits from, as the case may be—
  - (a) that loan relationship, or
  - (b) the loan relationship mentioned in subsection (3)(c).
- (8) A loan 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 loan relationship to provide (directly or indirectly) funding for a loan to another person.
- (9) A loan 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 loan 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,
  - (c) the relevant loan is wholly or mainly used 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.
- (10) In subsection (9)—
  - (a) "relevant UK funds or other assets" and "UK connected company" have the same meaning as in section 371IC, and

- (b) in paragraph (c) “the relevant loan” means –
  - (i) the loan which is the subject of the CFC’s loan relationship, or
  - (ii) if the ultimate debtor is determined in accordance with subsection (3), the loan made to P.
- (11) In this section references to a loan relationship include part of a loan relationship.
- (12) The HMRC Commissioners may by regulations amend this section so as to amend the definition of “qualifying loan relationship”.

## CHAPTER 18

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

#### *Overview*

#### **371RA Overview of Chapter**

This Chapter explains the concepts of “assumed taxable total profits” and “assumed total profits” (see section 371RB) and “the corporation tax assumptions” (see section 371RC) which are referred to in this Part.

*“Assumed taxable total profits” and “assumed total profits”*

#### **371RB 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”*

**371RC What are “the corporation tax assumptions”?**

- (1) In this Part “the corporation tax assumptions” means the assumptions set out in sections 371RD to 371RM.
- (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 371RB(1),
  - (b) the relevant corresponding UK tax in accordance with section 371EI(4) to (7),
  - (c) the corresponding UK tax in accordance with section 371FE, and
  - (d) the CFC’s creditable tax in accordance with Chapter 15.

**371RD UK residence etc**

- (1) Assume –
- (a) that the CFC is UK resident throughout 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 371BB) 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.

### **371RE Close company**

Assume that the CFC is not a close company.

### **371RF 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 a claim or election under—
  - (a) section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments),
  - (b) section 1275 of CTA 2009 (relief for unremittable income), or
  - (c) section 9A of CTA 2010 (designated currency of a UK resident investment company).

### **371RG Disapplication of assumption in section 371RF(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 371RF(1),
  - (b) to have made for the relevant accounting period a specified claim or election (other than one under section 18A of CTA 2009 or section 9A of CTA 2010), being different from one assumed by section 371RF(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 371GA(2) 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 371RF(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 371RF(1) is to be disapplied to the extent necessary as a consequence.
- (4) A notice under subsection (1) –
  - (a) may be given only by a company or companies determined under subsection (5) or (6), 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.
- (5) A company may give a notice if –
  - (a) the company would be a chargeable company were the CFC charge to be charged in relation to the relevant accounting period, and
  - (b) the percentage of the CFC's chargeable profits which would be apportioned to the company would represent more than half of X%.
- (6) Two or more companies may together give a notice if –
  - (a) the companies would all be chargeable companies were the CFC charge to be charged 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, would represent more than half of X%.
- (7) In subsections (5) and (6) "X%" means the total percentage of the CFC's chargeable profits which would be apportioned to chargeable companies were the CFC charge to be charged in relation to the accounting period.

### **371RH 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 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) A notice under subsection (1) may be given only by a company or companies determined under subsection (4) or (5).
- (4) 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 the CFC charge to be charged 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 would represent more than half of X%.
- (5) 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 the CFC charge to be charged 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, would represent more than half of X%.
- (6) In subsections (4) and (5) (and this subsection) –

“the applicable accounting period” means the accounting period of the CFC during which the notice under subsection (1) 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 were the CFC charge to be charged in relation to the applicable accounting period.

### **371RI 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.

### **371RJ 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.

### **371RK 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 19, and
  - (c) any other territory in which the CFC is in fact resident at any time during the relevant accounting period.

### **371RL 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.

### **371RM 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 19

### RESIDENCE OF CFCs

#### **371SA 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 371SB, 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 371EC and step 1 in section 371FB(1).

#### **371SB 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, throughout 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 371SC(8)(b), the CFC is taken to be resident in the eligible territory which is the subject of the election or designation.
- (5) If, throughout 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) throughout 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 371SC(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 371SC(5) to (7)), the CFC is taken to be resident in that territory.

### **371SC Elections and designations about residence**

- (1) An election under section 371SB(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,
  - (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 were the CFC charge to be charged 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 the CFC charge to be charged 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 the CFC charge to be charged 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 the CFC charge to be charged in relation to the relevant accounting period.
- (5) A designation under section 371SB(9) is irrevocable.
- (6) 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.
- (7) 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.
- (8) 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 (9) applies to an accounting period,regardless of any change in the persons who have interests in the CFC or any change in those interests.
- (9) 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 371SB(1) in relation to the later period, or
  - (b) some other territory also falls within section 371SB(1) in relation to the later period.

## CHAPTER 20

### MANAGEMENT

#### **371TA 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),
  - “company tax return” means a return required to be made under that Schedule,
  - “discovery assessment” means a discovery assessment or discovery determination under paragraph 41 of that Schedule (including by virtue of paragraph 52 of that Schedule), and

“the Taxes Acts” has the same meaning as in TMA 1970.

### **371TB Application of the Taxes Acts to the CFC charge**

- (1) The provision of step 6 in section 371BA(2) 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) any 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 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 6 in section 371BA(2) 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 6 in section 371BA(2).
- (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 371SB(8).

### **371TC Just and reasonable apportionments**

- (1) This section applies if—
  - (a) an apportionment of a CFC’s chargeable profits and creditable tax is to be made in accordance with section 371PC(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.

### **371TD 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 6 in section 371BA(2).
- (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 6 in section 371BA(2).
- (7) In this section –
- (a) "the appropriate rate" and "the relevant corporation tax accounting period" have the meaning given by section 371BA(5), 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 expenses deduction under section 76(1) of ICTA,
    - (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.

### **371TE 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.

### **371TF 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 6 in section 371BA(2) 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 on 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.

## **CHAPTER 21**

### SUPPLEMENTARY PROVISION

#### **371UA Definitions**

In this Part –

- “accounting period”, in relation to a CFC, is to be read in accordance with section 371BB,
- “arrangement” includes –
- (a) any agreement, scheme, transaction or understanding (whether or not legally enforceable), and
  - (b) a series of arrangements,
- “assumed taxable total profits”, in relation to a CFC, is to be read in accordance with section 371RB(1) to (6),
- “assumed total profits”, in relation to a CFC, is to be read in accordance with section 371RB(9),
- “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(2),
- “the CFC charge” is to be read in accordance with section 371AA(1),
- “chargeable company”, in relation to a CFC’s accounting period, has the meaning given at step 5 in section 371BA(2),
- “chargeable profits”, in relation to a CFC, is to be read in accordance with section 371GA,
- “company” is to be read subject to section 371UC,
- “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 371AB to 371AE,
- “the corporation tax assumptions” is to be read in accordance with section 371RC,
- “creditable tax”, in relation to a CFC, is to be read in accordance with section 371OA,
- “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 371UD,
- “the local tax amount”, in relation to a CFC, means the amount of tax determined at step 2 in section 371FB(1),
- “non-trading finance profits”, in relation to a CFC, means any amount included in the CFC’s assumed total profits for the accounting period in question on the basis that the amount would be chargeable to corporation tax under –

- (a) section 299 of CTA 2009 (charge to tax on non-trading profits from loan relationships) (including as applied by sections 481 and 574 of that Act), or
  - (b) Part 9A of that Act (company distributions),
- “non-trading income” means income which is not trading income,
- “tax advantage” has the meaning given by section 1139 of CTA 2010, and
- “trading income”, in relation to a CFC, means income brought into account in determining the CFC’s assumed total profits for the accounting period in question on the basis that it would be chargeable to corporation tax under Part 3 of CTA 2009 (trading income).

### **371UB 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 4 in section 371BA(2) 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 371AC, the person is connected or associated with either or both of the controllers.
- (4) If a CFC is a CFC by virtue of section 371AE, a person is to be taken to be connected, associated or related to the CFC if it is reasonable to suppose that, apart from the arrangement falling within section 371AE(4), the person would be connected, associated or related to the CFC.

### **371UC 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 of a relevant company (by whatever name known) which meets the following condition.
- (3) The condition is that, under the law under which the relevant company is incorporated or formed, under the articles of association or other document regulating the relevant company or under any arrangement entered into by or in relation to the relevant company –
  - (a) assets and liabilities of the relevant 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 relevant company who have rights in relation to the company's assets which cover only or mainly assets so allocated.
- (4) An "incorporated cell" is an entity (by whatever name known) established under the articles of association or other document regulating a relevant company –
  - (a) which, under the law under which the relevant company is incorporated or formed, has a legal personality distinct from that of the relevant company, but
  - (b) which is not itself a company (ignoring this section).
- (5) In this section "relevant company" means a non-UK resident company which is not a CFC.
- (6) 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.
- (7) Regulations under subsection (6) may add to, repeal or otherwise amend subsections (1) to (5).

### **371UD "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,
  - (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 to secure that income or assets of the company 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) Rights which a person has as a loan creditor of a company are not an "interest" in the company.
- (4) "Loan creditor" has the meaning given by section 453 of CTA 2010, but ignoring subsection (4) of that section.
- (5) In subsection (2) references to a person being entitled to do anything cover cases in which a person –
  - (a) is presently entitled to do it at a future date, or
  - (b) will at a future date be entitled to do it.
- (6) But an entitlement to secure that the income or assets of a company will be applied as mentioned in subsection (2)(c) which is contingent upon a default of the company or any other person under any agreement does not fall within subsection (2)(c) unless the default has occurred.

- (7) Subsection (8) applies in relation to a CFC which is a CFC by virtue of section 371AE.
- (8) The persons who have “interests” in the CFC, and the nature of their interests, are to be determined by applying section 371AE(3) and otherwise by reference to what it is reasonable to suppose would have been the state of affairs in relation to the CFC apart from the arrangement falling within section 371AE(4).
- (9) Subsections (10) and (11) apply if –
- (a) apart from subsection (10), 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 (10).)
- (10) The person or persons mentioned in subsection (9)(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).
- (11) 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 (9)(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.
- (12) 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.

### **371UE Regulations**

Regulations under this Part may contain incidental, supplemental, consequential and transitional provision and savings.”

## PART 2

### FOREIGN PERMANENT ESTABLISHMENTS

#### *Main provision*

- 2 Chapter 3A of Part 2 of CTA 2009 (foreign permanent establishments of UK resident companies) is amended as follows.
- 3 In section 18A(1) omit “UK resident”.
- 4 After section 18C insert –

#### **“18CA Income arising from immovable property**

The references in section 18A(6) to profits which would be taken to be attributable to the permanent establishment of a company in a territory include any income arising from immovable property which has been used for the purposes of the business carried on by the company through the permanent establishment in the territory

(to such extent as is appropriate having regard to the extent to which it has been so used); and the references to losses in section 18A(7) are to be construed accordingly.

### **18CB Profits and losses from investment business**

- (1) In determining any relevant profits amount or relevant losses amount under section 18A(6) or (7) in relation to a company, there is to be left out of account any profits or losses of any part of the company's business which consists of the making of investments.
  - (2) Subsection (1) does not apply to profits or losses arising from assets so far as they are effectively connected with any part of the permanent establishment through which a trade or overseas property business of the company is carried on in the territory.
  - (3) In subsection (2) "effectively connected" is to be given the same meaning as it would be given for the purposes of the OECD model were subsection (2) contained in the OECD model."
- 5 (1) Section 18F is amended as follows.
- (2) In subsection (1)(a) for "subsection (6)" substitute "subsections (6) to (8)".
  - (3) For subsection (2) substitute –
    - (2) "The relevant day", in relation to an election made by a UK resident company, means –
      - (a) the day on which, at the time of the election, the company's accounting period following that in which the election is made is expected to begin, or
      - (b) if the election is made before the company's first accounting period, the day on which that accounting period begins.
    - (2A) "The relevant day", in relation to an election made by a non-UK resident company, means the day on which the company becomes UK resident."
  - (4) In subsection (6) for "The election can be revoked" substitute "An election can be revoked by the company which made it".
  - (5) After subsection (6) insert –
    - (7) An election made by a UK resident company is revoked if the company ceases to be UK resident.
    - (8) An election made by a non-UK resident company is revoked if, having become UK resident, the company ceases to be UK resident."
- 6 For sections 18G to 18I substitute –

### **"18G Anti-diversion rule**

- (1) This section applies for the purposes of this Chapter for any relevant accounting period ("period X") of a company ("company X") in relation to a territory outside the United Kingdom ("territory X") if –
  - (a) there is an adjusted relevant profits amount in relation to territory X for period X,
  - (b) none of the exemptions mentioned in section 18H applies for period X, and

- (c) the adjusted relevant profits amount includes diverted profits (see section 18I).
- (2) The diverted profits are to be left out of the adjusted relevant profits amount.
- (3) For the purposes of this Chapter “adjusted”, in relation to a relevant profits amount, is what the relevant profits amount would be if it were determined without reference to gains or losses which are chargeable gains or allowable losses for corporation tax purposes.

#### **18H Exemptions from anti-diversion rule**

- (1) The exemptions referred to in section 18G(1)(b) are the exemptions set out in Chapters 3 to 6 of Part 9A of TIOPA 2010 (controlled foreign companies: exemptions from the CFC charge).
- (2) In applying those Chapters for the purposes of section 18G(1)(b) –
  - (a) references to section 371BA(1)(a) of TIOPA 2010 are to be read as references to section 18G(1)(b),
  - (b) the assumptions set out in subsection (3) are to be made, and
  - (c) section 371UB(3) of TIOPA 2010 (definition of “related” person) is to be read with the omission of paragraphs (b) and (c).
- (3) For the purposes of subsection (2)(b), assume –
  - (a) that the permanent establishment which company X has in territory X is a separate company from company X,
  - (b) that the separate company is a CFC resident in territory X,
  - (c) that period X and company X’s other accounting periods for corporation tax purposes are accounting periods of the CFC for the purposes of Part 9A of TIOPA 2010,
  - (d) that the CFC’s assumed total profits for period X are the adjusted relevant profits amount,
  - (e) that the CFC’s assumed taxable total profits for period X are the same as the CFC’s assumed total profits for period X,
  - (f) that the CFC is connected with company X and is also connected or associated with any person with whom company X is connected or associated, and
  - (g) that any person who has an interest in company X also has an interest in the CFC.
- (4) Chapters 3 to 6 of Part 9A of TIOPA 2010 are also to be applied subject to sections 18HA to 18HD.

#### **18HA The low profits exemption**

Chapter 3 of Part 9A of TIOPA 2010 (controlled foreign companies: the low profits exemption) applies for the purposes of section 18G(1)(b) with the omission of sections 371CB to 371CE.

#### **18HB The low profit margin exemption**

- (1) Chapter 4 of Part 9A of TIOPA 2010 (controlled foreign companies: the low profit margin exemption) applies for the purposes of section 18G(1)(b) with the following modifications.

- (2) In section 371DB—
  - (a) references to the CFC’s accounting profits for an accounting period are to be read as references to the adjusted relevant profits amount determined before any deduction for interest, and
  - (b) subsection (2) is to be omitted.

#### **18HC The excluded territories exemption**

- (1) Chapter 5 of Part 9A of TIOPA 2010 (controlled foreign companies: the excluded territories exemption) applies for the purposes of section 18G(1)(b) with the following modifications.
- (2) Sections 371EB(1)(b)(iii) and 371EJ are to be omitted.
- (3) Section 371EC is to be omitted and the assumption set out in section 18H(3)(b) above in relation to the CFC’s residence is to be applied instead; and references to “the CFC’s territory” are to be read accordingly.
- (4) Section 371ED(3) is to be omitted and references to a CFC’s accounting profits for an accounting period are instead to be read as references to the adjusted relevant profits amount.
- (5) Sections 371EE(2)(b)(ii) and 371EF are to be omitted.
- (6) Section 371EH is to be omitted.
- (7) In section 371EI—
  - (a) subsection (5)(a)(ii) is to be omitted,
  - (b) in subsection (6)—
    - (i) in paragraph (a), the reference to income tax which the CFC bears by deduction is to be read as a reference to income tax which company X bears by deduction (ignoring the assumption in section 18H(3)(a) above), and
    - (ii) in paragraph (b), the reference to the CFC is to be read as a reference to company X (ignoring that assumption), and
  - (c) subsection (7)(a)(ii) and (b) is to be omitted.
- (8) Section 371EK(2) and (3) is to be omitted.
- (9) In section 371EL—
  - (a) in subsection (2)(a), the reference to intellectual property held by the CFC is to be read as a reference to intellectual property held by company X (ignoring the assumption in section 18H(3)(a) above), and
  - (b) in subsections (2)(b) and (c) and (4), references to the CFC are to be read as references to company X (ignoring that assumption).

#### **18HD The tax exemption**

- (1) Chapter 6 of Part 9A of TIOPA 2010 (controlled foreign companies: the tax exemption) applies for the purposes of section 18G(1)(b) with the following modifications.

- (2) At step 1 in section 371FB(1)–
  - (a) in the first paragraph, the reference to section 371SB of TIOPA 2010 is to be read as a reference to the assumption in section 18H(3)(b) above relating to the CFC’s residence, and
  - (b) the second paragraph is to be omitted.
- (3) References to the CFC’s profits arising in the accounting period are to be read as references to the adjusted relevant profits amount and, accordingly, sections 371FB(2) and 371FC(2) to (4) are to be omitted.
- (4) In sections 371FC(5)(b) and 371FE(3) the reference to the CFC is to be read as a reference to company X (ignoring the assumption in section 18H(3)(a) above).

### **18I What are “diverted profits”?**

- (1) In section 18G(1)(c) “diverted profits” means so much of the adjusted relevant profits amount as falls within any of sections 18IA to 18ID, subject to any adjustment required by section 18IE.
- (2) Subsection (1) is subject to section 18IF.

### **18IA Profits attributable to UK SPFs**

- (1) To determine the extent to which the adjusted relevant profits amount falls within this section, apply Chapter 8 of Part 9A of TIOPA 2010 (chargeable profits of a controlled foreign company: profits attributable to UK SPFs) with the following assumptions and modifications.
- (2) Assume–
  - (a) that company X is a CFC resident in territory X,
  - (b) that period X is the CFC’s accounting period, and
  - (c) that the adjusted relevant profits amount is the CFC’s assumed total profits for the accounting period.
- (3) Subsection (2)(a) does not require it to be assumed that there is any change in the place or places at which company X carries on its activities.
- (4) The modifications are–
  - (a) section 371HA(2)(d)(i) is to be omitted,
  - (b) in section 371HG(4), after “the accounting period”, in the second place it occurs, there is to be inserted “or the United Kingdom”,
  - (c) in section 371HH, the following are to be omitted–
    - (i) subsection (3)(a),
    - (ii) in subsection (3)(b), the words “(so far as not reflected in paragraph (a))”, and
    - (iii) in subsection (4), the words “, or to persons related to the CFC,”, and
  - (d) in section 371UB(3) of TIOPA 2010 (definition of “related” person), paragraphs (b) and (c) are to be omitted.
- (5) The adjusted relevant profits amount falls within this section so far as it is represented by the Chapter 8 profits (if any) determined at step 5 in section 371HA(1).

### **18IB Non-trading finance profits**

- (1) The adjusted relevant profits amount falls within this section so far as it represents non-trading finance profits.
- (2) For the purposes of subsection (1) apply the definition of “non-trading finance profits” in section 371UA of TIOPA 2010 (definitions of terms used in Part 9A of that Act) with the following assumptions.
- (3) Assume—
  - (a) that company X is a CFC resident in territory X,
  - (b) that period X is the CFC’s accounting period in question, and
  - (c) that the adjusted relevant profits amount is the CFC’s assumed total profits for the accounting period.
- (4) Subsection (3)(a) does not require it to be assumed that there is any change in the place or places at which company X carries on its activities.

### **18IC Trading finance profits**

- (1) This section applies only if, at any time during period X, company X is controlled by another person or persons as determined in accordance with section 371AB of TIOPA 2010 (as supplemented by section 371AD) (which sets out for the purposes of Part 9A of that Act how to determine if a company is “controlled” by another person or persons).
- (2) To determine the extent to which the adjusted relevant profits amount falls within this section, apply Chapter 10 of Part 9A of TIOPA 2010 (chargeable profits of a controlled foreign company: trading finance profits) with the following assumptions.
- (3) Assume—
  - (a) that company X is a CFC resident in territory X,
  - (b) that period X is the CFC’s accounting period, and
  - (c) that company X’s total profits for period X (ignoring this Chapter and step 2 in section 4(3) of CTA 2010) are the CFC’s assumed total profits for the accounting period.
- (4) Subsection (3)(a) does not require it to be assumed that there is any change in the place or places at which company X carries on its activities.
- (5) The adjusted relevant profits amount falls within this section so far as it is represented by the Chapter 10 profits (if any) determined at step 4 in section 371JA(1).

### **18ID Captive insurance business**

- (1) To determine the extent to which the adjusted relevant profits amount falls within this section, apply Chapter 11 of Part 9A of TIOPA 2010 (chargeable profits of a controlled foreign company: captive insurance business) with the following assumptions and modification.
- (2) Assume—
  - (a) that company X is a CFC resident in territory X,

- (b) that period X is the CFC’s accounting period, and
  - (c) that the adjusted relevant profits amount is the CFC’s assumed total profits for the accounting period.
- (3) Subsection (2)(a) does not require it to be assumed that there is any change in the place or places at which company X carries on its activities.
- (4) The modification is that section 371KA(6)(b) is to be omitted.
- (5) The adjusted relevant profits amount falls within this section so far as it is represented by the amounts (if any) falling within Chapter 11 as determined in accordance with section 371KA(2).

**18IE Adjustments to the diverted profits**

- (1) This section provides for amounts to be left out of the diverted profits.
- (2) To determine those amounts, apply sections 371MB to 371MD of TIOPA 2010 (chargeable profits of a controlled foreign company: amounts to be left out) with the following assumptions.
- (3) Assume—
- (a) that company X is a CFC resident in territory X,
  - (b) that period X is the CFC’s accounting period,
  - (c) that the adjusted relevant profits amount is the CFC’s assumed total profits for the accounting period, and
  - (d) that the diverted profits are the Chapters 8 to 12 profits.
- (4) Subsection (3)(a) does not require it to be assumed that there is any change in the place or places at which company X carries on its activities.

**18IF Loan relationships with connected companies: modification of section 18I**

[...]”

7 After section 18P(2) insert—

- “(3) Subsection (2) does not apply in relation to—
- (a) a chargeable gain accruing on the disposal of an asset used, and used only, for the purposes of a trade so far as carried on by the company in the relevant foreign territory through the company’s permanent establishment there, or
  - (b) a chargeable gain accruing on the disposal of currency or of a debt within section 252(1) of TCGA 1992 where the currency or debt is or represents money in use for the purposes of a trade so far as carried on by the company in the relevant foreign territory through the company’s permanent establishment there.”

*Lloyd’s underwriters*

8 In Chapter 5 of Part 4 of FA 1994 (Lloyd’s underwriters) after section 227B

insert –

**“227C Exemption for profits or losses of foreign permanent establishments**

- (1) This section applies for the purposes of section 18A(6) and (7) of the Corporation Tax Act 2009 (exemption for profits or losses of foreign permanent establishments: “relevant profits amount” and “relevant losses amount”).
- (2) Any regulations made under section 229(1)(d) below are to be ignored.
- (3) Profits or losses which are taken to arise to a corporate member in an underwriting year from its membership of one or more syndicates are to be left out of account in relation to any relevant accounting period so far as they are profits or losses of a previous underwriting year which began before the relevant day (as defined in section 18F of the 2009 Act (effect of election under section 18A)).
- (4) Profits or losses arising to a corporate member from assets forming part of a premium trust fund which are taken to be profits or losses of an underwriting year are to be left out of account in relation to any relevant accounting period so far as they are allocated under the rules or practice of Lloyds to a previous underwriting year which began before the relevant day (as defined in section 18F of the 2009 Act).”

*Plant and machinery allowances*

- 9 In section 15 of CAA 2001 (plant and machinery allowances: qualifying activities) after subsection (2A) insert –
- “(2B) Subsection (2A) does not apply to the business so far as it consists of a plant or machinery lease under which the company is a lessor if any profits or losses arising from the lease are to be left out of account as mentioned in section 18C(3) of CTA 2009.”

PART 3

OTHER AMENDMENTS

*ICTA*

- 10 ICTA is amended as follows.
- 11 Omit Chapter 4 of Part 17 (controlled foreign companies).

*CTA 2010*

- 12 CTA 2010 is amended as follows.
- 13 (1) Section 1139 (definition of “tax advantage”) is amended as follows.
- (2) In subsection (2) –
- (a) omit the “or” after paragraph (d), and

- (b) after paragraph (d) insert –  
 “(da) the avoidance or reduction of a charge or assessment to a charge under Part 9A of TIOPA 2010 (controlled foreign companies), or”.

*TIOPA 2010*

- 14 TIOPA 2010 is amended as follows.
- 15 (1) Section 314 (financing income amounts) is amended as follows.
- (2) In subsection (1) after “D” insert “or that is determined in accordance with section 314A”.
- 16 After section 314 insert –

**“314A The finance income amounts of a chargeable company under Part 9A**

- (1) This section applies if –
- (a) a sum is charged on a company at step 6 in section 371BA(2) (controlled foreign companies: charging the CFC charge),
  - (b) the relevant corporation tax accounting period (as defined in section 371BA(5)) is a relevant accounting period of the company in relation to a period of account of the worldwide group, and
  - (c) the CFC’s chargeable profits mentioned in paragraph (a) at step 6 in section 371BA(2) include amounts (“the relevant finance profits”) which fall within Chapter 9 or 10 of Part 9A.
- (2) An amount equal to P% of the relevant finance profits is to be taken to be a financing income amount of the company for the period of account of the worldwide group.
- (3) “P%” has the meaning given by section 371BA(5).
- (4) In subsection (1)(c) –
- (a) the reference to the CFC’s chargeable profits is to be read as a reference to those profits as re-determined in the case of the company under Chapter 17 of Part 9A (if applicable), and
  - (b) the reference to amounts which fall within Chapter 9 or 10 of that Part is limited to amounts –
    - (i) which so fall by virtue of section 297 or 299 of CTA 2009 (including as applied by section 481 of that Act but not, in the case of section 299, as applied by section 574 of that Act), and
    - (ii) which are not excluded credits (as defined in section 314(3) above).”

PART 4

COMMENCEMENT AND TRANSITIONAL PROVISION

*Commencement*

- 17 [...]

*Transitional provision*

18      [...]