

Controlled Foreign Companies Full Reform

Who is likely to be affected?

Primarily large UK based multinationals, but any UK company with overseas subsidiaries or exempt foreign branches may be affected.

General description of the measure

A reform of the controlled foreign companies (CFC) rules to introduce a modernised regime that fits with a move towards a more territorial corporate tax system and better reflects the way that businesses operate in a globalised economy.

Policy objective

The policy objectives of the new CFC regime are to:

- introduce a modernised CFC regime that better reflects the way that businesses operate in a global economy whilst maintaining adequate protection of the UK tax base;
- exempt profits where there is no artificial diversion of UK profits; and,
- exempt profits arising from genuine economic activities undertaken overseas.

Background to the measure

In November 2010, the Government proposed reforms to the CFC rules as part of the Corporate Tax Road Map. The Government made a first step towards reforming the rules by introducing interim improvements in Finance Bill 2011.

In June 2011 the Government published a consultation document setting out detailed proposals for new CFC rules to be introduced in Finance Bill 2012.

Detailed proposal

Operative date

This measure will be included in Finance Bill 2012.

It is likely the rules will have effect for accounting periods beginning on or after the date of Royal Assent to Finance Bill 2012 but this is subject to further consultation.

Current law

The current law is in Chapter IV of Part XVII Income Tax and Corporation Taxes Act 1988 and Schedules 24, 25 and 26 of that Act. It charges United Kingdom resident companies tax on profits of certain foreign subsidiaries in which they have an interest.

A controlled foreign company is an overseas company controlled by United Kingdom residents which pays less than three quarters of the tax which it would have paid on its income had it been resident in the UK. The controlled foreign companies' provisions are directed at companies which artificially divert UK profits to low tax territories or other favourable overseas tax regimes to reduce their UK tax liabilities.

No tax will be due in respect of a CFC if the company satisfies any one of the statutory exemptions or exclusions.

Proposed revisions

Legislation will be introduced in Finance Bill 2012 to repeal the current legislation and replace it with a new CFC regime, the key elements of which are:

The business profits of a foreign subsidiary will be outside the scope of the new CFC regime unless they meet the specified conditions set out in a "gateway". These conditions define what is to be treated for the purposes of the regime as profits artificially diverted from the UK.

"Safe harbours" for the gateway conditions will be provided covering general commercial business, incidental finance income and some sector specific rules. A foreign subsidiary can rely on these safe harbours to show that some or all of its profits are outside the regime's scope.

As an alternative to the gateway, the regime will also provide exemptions for CFCs. The exemptions will apply to the CFC as a whole and include an excluded territory exemption and a low profits exemption. The lower level of tax test which currently forms part of the definition of a CFC will function as an exemption in the new regime.

Summary of impacts

Exchequer impact (£m)	2011-12	2012-13	2013-14	2014-15	2015-16
	nil	-210	-540	-770	-840
<p>These figures were set out in Table 2.1 of the Budget 2011 and have been certified by the Office of Budget Responsibility. More detail can be found in the policy costings document published alongside the Budget 2011.</p> <p>In addition, further policy changes made as a result of consultation will be expected to decrease receipts by approximately £100 million per annum. The final costing will be subject to scrutiny by the Office for Budget Responsibility, and will be set out at Budget 2012.</p> <p>The CFC regime protects the UK corporation tax base against the artificial diversion of UK profits to low tax jurisdictions by UK based companies, by seeking to tax these profits in the UK.</p> <p>The CFC base is comprised of all foreign companies and exempt permanent establishments in which a UK company is able to exercise control. However, there is only a charge to tax when a CFC artificially diverts profits from the UK as defined by the CFC legislation. Therefore, the tax charged in any given year is defined by the actions of those companies and so the estimated costs are reliant on assumptions of behavioural change.</p> <p>In reforming the CFC regime, the aim is to make the rules simpler to apply, exempting genuine foreign profits whilst better targeting artificially diverted UK profits. Where a CFC charge arises it will only apply to the proportion of a CFC's profits that have been artificially diverted from the UK.</p> <p>Further consultation on this measure is ongoing and this cost will be subject to scrutiny by the OBR.</p>					

Economic impact	The UK introduced CFC rules to protect against the artificial diversion of UK profits to low tax jurisdictions; however, the current CFC regime has been in place for 27 years, and its reform is frequently identified by UK multinational businesses as a key priority in improving the UK's tax competitiveness. Modernisation of the CFC regime, together with the programme of corporate tax reforms set out in the Corporate Tax Road Map, will assist in improving the UK's international tax competitiveness; it will allow businesses based in the UK to be more competitive on the world stage, as well as supporting investment in the UK. The new regime also provides: (i) UK businesses with greater flexibility to organise their foreign operations; with rules aimed at making it easier for business to show that those operations do not represent artificial diversion of profits from the UK, and (ii) an expected reduction in their compliance costs.
Impact on individuals and households	This is a corporate tax measure and therefore, has no direct impact on individuals and households.
Equalities impacts	This is a corporate tax measure and has no impacts on any protected equality group.
Impact on business including civil society organisations	<p>The CFC rules impact primarily on large UK multinationals but will affect all UK companies with overseas subsidiaries or exempt foreign branches. The changes introduced are designed to make the current CFC rules easier to operate, more competitive internationally and to benefit as many businesses with both UK and overseas presence as possible. They will not harm domestic competition.</p> <p>A number of aspects of the proposed changes reflect a degree of simplification of the CFC regime and it is expected that any additional one-off administrative costs should not be significant.</p> <p>It is expected that in general, civil society organisations will not be impacted negatively by the proposed changes (if impacted at all).</p>
Operational impact (£m) (HMRC or other)	Introducing and implementing the new regime is not expected to involve any additional funding.
Other impacts	<u>Small firms impact test:</u> Small and medium sized companies are less likely to have CFCs and where they do they are more likely to be eligible for the simpler exemptions as under the current rules, unless they are artificially diverting UK profit. Therefore, the impact on small and medium sized companies is not expected to be significant.

Monitoring and evaluation

The measure will be monitored and assessed alongside other measures in the Government's package for corporation tax changes.

Further advice

If you have any questions about this change, please contact Carol Johnson on 020 7270 6032 (email: carol.johnson@hmtreasury.gsi.gov.uk) or Andrew Page on 020 7147 2673 (email: andrew.page@hmrc.gsi.gov.uk).

1 Controlled foreign companies

Schedule 1 makes 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.

SCHEDULES

SCHEDULE 1

Section 1

CONTROLLED FOREIGN COMPANIES

PART 1

MAIN PROVISION

- 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.

- (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.

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- (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)).

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- (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, profits are shifted to the relevant CFC from another company,
 - (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) For the purposes of subsection (3)(b) profits are shifted to the relevant CFC from another company if it is reasonable to suppose that apart from the arrangement, and any similar arrangement, the whole or part of the income reflected in the relevant CFC’s accounting profits for the relevant accounting period would have been reflected in the other company’s profits for any period.
- (5) In subsection (4) the reference to the other company’s profits for any period are to –

- (a) if the company is a CFC, the CFC’s accounting profits for any accounting period, or
 - (b) otherwise, what the company’s accounting profits for any period would have been had it been a CFC and the period been an accounting period.
- (6) 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).
- (7) 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.
- (8) For the purposes of subsection (7) 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, profits are shifted to the relevant CFC from another company,
 - (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) For the purposes of subsection (3)(b) profits are shifted to the relevant CFC from another company if it is reasonable to suppose that apart from the arrangement, and any similar arrangement, the whole or part of the income reflected in the relevant CFC’s assumed taxable total profits for the relevant accounting period would have been reflected in the other company’s profits for any period.
- (5) In subsection (4) the reference to the other company’s profits for any period are to—
 - (a) if the company is a CFC, the CFC’s assumed taxable total profits for any accounting period, or
 - (b) otherwise, what the company’s assumed taxable total profits for any period would have been had it been a CFC and the period been an accounting period.
- (6) 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.
- (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.

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, as adjusted under 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 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).

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- (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.
 - (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 the investment or other use of relevant UK funds.
- (2) “Relevant UK funds” means funds deriving (directly or indirectly) from –
 - (a) 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) any amounts included in the CFC’s chargeable profits for any earlier accounting period,

- (c) 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) any payment received by the CFC (directly or indirectly) from a UK connected company not covered by paragraphs (a) to (c), other than a payment for the provision of goods or services.
- (3) "UK connected company" means a UK resident company connected with the CFC.

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

LOAN RELATIONSHIPS WITH CONNECTED COMPANIES

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 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 the chargeable company.

- (3) Terms used in this Chapter have the same meaning as they have in Part 5 of CTA 2009 (loan relationships), except where otherwise indicated.
- (4) In this Chapter references to a loan relationship include a part of a loan relationship.

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 (see section 371QC),
 - (b) the business premises condition set out in section 371HF is met, and
 - (c) the chargeable company makes a claim to an officer of Revenue and Customs for this section to apply.
- (2) The sum charged on the chargeable company (but no other chargeable 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) 25% of the CFC’s qualifying loan relationship profits, and
 - (ii) so much of the assumed total profits which are not qualifying loan relationship profits as fall within Chapters 8 to 12, as adjusted under Chapter 13 (so far as applicable), and”.
- (4) In the paragraph (a) set out in subsection (3) references to the CFC’s “qualifying loan relationship profits” are to be read in accordance with section 371QC.

371QC What are “qualifying loan relationship profits”?

Take the following steps to determine the CFC’s qualifying loan relationship profits.

Step 1

Determine the credits from the CFC’s qualifying loan relationships (see section 371QD) which are brought into account in determining the CFC’s non-trading finance profits for the accounting period.

The result is “the step 1 credits”.

Step 2

Leave out from the step 1 credits 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 2 credits”.

Step 3

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 similar arrangement entered into by the CFC as a hedge of risk in connection with any of the CFC’s qualifying loan relationships, and
- (b) are attributable to the hedge of risk.

If the credits exceed the debits add the excess to the step 2 credits and if the debits exceed the credits subtract the deficit from the step 2 credits.

The result is “the step 3 credits”.

Step 4

Determine the debits from the CFC’s loan relationships (so far as not reflected in the step 3 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).

Subtract a just and reasonable proportion of them from the step 3 credits to give the CFC’s qualifying loan relationship profits.

371QD 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 (9).
- (2) “The ultimate debtor”, in relation to a loan relationship of the CFC, means the debtor in relation to the loan relationship, unless subsection (3) applies.
- (3) If –
 - (a) the loan in question 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) A loan relationship of the CFC cannot be a qualifying loan relationship so long as some or all of the debits of the company which is the ultimate debtor—
- (a) are being brought into account under section 297 of CTA 2009 (trading loan relationships) for corporation tax purposes, or
 - (b) would be brought into account under that section for those purposes were the company a UK resident company within the charge to corporation tax.
- (7) 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.
- (8) In subsections (4) to (7) 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).
- (9) A loan relationship 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.
- (10) 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 disappplied 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 disappplied to the extent necessary as a consequence.

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- (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.

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- (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

CONSEQUENTIAL AMENDMENTS

ICTA

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

CTA 2010

- 4 CTA 2010 is amended as follows.
- 5 (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

- 6 TIOPA 2010 is amended as follows.
- 7 (1) Section 314 (financing income amounts) is amended as follows.
- (2) In subsection (1) for “or D” substitute “, D or E”.
- (3) After subsection (5A) insert –
- “(5B) Condition E is that –
- (a) the amount is included in a CFC’s chargeable profits for an accounting period in relation to which the CFC charge is charged in accordance with Part 9A (controlled foreign companies),
 - (b) the amount is so included by virtue only of falling within Chapter 9 or 10 of that Part, and
 - (c) the amount is included in the CFC’s assumed total profits for the accounting period 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).
- (5C) Terms used in subsection (5B) have the same meaning as they have in Part 9A.”

PART 3

COMMENCEMENT AND TRANSITIONAL PROVISION

Commencement

8 [...]

Transitional provision

9 [...]

EXPLANATORY NOTE

CFC REFORM MEASURE NUMBER

SUMMARY

1. This clause and Schedule 1 repeal the Controlled Foreign Companies (CFC) regime in Chapter 4 of Part 17 of the Income and Corporation Taxes Act 1988 (ICTA) and provide for a new CFC regime. The new regime is inserted as Part 9A of the Taxation (International and Other Provisions) Act 2010 (TIOPA).

DETAILS OF THE SCHEDULE

Part 1 of the Schedule

2. Paragraph 1 of Part 1 Schedule 1 inserts Part 9A after Part 9 of TIOPA

Part 9A Controlled Foreign Companies

Chapter 1 – Introduction

3. Chapter 1 of Part 9A provides an overview of the Part and defines “control” for the purposes of the CFC rules.
4. New section 371AA provides an overview of the Part by describing what is contained in the Chapters of the Part and a statement that it is part of the Corporation Tax Acts. In particular new subsection 371AA(1) states that “the CFC charge” will be charged on UK resident companies which have certain interests in CFCs and at new subsection 371AA(2) defines a CFC as a non-UK resident company which is controlled by a UK person or persons.
5. New section 371AB outlines three mechanical tests to determine when a person or persons control a company for the purposes of Part 9A. If any one of the tests is met then the company is controlled for the purposes of the Part.
6. New subsection 371AB(2) introduces the first test where a person controls a company if they have the power to secure that, directly or indirectly, the affairs of the company are conducted in accordance with their wishes through the possession of voting or similar powers.

7. New subsection 371AB(3) introduces the second test where a person controls a company through holding rights that entitle the person to receive, directly or indirectly, the majority of;
 - disposal proceeds in the event of a disposal of the whole of the company's share capital,
 - income on a distribution if the whole of the company's income was distributed,
 - assets on a winding up or other similar circumstances

whether at the time of the disposal, distribution or winding up, or at any later time.
8. New subsection 371AB(4) however excludes from subsection (3) any rights held by a "relevant bank" and such rights are not included in the whole of the company's share capital, distributable income and assets on a winding up when determining the percentage that a person would be entitled to receive under subsection (3).
9. New subsection 371AB(5) defines a "relevant bank" as a bank carrying on a banking business (as defined at new section 371UA) which is regulated in the CFC's territory of residence. New paragraph 371AB(5)(b) limits the exclusion to cases where the lending of money that is made in the ordinary course of the bank's business.
10. New subsection 371AB(6) extends a person's entitlement detailed at subsections (3) and (4) to include proceeds, amounts or assets that a person is entitled to secure will be applied directly or indirectly for their benefit.
11. New subsection 371AB(7) states that if two or more persons taken together meet the conditions of the tests at subsections (2) and (3) they will be taken to control the company.
12. New subsections 371AB(8) to (10) introduces the third test, which is an accounting test based on Financial Reporting Standard 2 ("FRS 2") issued and updated by the Accounting Standards Board in the UK. A person controls a company if the person is the company's "parent undertaking" (defined as the person that would be required to prepare consolidated financial statements under FRS 2 whether they are actually prepared or not). If a company is a subsidiary undertaking of a parent undertaking and its results would be included in consolidated accounts of that parent undertaking (whether such accounts are prepared or not) then it is a controlled company for the purposes of Part 9A.

13. New section 371AC introduces an alternative test of whether a company is a CFC if two persons control the company. If a UK resident person has interests, rights or powers that represent at least 40 per cent of the holdings, rights or powers that give control of a company and a non-UK resident holds at least 40 per cent but not more than 55 per cent, the company will be taken to be a CFC. This test will apply mainly to joint venture companies.
14. New section 371AD attributes various rights and powers to a person in order to determine whether a person or two or more persons control a company for the purposes of the tests set out above.
15. New subsection 371AD(2) provides that there should be attributed to each person all the rights and power mentioned in new subsection 371AD(3) to the extent that they would not otherwise be attributed to that person.
16. The rights and powers within new paragraphs 371AD(3)(a) to (c) are:
 - (a) rights and powers which the person (identified as “P”) is entitled to acquire at a future date or will become so entitled to acquire at a future date;
 - (b) rights and powers of other persons that fall within new subsection 371AD(4);
 - (c) if P is UK resident, the rights and powers of other UK residents who are connected to P.
17. New paragraph 371AD(3)(d) covers more complex circumstances where P is a UK resident person. It includes rights and powers which would, under new subsection 371AD(2) be attributed to another UK resident person (identified as “Q”) who is connected to P on the assumption that Q were P. This covers situations where there are three persons (for example A, B and C) and A is connected to B and B is connected to C but A and C are not connected. In these circumstances any rights and powers of A are to be attributed to C vice versa. This then extends to circumstances where there are more than 3 persons (say A to Z) and C is connected to D, D to E and so on forming a chain of connection. In these circumstances (and as long as the persons are UK resident) any rights and powers of any one person are to be attributed to each other.
18. New subsection 371AD(4) covers rights and powers so far as they are required or may be required to be exercised on behalf of P, under P’s direction or for P’s benefit. In the case of a loan made by one person to another, these are not limited to rights and powers conferred by the terms of any security relating to the loan.

19. New subsection 371AD(5) states that in subsections (3)(b) to (d) and subsection (4) references to rights and powers include rights and powers which the person is entitled to acquire at a future date or will, at a future date, become entitled to acquire.
20. New subsection 371AD(6) disapplies section 1122(4) of CTA 2010 (as applied by new paragraph 371UB(2)(b)) when determining whether one person is connected with another for the purposes of this section.
21. New subsection 371AD(7) provides that for the purposes of new sections 371AB, 371AC and 371AD rights and powers of a person or rights and powers which a person is or will become entitled to acquire includes references to rights and powers that are exercisable jointly with one or more persons.
22. New Section 371AE introduces an anti-avoidance rule to prevent arrangements the main purpose, or one of the main purposes, of which is to secure that a company will not fall within the definition of control in Chapter 1.

Chapter 2 – The CFC charge

23. New section 371BA outlines the basis on which a CFC charge is to be applied to a UK resident company.
24. New subsection 371BA(1) specifies that a CFC charge is made in relation to every accounting period of a CFC unless one of the entity level exemptions (set out in Chapters 3 to 6 but subject to new section 371BC – solo consolidation etc.) applies or the charge is specifically excepted in the process of determining the charge in the steps detailed below.
25. New subsection 371BA(2) provides that the CFC charge is determined in accordance with a series of steps that are used to work out whether or not a charge arises and if it does which UK resident companies it should arise to. The detailed rules that explain how the various steps are to be applied are provided by subsequent Chapters of Part 9A.
26. Step 1 explains that a CFC's chargeable profits for an accounting period are calculated in accordance with Chapters 7 to 13 of Part 9A and that if the profits are nil then no charge arises for the accounting period. If this is the case no further steps are necessary.
27. Step 2 explains that the rules in Chapter 14 are used to determine the persons ("the relevant persons") who have relevant interests in the CFC at any time during the accounting period. A CFC charge will only arise for an accounting period where the relevant person (which is defined by new subsection 371BA(3)) is a company which is resident

in the UK at a time during the accounting period when it has a relevant interest in the CFC.

28. Step 3 determines the CFC's creditable tax for the accounting period in accordance with Chapter 15.
29. Step 4 determines, in accordance with Chapter 16, how the chargeable profits and creditable tax of a CFC are apportioned among the relevant persons.
30. Step 5 limits the CFC charge to "chargeable companies" which are companies that hold a specified level of interest in the CFC. New subsection 371BA(4) determines that to be a chargeable company the percentage of the chargeable profits apportioned to the company and the percentages of the chargeable profits (if any) apportioned to relevant persons connected or associated with the company at any time during the accounting period must be at least 25 per cent of the total chargeable profits of the CFC. So if following step 4, two UK resident companies, which are members of the same group, respectively have 90 per cent and 10 per cent of the CFC's chargeable profits apportioned to them, they are both chargeable companies. If there are no chargeable companies, step 6 is not taken.
31. Step 6. A CFC charge is charged on each chargeable company and the charge is a sum equal to the appropriate rate of corporation tax on the appropriate percentage of apportioned chargeable profits, less the appropriate percentage of creditable tax apportioned to the chargeable company. The appropriate rate and proportions to be used are set out in new subsection 371BA(5). The charge is calculated as if it were an amount of corporation tax charged on the company for the "relevant corporation tax accounting period". The calculation of the charge is subject to any adjustments to the chargeable profits or creditable tax required by Chapter 17.
32. New subsection 371BA(5) defines a number of terms for the purposes of Step 6. The appropriate rate of corporation tax is defined as the rate applicable to the chargeable company's relevant corporation tax accounting period on which tax is chargeable or an average where there is more than one such rate. The "relevant corporation tax accounting period" is defined as the chargeable company's accounting period for corporation tax purposes that ends at the same time as the CFC's accounting period or, where there is no accounting period ending at the same time as the CFC's, the accounting period of the company in which the CFC's accounting period ends. The subsection also states that the appropriate proportion of chargeable profits is the percentage of the chargeable profits apportioned to the chargeable company, and that the appropriate proportion of creditable tax is the percentage of the creditable tax apportioned to the chargeable company.

33. New section 371BB defines what is meant by “accounting periods” within Part 9A.
34. New subsection 371BB(2) states that an accounting period of a CFC begins when the company becomes a CFC or immediately after the end of a previous accounting period of the CFC where the company continues to be a CFC following the end of that preceding period.
35. New subsection 371BB(3) states that an accounting period of a CFC comes to an end when the CFC ceases to be a CFC, becomes or ceases to be liable to tax in a territory by reason of domicile, residence or place of management, ceases to have any source of income at all, or, a company which has a relevant interest in the CFC ceases to have that interest or ceases to be within the charge to corporation tax.
36. New subsection 371BB(4) imports certain rules within Chapter 2 CTA 2009 (corporation tax accounting periods) dealing with the cessation of accounting periods, companies with more than accounting date and companies being wound up to apply to the calculation of an accounting period for the purposes of Part 9A, but without affecting subsections (2) and (3).
37. New subsections 371BB(5) to (9) sets the circumstances and manner by which an officer of Revenue and Customs can determine the period of an accounting period. This applies if it appears to an officer of Revenue and Customs that the beginning or end of a CFC’s accounting period is uncertain. New subsection 371BB(6) allows an officer of Revenue and Customs to specify by notice an accounting period for the CFC providing that period does not exceed 12 months.
38. New subsection 371BB(7) determines that where further facts or circumstances come to the knowledge of an officer of Revenue and Customs that suggests that the accounting period is not the true accounting period then new subsection 371BB(8) states that an officer must by notice amend the notice in subsection (6) to reflect the true accounting period.
39. New subsection 371BB(9) ensures that a notice under subsections (6) or (8) must be given to each company that 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.
40. New section 371BC is relevant only for foreign subsidiaries of companies carrying on business subject to financial regulation. The section prevents subsidiaries of UK resident regulated companies from benefiting from any of the exemptions where the CFC and a UK resident company form a solo consolidation as defined within the FSA

Handbook, or where there are arrangements in place which reduce the regulatory capital requirements of a bank.

41. New subsection 371BC(1) prevents the exemptions set out in Chapters 3 to 6 from applying where the conditions in new subsections 371BC(2) or (3) apply in relation to a CFC, for an accounting period.
42. New subsection 371BC(2) contains the solo consolidation condition. This subsection applies if, at any time during a CFC's accounting period, 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 the CFC's parent undertaking in relation to that waiver is a UK resident company.
43. New subsection 371BC(3) contains a condition for arrangements which reduce the regulatory capital requirements. This subsection applies if, at any time during a CFC's accounting period, the CFC is controlled (either alone or with other persons) by a UK resident bank which holds shares in the CFC, and any fall in the value of those shares would be (wholly or mainly) ignored for the purpose of determining whether the UK resident bank meets the requirements of the FSA Handbook in relation to the bank's capital, and the main purpose, or one of the main purposes, of the UK resident bank in holding the shares is to obtain a tax advantage (which has the meaning given by section 1139 of CTA 2010) for itself or any connected company.
44. New subsection 371BC(4) provides a definition of terms used in the section.
 - A bank carrying on banking business has the meaning given by new section 371UA.
 - 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

45. New section 371CA introduces Chapter 3 which sets out the low profits exemption ("LPE") for the purposes of section 371BA(1)(a).
46. New section 371CB outlines two alternative computational tests, based on the CFC's accounting profit, to determine whether the LPE applies for a CFC's accounting period. Both tests are entity based exemptions and so apply to the whole of the CFC's profits.

47. New subsection 371CB(2) gives exemption to a CFC if its accounting profits are not more than £50,000. There is no limitation in relation to the source of the profits.
48. New subsection 371CB(3) gives exemption to a CFC if its accounting profits are not more than £500,000 and do not include more than £50,000 non-trading income (which is defined at new section 371UA).
49. New subsection 371CB(4) requires the relevant thresholds for the overall limits and non-trading income amount at subsections (2) and (3) to be reduced on a proportional basis where the accounting period is less than 12 months.
50. New section 371CC defines what is meant by accounting profits for the purposes of the LPE.
51. New subsection 371CC(1) defines accounting profits as the CFC's pre-tax profits for the accounting period.
52. New subsection 371CC(2) states that if financial statements for the CFC are prepared for the accounting period in accordance with an acceptable accounting practice, the CFC's pre-tax accounting profits should be determined from amounts disclosed in these statements.
53. New subsection 371CC(3) applies new subsection 371CC(4) where either the CFC has not prepared financial statements in accordance with an acceptable accounting practice (which includes the case where part of those statements are not prepared in accordance with an acceptable accounting practice), or the CFC has not prepared any financial statements for the accounting period within 12 months after the end of that period.
54. New subsection 371CC(4) provides that the accounting profits of the CFC should be determined by reference to the amounts that would have been disclosed by financial statements drawn together in accordance with an acceptable accounting practice - if financial statements for the CFC are normally prepared in accordance with any such practice - or if this is not applicable, international accounting standards.
55. New subsection 371CC(5) defines an acceptable accounting practice as any of the following: international accounting standards, UK generally accepted accounting practice and accounting practice which is generally accepted in the territory in which the CFC is resident for the accounting period.
56. New subsection 371CC(6) states that references to amounts disclosed in financial statements include amounts comprised in amounts so disclosed.

57. New subsection 371CC(7) requires the accounting profit (or any amounts included in them) to be translated into its sterling equivalent if it is denoted in a different currency and explains how to calculate the exchange rate for this purpose.
58. New subsection 371CC(8) explains that when establishing what the accounting profits of a CFC are under section 371CC, the calculation of those profits must also take account of the rules set out in new section 371CD.
59. New section 371CD supplements the definition of accounting profits.
60. New subsection 371CD(2) excludes distributions that would be exempt if received by a UK resident company (under Part 9A of CTA 2009), and capital gains and losses from the calculation of the accounting profits.
61. New subsection 371CD(3) requires that the calculation of accounting profits include:
 - any amount which accrues during the accounting period to the trustees of a settlement in relation to which the CFC is a settlor or a beneficiary, and
 - a just and reasonable share of any income which accrues during that period to a partnership of which the CFC is a partner.
62. New subsection 371CD(4) applies to a situation where there is more than one settlor or beneficiary of a settlement and the CFC is one of the settlors or beneficiaries. Under those circumstances the income is to be apportioned between the CFC and the other settlors or beneficiaries on a just and reasonable basis.
63. New subsection 371CD(5) defines a partnership for the purposes of paragraph (3)(b).
64. New subsection 371CD(6) sets out a requirement that the transfer pricing rules at Part 4 of TIOPA must be applied in determining the CFC's profits as they apply in determining the CFC's assumed taxable total profits for the accounting period.
65. New subsection 371CD(7) disapplies subsection (6) where any adjustment to the CFC's accounting profits would be £50,000 or less.
66. New section 371CE provides anti-avoidance rules covering the calculation of a CFC's accounting profits.
67. New subsection 371CE(1) determines that the LPE otherwise provided by virtue of new section 371CB is denied for the "relevant accounting

period” of a CFC (“the relevant CFC”) where one of four Conditions A, B, C or D is met.

68. New subsection 371CE(2) sets out Condition A. This condition is met where there is an arrangement, entered into at any time, which would ensure that the LPE provided by virtue of new section 371CB, is met for the relevant accounting period or other accounting periods, and it is the main purpose or one of the main purposes of the arrangement for the relevant CFC to benefit from the LPE.
69. New subsection 371CE(3) sets out Condition B. This condition is met where there is an arrangement, entered into at any time, which secures that profits are shifted to the relevant CFC from another company, and it is the main purpose or one of the main purposes of the arrangement to secure that the LPE would apply for one or more accounting periods of this CFC or any other CFCs. It prevents profits of a company that would not meet the LPE being fragmented between other companies.
70. New subsections 371CE(4) and (5) clarifies the meaning of profit shifting for the purposes of subsection (3).
71. New subsection 371CE(6) sets out Condition C. This condition is met if Part 21B of CTA 2010 (group mismatch schemes) would apply in determining the CFC’s assumed taxable total profits for the relevant accounting period for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts).
72. New subsection 371CE(7) sets out condition D which is met where at any time during the relevant accounting period the relevant CFC’s business is wholly or mainly the provision of UK intermediary services.
73. New subsection 371CE(8) defines UK intermediary services as services performed by a UK individual (or individuals) in the UK for a client but where the services are provided, not under a contract directly between the service provider and the client but instead under an arrangement that involves the relevant CFC.
74. New section 371CF gives exemption if the CFC’s assumed taxable total profits are not more than £50,000 (new subsection 371CF(2)), or if the CFC’s assumed taxable total profits are not more than £500,000 and do not include more than £50,000 of non-trading income (new subsection 371CF(3)).
75. New subsection 371CF(4) states that the thresholds and amount of non-trading income in subsections (2) and (3) are reduced proportionately for an accounting period of less than 12 months.

76. New section 371CG provides anti-avoidance rules covering the calculation of a CFC's assumed taxable total profits.
77. New subsection 371CG(1) determines that the LPE otherwise provided by virtue of new section 371CF is denied where one or more of three Conditions A, B or C is met.
78. New subsection 371CG(2) sets out Condition A. This condition is met where there is an arrangement, entered into at any time, which would ensure that the LPE provided by virtue of new section 371CF is met for the relevant accounting period or other accounting periods, and it is the main purpose or one of the main purposes of the arrangement for the relevant CFC to benefit from the LPE.
79. New subsection 371CG(3) sets out Condition B. This condition is met where for any accounting period there is an arrangement, entered into at any time, which secures that profits are shifted to the relevant CFC from another company, and it is the main purpose or one of the main purposes of the arrangement to secure that the LPE provided by virtue of new section 371CF would apply for this CFC and any other CFCs. It prevents profits of a company that would not meet the LPE being fragmented between other companies.
80. New subsections 371CG(4) and (5) clarify the meaning of profit shifting for the purposes of subsection (3).
81. New subsection 371CG(6) sets out condition C which is met where at any time during the relevant accounting period the relevant CFC's business is wholly or mainly the provision of UK intermediary services.
82. New subsection 371CG(7) defines UK intermediary services as services performed by a UK individual (or individuals) in the UK for a client but where the services are provided, not under a contract directly between the service provider and the client but instead under an arrangement that involves the relevant CFC.

Chapter 4 – The low profit margin exemption

83. New section 371DA introduces Chapter 4 which sets out the low profit margin exemption for the purposes of new paragraph 371BA(1)(a).
84. New section 371DB sets out the conditions which need to be met for this exemption to apply.
85. New subsection 371DB(1) states the exemption applies if the accounting profits do not exceed 10 per cent of the "relevant operating expenditure".

86. New subsection 371DB(2) adjusts the definition of accounting profits in new sections 371CC and 371CD to disregard income from trusts and partnerships and transfer pricing adjustments and to consider accounting profits before any interest deductions.
87. New subsection 371DB(3) defines “relevant operating expenditure” as operating expenses included in the CFC’s accounts, but specifically excluding those costs detailed in new paragraphs 371DB(3)(a) and (b).
88. New paragraph 371DB(3)(a) excludes the cost of goods purchased for resale, unless those goods have been imported by the CFC into the territory in which it is resident for the accounting period.
89. New paragraph 371DB(3)(b) excludes any expenditure which, gives rise directly or indirectly to income of a person related to the CFC.

Chapter 5 – The excluded territories exemption

90. New section 371EA introduces Chapter 5 which sets out the excluded territories exemption (“ETE”) for the purposes of new paragraph 371BA(1)(a).
91. New section 371EB sets out the basic rule.
92. New subsection 371EB(1) sets out four conditions that need to be met for the ETE to apply for a CFC’s accounting period. These are that:
 - the CFC is resident in an excluded territory for the accounting period,
 - the total of amounts (if any) of Categories A, B, C and D of the CFC’s income is not more than the “threshold” amount for the accounting period,
 - the intellectual property (IP) condition is met and
 - the CFC is not involved in an arrangement, the main purpose or one of the main purposes of which is to obtain a tax advantage (as defined by section 1139 of CTA 2010) for any person at any time during the accounting period.
93. New subsection 371EB(2) defines “excluded territory” as a territory specified in regulations made by HMRC Commissioners.
94. New subsection 371EB(3) provides that HMRC Commissioners may also, by regulations, specify further conditions which must be met in all or specified cases in order for the ETE to apply or provide that, in specified cases, the ETE will not apply even though the conditions set out in subsection (1) are met. For either of these purposes, the regulations may modify the application of the provisions in Chapter 5.

95. New subsection 371EB(4) states that, if an amount is included in more than one of the Categories A, B, C or D, the amount is to be counted only once in determining if the threshold amount is exceeded.
96. New section 371EC determines which territory a CFC is resident in for the purposes of the ETE and new subsection 371EC(1) states that “the CFC’s territory” in this chapter means the territory determined by this section.
97. New subsection 371EC(2) states that the residence rules in new section 371SA are used to determine the residence of a CFC for this section.
98. New subsection 371EC(3) however goes on to state that new paragraph 371SA(1)(b) can only be applied as long as, throughout the accounting period, the CFC or persons with interests in the CFC are liable to tax under the law of the territory in question on the CFC’s income.
99. New subsection 371EC(4) disapplies the ETE if a territory of residence cannot be determined for an accounting period under this section.
100. New section 371ED defines the threshold amount for the purpose of the second condition in new paragraph 371EB(1)(b).
101. New subsections 371ED(1) and (2) provide that the threshold amount for a CFC’s accounting period is either 10 per cent of the CFC’s accounting profits for the accounting period or £50,000 (proportionately reduced if the accounting period is less than 12 months) if the latter is a greater amount.
102. New subsection 371ED(3) defines “accounting profits” in accordance with new section 371CC and new section 371CD (the definition of “accounting profits” for the LPE) but excluding new subsections 371CD(6) and (7).
103. New section 371EE outlines the basic rule covering Category A income.
104. New subsection 371EE(1) states that Category A income for an accounting period comprises the gross amounts (that is amounts before deduction of expenses or reserves) of any relevant income detailed in new subsections 371EE(3), (4) or (5) subject to the application of new section 371EF.
105. New subsection 371EE(2) defines “relevant income” as any income brought into account in determining the CFC’s accounting profits for the accounting period which:
 - arises in the CFC’s territory or

- arises from the operations of a PE which the CFC has in a territory outside the CFC's territory.
106. New subsection 371EE(3) includes as Category A income relevant income so far as it is exempt from tax in the CFC's territory (apart from any dividend or other distribution of a company).
 107. New subsection 371EE(4) includes as Category A income relevant income which is taxed at a reduced rate under the law of the CFC's territory by virtue of a provision wholly or mainly to directly or indirectly encourage investment in the territory.
 108. New subsection 371EE(5) includes as Category A income, any relevant income where, in relation to any tax that has been paid in the CFC's territory in respect of the relevant income, the CFC, an interest-holder of the CFC or any person connected with the CFC is entitled under the law of that territory to any repayment or payment in respect of credit in respect of the whole or part of the tax on the relevant income. However any repayment of tax or payment in respect of a credit in respect of relief for losses incurred by the CFC is excluded from the definition of repayment of tax or payment in respect of a credit.
 109. New section 371EF excludes from Category A, certain relevant income arising from operations of a PE which the CFC has in a territory outside the CFC's territory and the territory in which the PE is established is an excluded territory.
 110. New subsection 371EF(1) applies if a CFC's Category A income would (apart from this section) include the gross amount of any relevant income arising from the operations of a PE which the CFC has in a territory outside the CFC's territory and the territory in which the PE is established is an excluded territory.
 111. New subsection 371EF(2) then excludes from Category A, any income included in the subsection (1) that would not be treated as Category A income if the references in subsections 371EE(3) to (5) were to the territory in which the PE is established rather than the CFC's territory.
 112. New section 371EG covers the basic rule for Category B income by outlining four steps to take in determining whether the CFC has any Category B income in an accounting period and, if it does, the amount of Category B income.
 113. Step 1 asks whether the CFC has any relevant non-local income (subject to an exclusion for certain non-local income in new section 371EH). If it does not, there is no Category B income and no further steps are taken.

114. Step 2 requires that the amount of tax paid in the CFC's territory on the relevant non-local income needs to be determined.
115. Step 3 requires that any relevant deductions should be made from the relevant non-local income (but not to reduce the amount below nil). This gives the net relevant non-local income.
116. Step 4 determines the amount of relevant corresponding UK tax and if the amount determined at step 2 is less than 75 per cent of the relevant corresponding UK tax, the CFC's Category B income is the net relevant non-local income. If it is 75 per cent or more, the CFC has no Category B income.
117. New section 371EH excludes from Category B, certain non-local income that is received by a PE which the CFC has in a territory outside the CFC's territory and the territory in which the PE is established is an excluded territory.
118. New subsection 371EH(1) states that this subsection applies if (apart from this section) a CFC's relevant non-local income for Category B purposes, determined at step 1 in new section 371EG, would include relevant non-local income which is received by a PE which the CFC has in a territory outside the CFC's territory and the territory in which the PE is established is an excluded territory.
119. New subsection 371EH(2) then provides that any income defined in subsection (1) will be excluded from step 1 of new section 371EG if the tax paid in respect of the PE's relevant non-local income in the territory in which the PE is established is 75 per cent or more of the relevant corresponding UK tax.
120. New section 371EI defines "relevant non-local" income, "relevant corresponding UK tax" and "relevant deduction" for the purposes of calculating Category B income.
121. New subsection 371EI(2) defines "relevant non-local income" as the gross amount (i.e. before the deduction of expenses or reserves) of any non-trading income which is brought into account in determining the CFC's accounting profits for the accounting period and which is received directly or indirectly from:
 - a person resident outside the CFC's territory, or
 - a PE which a person resident in the CFC's territory (apart from the CFC itself) has in a territory outside the CFC's territory."Trading income" and "non-trading income" are defined at new section 371UA.

122. New subsection 371EI(3) provides that “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.
123. New subsection 371EI(4) defines “the relevant corresponding UK tax” as the amount of corporation tax which applying the corporation tax assumptions outlined in Chapter 18 would be charged in respect of the CFC’s assumed taxable total profits for the accounting period.
124. New subsections 371EI(5) and (6) states that in determining this amount of corporation tax the following should be taken into account:
- relief attributable to either tax paid in the CFC’s territory or in the territory in which the PE is established (as applicable) which would be given to the CFC by virtue of Part 2 of TIOPA (double taxation relief) should be ignored,
 - there should be deducted from the corporation tax any amount of “relevant income tax” which (on the assumptions applied by new subsection (4)) would be set off by virtue of section 967 of CTA 2010 (cases in which a company receives a payment bearing income tax), and
 - any amount of income tax or corporation tax actually charged in respect of any income included in the CFC’s assumed taxable total profits should be deducted.
125. In respect of the second bullet above, “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 no part of any amount can be deducted in either the second or third bullets if that part has been or falls to be repaid to the CFC whether on the making of a claim or otherwise.
126. New subsection 371EI(7) states that for the purposes of new subsections (4) to (6) the CFC’s assumed taxable total profits for the accounting period are to be determined on the basis;
- 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 the net relevant non-local income determined at step 3 in new section 371EG or the PE income detailed at new section 371EH less any relevant deductions from that income and,
 - 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 the income identified in the above bullet point.

127. New section 371EJ defines Category C income as the total of any amounts included in the CFC's accounting profits for an accounting period by virtue of new paragraph 371CD(3)(a) (whether they would otherwise be included in the accounting profits of the CFC or not) but with regard to new paragraph 371CD(3)(b) profits, they will only be included if they are deemed to be part of the accounting profits by virtue only of new paragraph 371CD(3)(b). Category C income therefore covers amounts accruing during the accounting period to the trustees of a settlement in relation to which the CFC is a settlor or beneficiary (see new paragraph 371CD(3)(a)) and 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. This section does not apply in cases where the income earned by a partnership is included in the CFC's accounting profits without having to be deemed so (see new paragraph 371CD(3)(b)).
128. New section 371EK defines Category D income.
129. New subsection 371EK(1) provides that a CFC's Category D income for an accounting period consists of gross amounts (i.e. before deduction of expenses or reserves) of any income which is included in Category D income in accordance with new subsections 371EK(3) or (4) and is brought into account in determining the CFC's accounting profits for the accounting period.
130. New subsection 371EK(2) states that new subsection (3) applies if:
 - relevant income arises from any provision made or imposed by means of an arrangement as between the CFC and any company connected with the CFC,
 - 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
 - there is not in any territory a corresponding increase for tax purposes in the income of a company connected with the CFC.
131. New subsection 371EK(3) provides that the amount calculated in subsection (2) is to be included in the CFC's Category D income.
132. New subsection 371EK(4) includes as category D income, so far as it is exempt from tax or taxed at a reduced rate in the CFC's territory by

virtue of a ruling, decision or arrangement made in relation to the CFC by a governmental authority in that territory.

133. New section 371EL outlines the IP condition for the purposes of new section 371EB.
134. New subsection 371EL(2) outlines that the condition is met unless the following are present:
 - the CFC's assumed total profits for the accounting period include amounts arising from IP held by the CFC (the "exploited IP"),
 - all or parts of the exploited IP were transferred directly or indirectly to the CFC by persons related to the CFC at times during the relevant period or otherwise derive (directly or indirectly) at times during that period out of or from IP held at times during that period by persons related to the CFC,
 - as a result of those transfers or other derivations, the value of the IP held by those related persons taken together has been significantly reduced from what it would otherwise have been, and
 - if only parts of the exploited IP were so transferred or derived, the significance condition is met.
135. New subsection 371EL(3) provides that the significance condition is met if:
 - the parts of the exploited IP ("the UK derived IP") which were transferred or otherwise derived as mentioned in new subsection (2) are, taken together, a significant part of the exploited IP, or
 - 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 otherwise would have been.
136. New subsection 371EL(4) provides that in relation to a non-UK resident person who is related to the CFC in this section, references to the transfer or holding of IP by a person related to the CFC are limited to:
 - the transfer of IP which before the transfer was held by the non UK resident person (wholly or partly) for the purposes of a PE which the person has in the UK, or

- the holding of IP by the non-UK resident person (wholly or partly) for those purposes.
137. New subsection 371EL(5) defines “the relevant period” as covering the accounting period and the 6 years before the accounting period.

Chapter 6 – The tax exemption

138. New section 371FA introduces Chapter 6 which sets out the rules for an exemption referred to as “the tax exemption”.
139. New section 371FB sets out the three steps required to determine if the tax exemption applies for a CFC’s accounting period.
140. Step 1 explains how to determine the CFC’s territory of residence for the accounting period. It states that this has to be done in accordance with the rules in new section S371SB (determination of CFC’s territory of residence). If after applying the residence rules in that section, the CFC has no territory of residence, the tax exemption cannot apply and Steps 2 and 3 are not considered.
141. Step 2 explains how to calculate the tax paid (the “local tax amount”) by the CFC for the accounting period in its territory of residence. First of all this requires calculation of the amount of tax actually paid in that territory for that accounting period in respect of the CFC. It then states that in calculating the amount of local tax the actual tax paid should be reduced by any amounts determined in accordance with new section 371FC, where it is relevant to do so. If however the local tax amount is calculated under designer rate tax provisions contained in new section 371FD then the tax exemption cannot apply and step 3 is not considered.
142. Step 3 explains how to calculate the amount of corresponding UK tax for the accounting period based on the provisions contained in new section 371FE. The tax exemption applies if the local tax amount is at least 75 per cent of the amount of the corresponding UK tax.
143. New subsection 371FB(2) clarifies the meaning of a CFC’s profits as its profits for an accounting period ignoring any capital gains or losses.
144. New section 371FC sets out the reductions that should be made where necessary in computing the local tax amount.
145. New subsection 371FC(1) explains that new section 371FC applies for the purposes of calculating the local tax in step 2 in new section 371FB.
146. New subsection 371FC(2) states that the local tax amount is to be reduced to what would have been paid if either one or both of two

circumstances set out in the new paragraphs 371FC(2)(a) and (b) are met.

147. New paragraph 371FC(2)(a) sets out the first circumstance. Where the CFC has any income, or any income and expenditure (which results in a loss), to which new subsection 371FC(3) applies, then the local tax amount is reduced to the amount of tax that would have been paid in the CFC's territory of residence for the accounting period if that income or income and expenditure had not been taken into account in calculating the profits that form the basis of the calculation of the local tax.
148. New paragraph 371FC(2)(b) sets out the second circumstance. Where the CFC has any expenditure to which new subsection 371FC(4) applies then the profits in paragraph (a) are calculated as though that expenditure had been brought into account.
149. New subsection 371FC(3) applies to any income, or any income and expenditure, for the accounting period which;
 - is brought into account in calculating the CFC's taxable profits on which tax is charged in the CFC's territory of residence (see new paragraph 371FC(3)(a)); but
 - isn't brought into account in determining the UK measure of tax of the CFC's profits (the "assumed taxable total profits" of the CFC) (see new paragraph 371FC(3)(b)).
150. New subsection 371FC(4) applies to any expenditure of the CFC for the accounting period which
 - is not brought into account in calculating the CFC's taxable profits on which tax is charged in the CFC's territory of residence (see new paragraph 371FC(4)(a)); but
 - is brought into account in determining the UK measure of tax of the CFC's profits (the "assumed taxable total profits" of the CFC) (see new paragraph 371FC(4)(b)).
151. New subsection 371FC(5) states that the new subsection (6) applies if each of three conditions are all met.
152. New paragraph 371FC(5)(a) sets out the first condition, which is that the CFC has paid tax charged by the territory in which it is resident, in respect of its profits arising in the accounting period.
153. New paragraph 371FC(5)(b) sets out the second condition, which is that any repayment of tax, or any payment in respect of a credit for tax

under the law of territory in which the CFC is resident is made to a person other than the CFC.

154. New paragraph 371FC(5)(c) sets out the third condition, which is that the repayment or payment is directly or indirectly in respect of the whole or part of the tax mentioned in paragraph (a).
155. New subsection 371FC(6) applies where the three conditions new subsection 371FC(5) are met. The local tax amount is reduced (or further reduced after any reduction under subsection (2)) by the amount of the repayment or payment referred to in subsection (5).
156. New section 371FD sets out what are designer rate tax provisions.
157. New subsection 371FD(1) applies for the purposes of step 2 in new section 371FB. It explains that “designer rate tax provisions” mean provisions which appear to be designed to enable companies to exercise significant control over the amount of tax which they pay and which are specified as such in Regulations made by the HMRC Commissioners.
158. New subsection 371FD(2) explain that the Regulations under new subsection (1) may make different provision for different cases or with respect to different territories.
159. New section 371FE explains how to determine “the corresponding UK tax”, which is the deemed UK measure of tax on the CFC’s profits.
160. New subsection 371FE(1) explains that the corresponding UK tax used in step 3 of new section 371FB is the amount of corporation tax which would be charged in respect of the CFC’s assumed taxable total profits for the accounting period. The CFC’s assumed taxable total profits are calculated in accordance with Chapter 18 taking into account the corporation tax assumptions.
161. New subsection 371FE(2) explains that for the purposes of calculating the amount of corporation tax, the adjustments set out in new paragraphs 371FE(2)(a) and (b) are to be taken into account.
162. New paragraph 371FE(2)(a) denies any double taxation relief in respect of the local tax paid by the CFC in its territory of residence when calculating the corresponding UK tax.
163. New paragraph 371FE(2)(b) allows deductions when calculating the corresponding UK tax to be made in respect of;
 - any amount which, after applying the corporation tax assumptions, would be set off by virtue of section 967 of CTA

2010 (cases in which a company receives a payment bearing income tax) (see new sub-paragraph 371FE(2)(b)(i)), and

- any amount of income tax or corporation tax actually charged in respect of any income included in the CFC's UK measure of profits (the "assumed taxable total profits" of the CFC) (see new sub-paragraph 371FE(2)(b)(ii)).

164. New subsection 371FE(3) provides that in the new paragraph 371FE(2)(b) the references to an amount being set off or an amount actually charged do not include so much of any such amount that has or will be repaid to the CFC, whether that repayment is dependent on making a claim or otherwise.

Chapter 7 – Chargeable profits of a CFC: main provision

165. New section 371GA introduces Chapter 7 and contains the main rules for determining the CFC's chargeable profits for an accounting period for the purposes of Step 1 of new subsection 371BA(2).

166. New subsection 371GA(2) states that the CFC's chargeable profits are its assumed taxable total profits for the accounting period. Those profits are determined on the basis 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, as adjusted under Chapter 13 (as applicable), and
- 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 the amount arrived at in the first bullet point above.

167. New subsection 371GA(3) provides that subsection (2) is subject to new subsections 371RB(7) and (8) (see below).

Chapter 8 – Chargeable profits of a CFC: profits attributable to UK SPFs

168. New section 371HA outlines the basic rule in determining the "Chapter 8 profits" which fall within the main chargeable profits provision (new paragraph 371GA(2)(a)).

169. Chapter 8 profits are those attributable to significant people functions ("SPF") performed in the UK. New subsection 371HA(1) sets out the basic rule in identifying this profit as a five step process. Terms used in these steps have the same meaning as they have in the Report on the Attribution of Profits to Permanent Establishments of the Organisation of Economic Co-operation and Development ("OECD"). This is referred to as the "OECD Report" (see new subsection (2)). In addition

Steps 1 to 3 are to be taken in accordance with the principles set out in that same report.

170. Step 1 identifies the assets the CFC has and the risks it bears, in so far as they give rise to the CFC's profits.
171. Step 2 determines the extent to which the SPFs that are relevant to the economic ownership of the assets identified at Step 1, and the SPFs that are relevant to the assumption and management of the risks identified at step 1 are UK SPFs. If there are no UK SPFs then no profits fall within Chapter 8 and no further steps are to be taken.
172. Step 3 firstly assumes that the identified UK SPFs are carried out by a UK PE of the CFC. It then determines the extent to which the assets and risks identified at step 1 would be attributed to the PE.
173. Step 4 re-determines the CFC's assumed total profits as if the CFC did not hold the assets and did not bear the risks so far as they would be attributed to the PE mentioned at step 3. The extent to which the step 4 re-determined profits exceed the CFC's assumed total profits, that excess shall be "the provisional Chapter 8 profits".
174. Step 5 excludes from "the provisional Chapter 8 profits" amounts excluded by new sections 371HB to 371HE, the result being "the Chapter 8 profits".
175. New subsection 371HA(2) defines, for the purposes of Chapter 8 the terms, "the OECD Report", "SPF" and "UK SPF".
176. New subsection 371HA(3) introduces Treasury regulatory powers to permit the amendment of Chapter 8 to take account of any "relevant document" published by OECD.
177. New subsection 371HA(4) defines "relevant document" as one which replaces, updates or supplements the OECD Report, or one that replaces, updates or supplements a "relevant document" of the OECD Report.
178. New section 371HB excludes from the provisional Chapter 8 profits an amount of profit arising from an asset or risk, if only a minority of the profit arising from the asset or risk would otherwise be included in the Chapter 8 amount.
179. New subsection 371HB(1) gives conditions for new subsection 371HB(2) to apply in relation to an amount included in the provisional Chapter 8 profits by virtue of any asset or risk identified in Step 1 of new subsection 371HA(1). Subsection (2) applies if the SPFs relevant to the economic ownership of the asset, or the assumption and

management of the risk, are only partly UK SPFs as determined by Step 2 of new subsection 371HA(1).

180. New subsection 371HB(2) outlines that the amount referred to in subsection (1) shall be excluded from the Chapter 8 profits where the amount of profit identified at Step 4 of new subsection 371HA(1) is no more than the further amount that would be added if at Step 4 it were assumed that the CFC held no part of the asset or bore no part of the risk mentioned in subsection (1).
181. This exclusion therefore applies where the actual amount otherwise to be included in the provisional Chapter 8 profits in consequence of an asset or risk is less than half of the maximum that could have been so included.
182. New subsections 371HB(3) and (4) provide for a bundle of assets or of risks to be treated as if it were a single asset or risk for the purposes of this section. Assets or risks are bundled in this way if it is not reasonably practicable to separate them for the purpose of identification of SPFs.
183. New section 371HC excludes amounts from the provisional Chapter 8 profits where substantial non-tax value arises from the CFC's holding of assets or its bearing of risks.
184. New subsections 371HC(1) and (2) exclude amounts calculated at Step 4 of new subsection 371HA(1) in relation to the CFC's holding of assets or its bearing of the risks identified in Step 1 and taken into account in Step 4 if:
 - the CFC's holding of the asset or its bearing of the risk gives rise to non-tax value for the CFC group; and
 - that value is a substantial proportion of the total value resulting from the CFC's holding the assets or bearing the risks.
185. New subsection 371HC(3) defines the term "net economic value" used in subsection (2). It excludes value directly, or indirectly derived from the reduction or elimination of a person to tax or duty imposed under the law of any territory.
186. New subsection 371HC(4) defines the term "CFC group".
187. New subsection 371HC(5) defines the term "relevant non-tax value" used in subsection (2). It is the part of the net economic value that does not derive from the reduction of any UK tax or duty.

188. Overall therefore, non-tax value is compared to the aggregate of non-tax value and value derived from UK tax advantage. Foreign tax effects are wholly disregarded for the purposes of this comparison.
189. New subsections 371HC(6) and (7) provide for a bundle of assets or of risks to be treated as if it were a single asset or risk for the purposes of this section. Assets or risks are bundled in this way if it is not reasonably practicable to separate them for the purpose of identification of SPFs.
190. New Section 371HD excludes amounts from the provisional Chapter 8 profits where they arise from an arrangement that independent companies would have entered into.
191. New subsection 371HD(1) sets the scene for the section by establishing the arrangements by which SPFs come to be separated from assets or risks with the result that a provisional Chapter 8 profit arises.
192. New subsection 371HD(2) excludes the amount arising from the arrangement identified in subsection (1), if it is reasonable to suppose that identical arrangements would have been entered into by the two companies if they were independent of each other.
193. New subsections 371HD(3) and (4) provide for a bundle of assets or of risks to be treated as if it were a single asset or risk for the purposes of this section. Assets or risks are bundled in this way if it is not reasonably practicable to separate them for the purpose of identification of SPFs.
194. New section 371HE introduces a mechanical exclusion from “the provisional Chapter 8 profits” for amounts representing trading income where it can be shown all of the following five conditions are met:
- business premises condition (new section 371HF),
 - income condition (new section 371HG),
 - management expenditure condition (new section 371HH),
 - IP condition (new section 371HI), and
 - export of goods condition (new section 371HJ).
195. New section 371HF outlines the “business premises” condition for the purposes of new section 371HE. It is met if, throughout the accounting period, the CFC in its territory of residence has “premises” (defined at new subsection 371HF(3)):

- which are, or are intended to be, occupied and used with a reasonable degree of permanence, and
 - from which the CFC operations in that territory are wholly and mainly carried on.
196. New subsection 371HF(3) defines premises as:
- An office, shop, factory, other building or part thereof,
 - a mine, oil or gas well, quarry or other place of where natural resources are extracted, or
 - a building, construction or installation site if the project has or will last at least 12 months.
197. New section 371HG outlines the “income condition” for the purposes of new section 371HE.
198. New subsection 371HG(2) details that the condition shall be met where the CFC is not a regulated bank and where no more than 20 per cent of the CFC’s “relevant trading income” derives, directly or indirectly, from
- UK resident persons, or
 - UK PEs of a non-UK resident company.
199. New subsection 371HG(3) defines “relevant trading income” for the purposes of new subsection (2) as the CFC’s trading income for the accounting period, excluding any income arising from the sale of goods in the UK which were produced by the CFC in its territory of residence
200. New subsection 371HG(4) applies new subsection 371HG(5) rather than new subsection (2) when a substantial part of the CFC’s business consists of regulated banking activity.
201. New subsection 371HG(5) the income condition for a banking CFC within subsection (4) is met if no more than 10 per cent of the relevant trading income of the CFC is derived, directly or indirectly from
- UK resident persons, or
 - UK PEs of a non-UK resident company
202. New subsection 371HG(6) explains that for the purposes of subsection (5), “relevant trading income” excludes interest received from UK resident companies connected or associated with the banking CFC.

203. New subsection 371HG(7) determines that subsections (2) and (5) do not apply to income derived from UK resident persons where a corresponding expense is brought into account for the purposes of section 18A of CTA 2009 (non-UK PEs of UK resident companies) in determining the profits or losses attributable to such PEs.
204. New section 371HH outlines the “management expenditure” condition for the purposes of new section 371HE.
205. New subsection 371HH(2) outlines that the condition is met where the “UK related management expenditure” is not more than 20 per cent of the “total related management expenditure”
206. New subsection 371HH(3) explains that the amounts to be included within “total related management expenditure” are the total of amounts set out in new paragraphs 371HH(3)(a) and (b).
207. New paragraph 371HH(3)(a) covers expenditure incurred during the accounting period by the CFC in the employment of its own staff, or the engagement of other persons related to the CFC, who carry out “relevant management functions”.
208. New paragraph 371HH(3)(b) covers expenditure incurred during the accounting period (so far as not reflected in paragraph (3)(a)) by persons related to the CFC in the employment of their own staff who carry out “relevant management functions”.
209. New subsection 371HH(4) defines “UK related management expenditure” as related management expenditure incurred in relation to staff or related persons who carry out relevant management functions in the UK.
210. New subsection 371HH(5) explains that a person carries out “a relevant management function” if that person manages any assets or risks identified at step 1 in new subsection 371HA(1).
211. New subsection 371HH(6) explains that relevant management function includes (for example) the formulation of plans or making of decisions in relation to:
- the creation, control, development or exploitation of such assets, or
 - the assumption or control of such risks.
212. New subsection 371HH(7) introduces an alternative management expenditure condition. This condition applies if

- the main 20 per cent management expenditure condition is not met, but the other conditions in new subsection 371HE(1) are met, and
 - the “50 per cent condition” is met in relation to an asset or risk identified in step 1 of new subsection 371HA(1) to which any related management expenditure relates, and
 - an amount representing trading income arising from that asset or risk is included in the provisional Chapter 8 profits.
213. New subsection 371HH(8) sets out that, if the 50 per cent condition is met, the amount representing trading income arising from that asset or risk is to be excluded from the provisional Chapter 8 profits.
214. New subsection 371HH(9) determines that the “50 per cent condition” is in relation to an asset or risk if the UK related management expenditure which relates to that asset or risk is no more than 50 per cent of the total related management expenditure which relates to that asset or risk.
215. New subsection 371HH(10) applies where any part of the total related management expenditure relates to a number of assets or risks and 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 separately.
216. New subsection 371HH(11) provides that subsections (7) and (9) shall apply to new subsection (10) assets or risks that are taken together and any references to an asset or risk are to be read accordingly. Thus the related management expenditure condition can be considered for each bundle of assets or risks identified under subsection (10).
217. New section 371HI outlines the “IP condition” for the purposes of new section 371HE.
218. New subsection 371HI(2) sets out that the IP condition shall be met unless all of the following apply:
- the CFC’s assumed total profits for the accounting period include amounts arising from IP held by the CFC (the “exploited IP”),
 - all or parts of the exploited IP were transferred directly or indirectly to the CFC by persons related to the CFC at times during the relevant period or otherwise derived (directly or indirectly) at times during that period out of or from IP held at times during that period by persons related to the CFC,

- as a result of those transfers or other derivations, the value of the IP held by those related persons taken together has been significantly reduced from what it would otherwise have been, and
 - if only parts of the exploited IP were so transferred or derived, the “significance condition” is met.
219. New subsection 371HI(3) provides that the “significance condition” is met if:
- the parts of the exploited IP (“the UK derived IP”) which were transferred or otherwise derived as mentioned in new subsection (2) are, taken together, a significant part of the exploited IP, or
 - 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 they otherwise would have been.
220. New subsection 371HI(4) provides that in relation to a non-UK resident person who is related to the CFC, references to the transfer or holding of IP by a person related to the CFC are limited to;
- the transfer of IP which before the transfer was held by the non UK resident person (wholly or partly) for the purposes of a PE which the person has in the UK, or
 - the holding of IP by the non-UK resident person (wholly or partly) for those purposes.
221. New subsection 371HI(5) defines “the relevant period” as covering the accounting period and the six years before the accounting period.
222. New section 371HJ outlines the “export of goods” condition for the purposes of new section 371HE.
223. New subsection 371HJ(2) explains the condition is met where no more of than 20 per cent of the CFC’s trading income arises from goods exported from the UK, but disregarding goods exported from the UK into the CFC’s territory of residence.
224. New section 371HK introduces an anti avoidance rule that can apply if:
- A condition in new subsection 371HE(1) is met, or

- The 50 per cent condition in new 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, apart from an arrangement falling within new subsection 371HK(3), that condition would not have been met.
225. New subsection 371HK(2) outlines that, if this section applies, the new subsection 371HE(1) condition, or new section 371HH condition, is to be taken not to be met.
226. New subsection 371HK(3) details that an arrangement falls within this subsection if the conditions of new paragraphs 371HK(3)(a) and (b) are met.
227. New paragraph 371HK(3)(a) requires that the arrangement involves “the CFC group” organising or reorganising any part of its business in a particular way.
228. New paragraph 371HK(3)(b) requires that the main purpose, or one of the main purposes, of that organising or reorganising is to secure that either
- one or more of the conditions within new subsection 371HE(1) are met, or
 - the 50 per cent condition within new section 371HH is met in relation to one or more assets or risks.
229. New subsection 371HK(4) defines “the CFC group” as the CFC together with companies with which it is connected from time to time.

Chapter 9 – Chargeable profits of a CFC: non-trading finance profits

230. Chapter 9 includes certain non-trading finance profits within new paragraph 371GA(2)(a). Those profits are any non-trading finance profits that are included within the CFC’s assumed total profits for the accounting period, so far as those non-trading finance profits fall within new sections 371IB to 371ID.
231. Non-trading finance profits are defined in new section 371UA. They are profits falling within Parts 5 and 9A of CTA 2009, including profits that fall within Part 5 by reason of Parts 6 or 7.
232. New section 371IB includes within Chapter 9 any non-trading finance profits that would have fallen within Chapter 8 but for the exclusions listed at step 5 of new subsection 371HA(1).

233. New section 371IC(1) outlines that non-trading finance profits shall fall within Chapter 9 so far as they arise from the investment or other use of “relevant UK funds”.
234. New subsections 371IC(2) defines “relevant UK funds” as funds derived directly, or indirectly, from:
- a UK connected company acquiring shares in, or making any other type of capital contribution to, the CFC, or
 - any amounts included within the CFC’s chargeable profits for any earlier accounting period, or
 - any amounts which are left out of account in determining the CFC’s assumed total profits for that or any earlier accounting period due to a claim under section 174 (transfer pricing: claims by disadvantage person), or
 - any other direct, or indirect, payments received by the CFC from a UK connected company except a payment for the provision of goods or services.
235. New subsection 371IC(3) defines “UK connected company” for the purposes of subsection (2).
236. New Section 371ID includes certain non-trading finance profits within Chapter 9 arising from loans (or parts of loans) made to UK resident companies connected with the CFC, or to UK PEs of foreign companies connected with the CFC.
237. Profits from these loans are included in Chapter 9 if the main reason or one of the main reasons for providing funds by way of loan, as opposed to by way of distribution, is a reason relating to any UK or foreign tax liability.

Chapter 10 – Chargeable profits of a CFC: trading finance profits

238. Chapter 10 includes certain trading finance profits within a CFC’s chargeable profits, to the extent that they arise from excess capital or excess free assets.
239. New subsection 371JA(1) outlines the steps to take in determining the trading finance income”.
240. Step 1 gives the scope of Chapter 10. It includes profits that, by identifying whether any “step 1 trading income” arises, would have been non-trading finance profits but for the priority given to Part 3 CTA 2009 over Parts 5 to 7 and 9A of that Act. If the assumed total

profits do not include any such income, then no profits fall within this Chapter and no further steps are to be taken.

241. Step 2 determines whether 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 either:
- the excess free capital, or
 - if less, the CFC's free capital so far as it is attributable to UK connected capital contributions.
242. Step 3 determines whether there are any excess "free assets" when a CFC is carrying on insurance business. Excess free assets arise where the CFC's free assets exceed what it is reasonable to suppose that amount would be were the CFC not controlled by any person. If there are excess free assets, "the step 3 amount" is either:
- the excess free assets, or
 - if less, the CFC's free assets so far as it is attributable to UK connected capital contributions.
243. Step 4 identifies that "the step 1 trading income" shall be the Chapter 10 profits 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).
244. New subsection 371JA(2) outlines, for the purposes of step 2 in subsection (1), the meaning of "free capital". This is where the funding it has for its business would 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.
245. New subsections 371JA(3) to (5) define how to calculate the CFC's free assets for the purposes of step 3 in subsection (1). This definition is consistent with that given in regulations made under Chapter 4 of Part 2 CTA 2009, which applies to foreign insurance companies trading in the UK through a PE (S.I. 2003/2714).
246. New subsection 371JA(6) gives the meaning of "UK connected capital contributions" for the purposes of steps 2 and 3 in subsection (1).
247. New section 371JB provides a power for the HMRC Commissioners to make regulations setting out conditions under which Chapter 10 will not apply in relation to the step 1 trading income in so far as that

income arises from the CFC's banking business, or banking business of a specified description.

248. New section 371JC provides a power for the HMRC Commissioners to make regulations setting out conditions under which Chapter 10 will not apply in relation to the step 1 trading income in so far as that income arises from the CFC's insurance business, or insurance business of a specified description.
249. New subsection 371JC(2) explains that subsection (1) will not apply to companies carrying on insurance business of the type described in new subsection 371KA(3) (captive insurance business).

Chapter 11 – Chargeable profits of a CFC: captive insurance business

250. New section 371KA introduces Chapter 11 which includes certain profits arising from captive insurance business within a CFC's chargeable profits for the purposes of new paragraph 371GA(2)(a).
251. New subsections 371KA(1) to (3) outline the profits to fall within Chapter 11. They are the amounts arising in a CFC whose main business is insurance and are derived from contracts of insurance in the following paragraphs of new subsection (3):
- (a) a UK resident company connected with the CFC, or
 - (b) a UK PE of a connected non-UK resident company, or
 - (c) a UK resident person in relation to the provision of good or services (excluding insurance business) to or by that person.
252. New subsection 371KA(4) limits the application of paragraph (a) above. It shall not include a premium paid under a contract of insurance where the UK resident company has made an election under section 18A CTA 2009 and the premium is wholly brought into account in calculating the profits arising in a non-UK PE of the UK resident company.
253. New subsection 371KA(5) limits the scope of paragraphs (a) and (b) above to exclude contracts of reinsurance unless the original contract of insurance would fall within those same paragraphs.
254. New subsection 371KA(6) limits the scope of new subsection 371KA(7) to an amount where the CFC is resident in an EEA state for the accounting period and that amount does not arise from the operations of a PE of the CFC in a non-EEA state.
255. New subsection 371KA(7) applies to capture amounts so far as they are derived, directly or indirectly, from a contract of insurance which

the insured has no significant UK non-tax reason for entering into. This also applies if the original contract of insurance is reinsured.

256. New subsection 371KA(8) defines the term “UK non-tax reason”.

Chapter 12 – Chargeable profits of a CFC: solo consolidation

257. New section 371LA encompasses Chapter 12 which includes certain profits for the purposes of new paragraph 371GA(2)(a) if the CFC is the subject of a solo consolidation waiver, or if the anti-avoidance rule in new subsection 371BC(2) or (3) applies to the CFC.

258. The Chapter 12 chargeable profits amount is the amount by which:

- The CFC’s assumed total profits (see new section 371UA), exceeds
- The amount of profit that would (for the purposes of applying Chapter 3A, Part 2, CTA 2009) be attributed to a PE of the UK resident company.

259. The overall effect of Chapter 12 is that if the profits of the CFC exceed the profits which would be attributed to the CFC if it were a PE of the UK resident company, that excess will be included in the CFC’s chargeable profits.

Chapter 13 – Chargeable profits of a CFC: amounts to be left out

260. New section 371MA introduces Chapter 13 which sets out the amounts to be left out of the assumed total profits which fall within Chapters 8 to 12 for the purposes of new paragraph 371GA(2)(a).

261. New section 371MB excludes profits from property business from the CFC’s assumed total profits if those profits would be chargeable under under Part 4 CTA 2009 and they represent an amount of profit included in the Chapter 8 to 12 profits.

262. New section 371MC excludes non-trading financing profits from assumed total profits if they do not exceed a fixed 5 per cent limit.

263. New subsection 371MC(1) applies if the total non-trading finance profits within Chapters 8 to 12 do not exceed 5 per cent of the total amount within new subsections 371MC(3) and (4) as calculated before any deduction for interest or any tax or duty.

264. New subsection 371MC(2) determines that all non-trading finance profits and amounts which represent such profits are to be excluded from Chapter 8 to 12 profits.

265. New paragraph 371MC(3) covers any trading income included in the CFC's assumed total profits for the accounting period, so far as it is not included in Chapter 8 to 12 profits.
266. New paragraph 371MC(4) covers any property income included in the CFC's assumed total profits.
267. New section 371MD excludes incidental non-trading finance profits from assumed total profits. This is an alternative to the fixed 5 per cent non-trading finance profit exclusion in new section 371MC.
268. New subsection 371MD(1) excludes profits which arise from the investment of funds held for the purposes of a trade if that trade is carried on by a CFC and if the income of that trade does not fall within Chapters 8 to 12.
269. New subsection 371MD(2) excludes non-trading finance profits which arise from the investment of funds held by the CFC for the purposes of a UK or overseas property business.
270. New subsection 371MD(3) sets out a number of circumstances in which the exclusions in new subsections 371MD(1) and (2) will not apply. Those exclusions will not apply to non-trading finance profits arising from funds:
- Held because of a prohibition on the payment of dividends imposed under the law of the CFC's territory of incorporation,
 - Held with a view to paying dividends or other distributions more than 12 months after the end of the accounting period,
 - Held with a view to acquiring shares in, or making capital contributions to, any company,
 - Held with a view to investing in land more than 12 months after the end of the accounting period,
 - Held only or mainly for contingencies,
 - Held in order to reduce or eliminate a tax or duty imposed by any territory.
271. New section 371ME introduces a specific exclusion for the non-trade finance profits of holding companies.

272. New paragraph 371ME(1)(a) requires that a substantial part of the business of the CFC is the holding of shares or securities in companies which are its 51 per cent subsidiaries.
273. New paragraph 371ME(1)(b) limits the “group non-trading finance profits” of the holding company to no more than 5 per cent of the “exempt distribution income” for that accounting period.
274. New subsection 371ME(2) defines “group non-trading finance profits” as the total of new paragraphs 371ME(2)(a) and (b).
275. New paragraph 371ME(2)(a) is the non-trading finance profits of the CFC for the accounting period.
276. New paragraph 371ME(2)(b) is the total of the “relevant non-trading finance profits” of all holding company subsidiaries of the CFC which meet the conditions of this exemption.
277. New subsection 371ME(3) deals with a CFC subsidiary whose accounting period either matches or falls entirely within the accounting period of the holding company CFC. The “relevant non-trading finance profits” of such a CFC are its non-trading finance profits to the extent that they are excluded from Chapters 8 to 12 by this section.
278. New subsection 371ME(4) deals with a CFC subsidiary whose accounting period overlaps with the accounting period of the holding company CFC. The “relevant non-trade financing profits” of such a CFC are a just and reasonable proportion of its non-trading finance profits to the extent that they are excluded from Chapters 8 to 12 by this section.
279. New subsection 371MD(5) defines “exempt distribution income” as the sum of any dividends or other distributions which are excluded from the assumed total profits of the CFC because they would be exempt under part 9A CTA 2009.
280. The effect of this exemption is to compare the total exempt distribution profits of the holding company CFC with the sum of the non-trading finance profits of this CFC and the non-trading finance profits of any exempt holding companies controlled by this CFC. If the total non-trading finance profits do not exceed 5 per cent of the exempt distribution income for the accounting period, then the non-trading finance profits of the holding company CFC are to be left out of the assumed total profits.

Chapter 14 – Relevant interests in a CFC

281. New section 371NA introduces Chapter 14 which applies for the purposes of determining the persons who have “a relevant interest” in a CFC for the purposes of step 2 in new subsection 371BA(2).
282. New section 371NB determines who holds a direct or indirect interest in a company in specified circumstances for the purposes of the Chapter.
283. New subsection 371NB(2) defines the term “indirect” and “direct” for the purposes of determining interests in a company. An indirect interest in a company exists where a person has an interest by virtue of having an interest in another company. It follows that a person who has an interest in the first company other than through another company has a direct interest in the first company.
284. New subsection 371NB(3) states that where a bare trustee or nominee holds an interest for a person or persons, that person or persons (rather than the trustee or nominee) are treated as holding the interest.
285. New subsection 371NB(4) defines the term bare trustee.
 286. New subsections 371NB(5) and (6) apply in a case not covered by new subsection (3) if an interest is held in a fiduciary or representative capacity and there are one or more identifiable beneficiaries. In these circumstances the interest is treated as held by that beneficiary or, if there is more than one beneficiary the interest is apportioned between them on a just and reasonable basis.
287. New section 371NC determines when a UK company’s interest will not be taken to be a relevant interest in a CFC. This will be where an indirect interest in that CFC is held by the UK resident company by virtue of it holding an interest in another UK resident company. This ensures that the relevant interest is held by the UK resident company that is at the bottom of a chain of two or more UK residents companies.
288. New section 371ND determines relevant interests of persons related to UK resident companies.
289. New subsection 371ND(1) provides that this section only applies if a UK resident company (“UKRC”) has a relevant interest in a CFC.
290. New subsection 371ND(2) states that a related person’s interest in the CFC is a relevant interest unless (by virtue of new subsection 371ND(4)) 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, or (by virtue of new subsection 371ND(5)) it is the same

relevant interest as UKRC's relevant interest in the CFC by virtue of the UKRC having an interest in the related person.

291. New subsection 371ND(3) defines related person as a person, other than a UK resident company, who is connected or associated with UKRC.
292. New section 371NE provides a further test for determining a relevant interest. This is set out within new subsection 371NE(1) and only applies in a case where a person ("P") has a direct interest in a CFC which is not a relevant interest by virtue of new sections 371NC or 371ND.
293. New subsection 371NE(2) provides that P's direct interest is a relevant interest for the purposes of this section unless new subsection 371NE(3) applies to it.
294. New subsection 371NE(3) applies to P's direct interest so far as it is the same as another person's relevant interest in the CFC which they have indirectly because they have an interest in P.
295. New subsection 371NE(4) defines the reference in new subsection (3) to "another person's relevant interest" as being a person's relevant interest by virtue of section 371NC or 371ND. This has the effect that P's interest under this section will only be a relevant interest if it is a direct interest in the CFC that is not otherwise a relevant interest of a person related to a UK resident company or UK resident company by virtue of their own indirect interest.

Chapter 15 – Creditable tax of a CFC

296. New section 371OA defines a CFC's "creditable tax" for Part 9A.
297. New subsection 371OA(1) explains that for the purposes of step 3 in new subsection 371BA(2) a CFC's creditable tax for an accounting period is the sum of the amounts determined by new paragraphs 371OA(1)(a) to (c).
298. New paragraph 371OA(1)(a) includes any double taxation relief in respect of the local tax paid by the CFC in its territory of residence that would be taken into account in calculating the corresponding UK tax in respect of the CFC's chargeable profits (the UK measure of profits). It also includes any foreign tax paid on the CFC's chargeable profits where that foreign tax would be allowed as double taxation relief against UK corporation tax if the CFC were resident in the UK. In accordance with new subsection 371OA(2) 'foreign tax' refers to both the local tax amount and the foreign tax paid in a territory other than the UK or the territory where the CFC is resident.

299. New paragraph 371OA(1)(b) includes any amount of “relevant income tax” which, after applying the corporation tax assumptions in Chapter 18 (which assumes the CFC is resident in the UK for certain matters), would be set off by virtue of section 967 of CTA 2010 (cases in which a company receives a payment bearing income tax) against UK corporation tax that would be due in respect of the CFCs chargeable profits (the UK measure of profits).
300. New paragraph 371OA(1)(c) includes any amount of income tax or corporation tax actually charged in respect of any income that makes up the CFC’s chargeable profits (the UK measure of profits).
301. New subsection 371OA(3) defines “relevant income tax” as income tax that has been deducted from a payment that makes up the CFC’s chargeable profits and which the CFC bears as a result.
302. New subsection 371OA(4) provides that in the paragraphs (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 that has or will be repaid to the CFC, whether that repayment is dependent on making a claim or otherwise.

Chapter 16 – Apportionment of a CFC’s chargeable profits and creditable tax

303. New section 371PA introduces Chapter 16, which contains the rules for apportioning the CFC’s chargeable profits and creditable tax, for an accounting period, among the relevant persons for the purposes of step 4 in new subsection 371BA(2).
304. New section 371PB contains provision about interpretation for the purposes of Chapter 16.
305. New subsection 371PB(2) applies the interpretation provisions contained in new section 371NB to Chapter 16 in the same way as they apply to Chapter 14.
306. New subsections 371PB(3) and (4) define “Ordinary shares”. It means for any company, shares of a single class (however they are described) which is the only class of share issued by that company. The term “share” can also refer to a fraction of a share. Shares issued by a company belong to different classes if they are paid up to different amounts.
307. New subsection 371PB(5) defines when a person ‘indirectly’ holds ordinary shares in a CFC. This occurs when the person directly holds shares in a company “share-linked” to the CFC.

308. New subsection 371PB(6) defines “share-linked” and “share-linked company” for the purposes of subsection (5). A share-linked company is one whose only interest in the CFC is through the direct, or indirect (in other words through a chain of companies), holding of ordinary shares in that CFC.
309. New section 371PC covers the basic rules of how apportionments are to be made. There is a mathematical method of apportionment and a default method of apportionment.
310. New subsection 371PC(1) introduces conditions X, Y and Z as the qualifying conditions for the mathematical method of apportioning chargeable profits and creditable tax. Where those conditions are met, the apportionment to relevant persons will be in accordance with new section 371PD (supplemented by new sections 371PE and 371PF). The apportionment mechanism divides the chargeable profits and creditable tax in direct proportion to the percentage of ordinary shares issued by the CFC.
311. New subsection 371PC(2) provides the default method of apportionment where subsection (1) is not in point. In that case the apportionment of chargeable profits and creditable tax to each relevant person should be determined on a just and reasonable basis.
312. New subsection 371PC(3) explains condition X (for the purposes of subsection (1)) is satisfied if the relevant persons only have relevant interests in the CFC by holding directly, or indirectly, ordinary shares in that CFC.
313. New subsection 371PC(4) explains condition Y (for the purposes of subsection (1)) is satisfied if each of the relevant persons has been either only UK resident, or only non-UK resident, throughout the accounting period.
314. New subsection 371PC(5) explains condition Z (for the purposes of subsection (1)) is satisfied provided a company with “intermediate interest” in the CFC only has that interest from holding, directly or indirectly, ordinary shares in the CFC.
315. New subsection 371PC(6) defines “intermediate interest” for the purposes of subsection (5) as when a company has an interest in a CFC and one or more relevant persons have relevant interests in the CFC because they have an interest in that company.
316. New subsection 371PD(1) states that where the conditions of new subsection 371PC(1) are met, the mathematical apportionment method in new subsections 371PD(2) and 371PD(3) should be applied to each relevant person.

317. New subsection 371PD(2) states that the relevant person's relevant interest should be determined by reference to the percentage of the ordinary shares it holds in the CFC.
318. New subsection 371PD(3) states that the percentage calculated by the rule in subsection (2) for each relevant person should be used in apportioning the chargeable profits and creditable tax to that relevant person.
319. New subsection 371PD(4) explains that new section 371PE "Indirect shareholdings" and new section 371PF "Variable shareholdings" supplement the application of new section 371PD.
320. New section 371PE provides the rules to establish the relevant interest of a person in the CFC, where the person holds an indirect interest in the CFC.
321. New subsection 371PE(1) applies new section 371PE to establish the relevant interest of a relevant person ("R") in the CFC to the extent that person indirectly holds ordinary shares in that CFC ("the relevant shares").
322. New subsection 371PE(2) outlines the formula to be used in determining the percentage of ordinary shares in the CFC arising from the indirect shareholding by R. This determines the relevant interest of R.
323. The formula is $P \times S$ 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 in the CFC, apart from the share-linked company that directly holds the relevant shares
 - S is the percentage of the issued ordinary shares in the CFC that the relevant shares represent

Example

Relevant person A owns 80 per cent of the shares in overseas company B, which in turn holds 90 per cent of the shares in overseas company C, which in turn holds 90 per cent of the issued ordinary shares in the CFC.

The fractional interest A has in B is 0.80 and the fractional interest B has in C is 0.90. As C directly holds shares in the CFC its fractional interest is not counted. P is the product of the two fractions: $0.80 \times 0.90 = 0.72$

S is 90 per cent, which is the percentage of the issued ordinary shares that A holds indirectly – it is the proportion of the issued shares held by C.

A has a relevant interest of 64.8 per cent (0.72×90 per cent) in the CFC.

324. New subsection 371PE(3) defines ‘appropriate fraction’ for the purposes of the formula in subsection (2). In any particular case it is the fraction of the issued ordinary shares in the share-linked company that the holding in that company represents.
325. New subsection 371PE(4) provides the process for determining the percentage in subsection (2), where the relevant person holds more than one indirect holding of ordinary shares in the CFC. In that case the formula in subsection (2) is applied to each holding and then the results of each calculation are added together.

Example

Relevant person A has a relevant interest of 64.8 per cent through one indirect holding in the CFC. A also owns 75 per cent of the shares in overseas company D, which in turn holds the remaining 10 per cent of the issued ordinary shares in the CFC.

The fractional interest A has in D is 0.75 and the fractional interest D has in C is 0.10. As C directly holds shares in the CFC its fractional interest is not counted. P is the product of the two fractions: $0.75 \times 0.10 = 0.075$

S is 90 per cent, which is the percentage of the issued ordinary shares that A holds indirectly – it is the proportion of the issued shares held by C.

A has a second relevant interest of 6.75 per cent (0.075×90 per cent) in the CFC.

The total relevant interest A has in the CFC is 71.55 per cent (the sum of the two relevant interest, 64.8 per cent and 6.75 per cent).

326. New subsection 371PF(1) states that new section 371PF will apply to determine the percentage of issued ordinary shares representing the relevant persons relevant interest, where that percentage holding varies during the accounting period.
327. New subsection 371PF(2) defines the percentage to be the sum of the relevant percentages for each holding period. So if during the accounting period the amount of a relevant person’s relevant interest changes three times, then the overall relevant interest for the

accounting period is found by adding together the relevant percentage calculated for each of the three periods.

328. New subsection 371PF(3) defines “holding period” for the purposes of subsection (2), as a period during a relevant interest remains unchanged.
329. New subsection 371PF(4) outlines the formula to be used in determining a holding period’s “relevant percentage” for the purposes of subsection (2). The relevant percentage for any holding period is the proportion of the holding period of the accounting period multiplied by the percentage of the CFC’s issued ordinary shares that represents the relevant person’s relevant interest for that holding period.

Example

Company A holds 60 per cent of the CFC’s issued ordinary shares as a relevant interest during the first 100 days of the accounting period and 80 per cent during the remaining 265 days of the accounting period.

A’s relevant interest for the whole accounting period is the sum of the relevant percentages for the two holding periods:

Holding period 1: relevant percentage is $60 \text{ per cent} \times 100/365 = 16.4 \text{ per cent}$

Holding period 2: relevant percentage is $80 \text{ per cent} \times 265/365 = 58.1 \text{ per cent}$

A’s relevant interest for the whole accounting period is $16.4 \text{ per cent plus } 58.1 \text{ per cent} = 73.5 \text{ per cent}$

Chapter 17 – Loan relationships with connected companies

330. New subsection 371QA(1) introduces Chapter 17 which provides the rules for partial exemption of intra-group finance investment profits. The partial exemption is given by way of an adjustment that is made to a CFC’s chargeable profits and creditable tax for an accounting period at step 6 of new subsection 371BA(2).
331. New subsection 371QA(2) provides that the Chapter does not affect the percentage of the CFC’s chargeable profits or creditable tax apportioned to the chargeable company as defined at new subsection 371BA(5).
332. New subsection 371QA(3) states that terms used in the Chapter should have the same meaning as they have in Part 5 of CTA 2009 (loan relationships).

333. New subsection 371QA(4) provides that references in the Chapter to a loan relationship include a part of a loan relationship
334. New section 371QB sets out the basic rule.
335. New subsection 371QB(1) sets out the three conditions that all need to be met in order for the section to apply. These are that:
- the CFC’s total profits for the accounting period include “qualifying loan relationship profits” as determined at new section 371QC,
 - the CFC has business premises as defined at new section 371HF, and
 - a claim is made by the chargeable company to an officer of Revenue and Customs.
336. New subsection 371QB(2) explains that the determination of the sum charged on the claimant is achieved by re-determining:
- the CFC’s chargeable profits for an accounting period under new section 371GA taking into account the modification set out in new subsection 371QB(3); and
 - the CFC’s creditable tax by reference to the re-determined chargeable profits above.
- The calculation of the sum charged by re-determination only applies to the chargeable company.
337. New subsection 371QB(3) explains the modification required to new section 371GA. It explains that new paragraph 371GA(2) (a) should be substituted with a rule that provides that the CFC’s assumed total profits should be limited to the following:
- 25 per cent of the CFC’s “qualifying loan relationship profits”, and
 - the balance of assumed total profits not represented by “qualifying loan relationship profits” that fall within Chapters 8 to 12 as adjusted by Chapter 13 (where applicable).
338. New subsection 371QB(4) provides that “qualifying loan relationships” for the purposes of the substituted new paragraph 371GA(2)(a) are defined at new section 371QC.
339. New section 371QC sets out the steps for calculating the CFC’s “qualifying loan relationship profits” These are;

- Step 1 – calculate the credits from the CFC’s qualifying loan relationships defined at new section 371QD that are brought into account for the purposes of determining the CFC’s non-trading finance profits for the accounting period. The amount determined is “the Step 1 credits”;
 - Step 2 – deduct from the Step 1 credits profits arising from the investment of funds held by the CFC for the purposes of a trade or property business carried on by the CFC as defined at new section 371MC. The amount determined is “the Step 2 credits”;
 - Step 3 – add to or deduct from the Step 2 credits any foreign exchange debits or credits (to the extent they are not already reflected in Step 1 credits) that arise in respect of derivatives or similar hedging arrangements entered into by the CFC as a hedge in connection with qualifying loan relationships. The amount so determined is “the Step 3 credits”;
 - Step 4 – calculate the debits (so far as not reflected in the Step 3 credits) that are brought into account for the purposes of determining the CFC’s non-trading finance profits for the accounting period and subtract from the Step 3 credits a just and reasonable proportion of them to give the CFC’s qualifying loan relationship profits.
340. New subsection 371QD(1) sets out the conditions for a loan relationship of a CFC to be treated as a qualifying loan relationship. These are where in relation to the qualifying loan relationship;
- the CFC is the creditor,
 - “the ultimate debtor” as defined at new subsection 371QD(2) is connected to the CFC; and
 - none of new subsections 371QD(4) to (9) treat the loan as non-qualifying.
341. New subsection 371QD(2) defines “the ultimate debtor” as the debtor in relation to the loan relationship unless new subsection 371QD(3) applies.
342. New subsection 371QD(3) provides that the ultimate debtor will be a person (“P”) if;
- the loan to the debtor of the CFC is made for the purposes of funding a loan to P;

- the loan to P is not used for the purposes of funding a loan to any other person; and
 - the loan to P gives rise to a loan relationship in relation to which P is the debtor.
343. New subsection 371QD(4) sets out the circumstances under which a loan cannot be a qualifying loan relationship where the ultimate debtor is a non-UK resident company. These are where the debtor's debits are:
- being taken into account for the purposes of determining the profits attributable to a UK PE of the debtor under Part 2 of CTA 2009, or
 - being taken into account for the purposes of determining the profits attributable to a UK property business of the CFC under Part 3 ITTOIA 2005.
344. New subsection 371QD(5) provides that a loan cannot be a qualifying loan relationship where the ultimate debtor is UK resident unless it is being taken into account for the purposes of determining the profits attributable to an exempt non-UK PE of the ultimate debtor and an election is made under section 18A of CTA 2009 in relation to the ultimate borrower.
345. New subsection 371QD(6) provides that a loan relationship cannot be a qualifying loan relationship where the ultimate debtor is a company and some or all of the debits are brought into account:
- in calculating trading profits under section 297 of CTA 2009, or
 - would be so brought into account if the company were a UK resident company within the charge to corporation tax.
346. New subsection 371QD(7) provides that a loan relationship cannot be a qualifying loan relationship where:
- the ultimate debtor is itself a CFC to which Chapters 3 or Chapters 8 to 12 apply in an accounting period and some or all of the debits of the CFC are being brought into account for the purposes of those Chapters, and
 - as a result there is no CFC charge for the accounting period, or the charge is reduced.

347. New subsection 371QD(8) provides that the references to debits in subsections (4) to (7) are to the debits from the loan to the debtor or the loan to P.
348. New subsection 371QD(9) provides that a loan relationship cannot be a qualifying loan relationship where it is part of an arrangement the main purpose or one of the main purposes of which is to provide, directly or indirectly, funding for a loan relationship to a person from the ultimate debtor.
349. New subsection 371QD(10) gives HMRC Commissioners the power to make regulations to amend the definition of qualifying loan relationship.

Chapter 18 – Assumed taxable total profits, assumed total profits and the corporation tax assumptions

350. New section 371RA provides an overview of the Chapter and says that it applies to explain the concepts of “assumed taxable total profits”, “assumed total profits” and “the corporation tax assumptions” in this Part.
351. New subsection 371RB(1) defines a CFC’s “assumed taxable total profits” for an accounting period as what, applying the corporation tax assumptions, would be the CFC’s taxable total profits of the accounting period for corporation tax purposes.
352. New subsection 371RB(2) determines that “taxable total profits” has the meaning given by section 4(2) of CTA 2010.
353. However for this purpose new subsection 371RB(3) determines that in section 4(3) of CTA 2010 step 1 is to be applied (subject to new subsections 371RB(4) to (6)), and step 2 is to be ignored.
354. New subsection 371RB(4) applies an additional amount when computing the CFC’s taxable total profits by adding to step 1 of section 4(3) of CTA 2010 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.
355. New subsection 371RB(5) states that where 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.
356. New subsection 371RB(6) covers circumstances whereby 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. This prevents any economic double taxation.

357. New subsection 371RB(7) covers circumstances where subsection (8) applies. New subsection 371RB(8) applies where the beneficiary's chargeable profits are the subject of a CFC charge at step 4 in subsection 371BA(2) so that the income is not to be included in the settlor's chargeable profits. Subsection (8) applies if there is any income which, by virtue of subsection (4), would (apart from subsection (8)) be included in;
- the chargeable profits for an accounting period of a CFC which is a beneficiary in relation to a settlement, and
 - the chargeable profits for an accounting period of a CFC which is a settlor in relation to the settlement.
358. New subsection 371RB(9) defines a CFC's "assumed total profits" for an accounting period to be its assumed taxable total profits for the period before taking step 2 in section 4(2) of CTA 2010.
359. New section 371RC explains what the "corporation tax assumptions" are and what they apply to.
360. New subsection 371RC(1) defines "the corporation tax assumptions" for the purposes of this Part as the assumptions set out in new sections 371RD to 371RL.
361. New subsection 371RC(2) outlines that the corporation tax assumptions are to be applied in determining the following for "the relevant accounting period" of a CFC:
- the CFC's assumed taxable total profits (see new subsection 371RB(1))
 - the relevant corresponding UK tax (see new subsections 371EI(4) to (7));
 - the corresponding UK tax (see new section 371FE)
 - the CFC's creditable tax (see Chapter 15)
362. New section 371RD covers the application of the assumption of UK residence to a CFC.
363. New subsection 371RD(1) applies the assumption of UK residence to the CFC so that it continues throughout the relevant accounting period. Where the relevant accounting period is not the CFC's first accounting

period, it applies so that the CFC is assumed to have been UK resident from the beginning of the CFC's first accounting period. The assumption of UK residence will continue to apply until the company ceases to be a CFC. The assumption has the effect that the CFC is, has been and will continue to be within the charge to corporation tax, and that its accounting periods are accounting periods for corporation tax purposes.

364. New subsection 371RD(2) clarifies that subsection (1) does not also require it to be assumed that there is any change in the place or places at which the CFC carries on its activities. This means that for the UK tax computation of profits the non UK resident company will be treated as undertaking its trading or business activities outside the UK (unless it is in fact carrying out activities through a PE in the UK). The subsection also requires that it be assumed that the CFC does not get the benefit of section 1279 of CTA 2009 (which provides an exemption for profits from securities free of tax to residents abroad).
365. New subsection 371RD(3) makes clear that where the CFC is actually UK resident immediately before the beginning of its first accounting period the assumption of UK residence does not as a consequence mean that there is a continuous period of UK residence running from the preceding period. This is ensured by making the additional assumption that its UK residence from the beginning of its first accounting period is not continuous with its (actual) UK residence before the beginning of that accounting period.
366. New subsection 371RD(4) assumes 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 with the exception of where the relevant accounting period is the CFC's first accounting period. New subsection 371RD(5) underpins the purpose of subsection (4) by explaining that the assumption is made in particular for the purposes of applying any relief which is relevant to two or more accounting periods.
367. New subsection 371RD(6) defines references to the CFC's first accounting period as being to the CFC's accounting period which begins when it becomes a CFC.
368. New section 371RE applies so that the CFC is assumed not to be a close company.
369. New subsection 371RF(1) assumes that any beneficial claims or elections have been made that would, on the assumption of UK residence, have been available in relation to any relief under the Corporation Tax Acts to the maximum amount that would be available under that provision, and to have been made within any applicable time limit.

370. New subsection 371RF(2) restricts the application of subsection (1) so that it does not cover a claim or election under section 18A of CTA 2009 (exemption for profits or losses of foreign PEs); section 1275 of CTA 2009 (relief for unremittable income); or, section 9A of CTA 2010 (designated currency of a UK resident investment company).
371. New section 371RG allows a chargeable company to vary any relief that has been assumed, as part of the corporation tax assumptions, to have been made for the purposes of computing the assumed taxable total profits and creditable tax of a CFC for an accounting period.
372. New subsection 371RG(1) applies so that if a notice is given to an officer of Revenue and Customs so requesting it can be assumed that the CFC:
- has not made for the accounting period a specified claim or election otherwise assumed automatically by the corporation tax assumptions at section 371RF(1),
 - to instead have made for the 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 the corporation tax assumptions at 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
 - 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.
373. New subsections 371RG(2) and (3) require the CFC's assumed total profits chargeable profits, the amounts to be relieved against those profits at step 2 in section 4(2) of CTA 2010 and creditable tax to be adjusted by applying the assumption set out in the notice, and disapplying the assumption set out at new subsection 371RF(1) to the extent necessary as a consequence.
374. New subsection 371RG(4) provides the time limits for submitting a notice under subsection (1). The notice must be given within 20 months after the end of the accounting period, or within such longer period as an officer of Revenue and Customs may allow. The subsection also restricts the giving of a valid notice to a company or companies determined by new subsections 371RG(5) or (6).
375. New subsection 371RG(4) states that a company may give a notice if it is a chargeable company and the percentage of the CFC's chargeable

profits apportioned to the company represents more than half of the total percentage of the CFC's chargeable profits apportioned to chargeable companies (see new subsection 371RG(7)).

376. New subsection 371RG(6) states that two or more companies may give a notice if the companies are all chargeable companies, and the percentage of the CFC's chargeable profits apportioned to the companies, taken together, represents more than half of the total percentage of the CFC's chargeable profits apportioned to chargeable companies (determined by reference to new subsection 371RG(7)).
377. New subsection 371RH(1) applies if a notice has been given to an officer of Revenue and Customs requesting that the CFC be assumed (applying the "corporation tax assumptions" and subject to meeting the requirements of section 9A and 9A(2) of CTA 2010) to have made an election under section 9A of that Act. This Part of the Acts applies to vary the designated currency of a UK resident investment company in the form specified in the notice.
378. New subsection 371RH(2) assumes that, where a notice is received designating a new functional currency, an election under section 9A of CTA 2010 has been made by the CFC and that sections 9A and 9B of that Act apply to determine the effect (if any) of that election.
379. New subsection 371RH(3) restricts the giving of a notice under this section to a company or companies falling within new subsection 371RH(4) or (5).
380. New subsection 371RH(4) specifies a company may give a notice if both of the following apply:
- the company would be likely to be a chargeable company in relation to the applicable accounting period were a CFC charge to apply in relation to that period
 - 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 per cent
381. New subsection 371RH(5) specifies two or more companies may together give a notice if the following applies
- the companies would all be likely to be chargeable companies in relation to the applicable accounting period were the CFC scheme to apply in relation to that period,
 - the percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to

apportioned to the companies, taken together, would represent more than half of X per cent.

382. New subsection 371RH(6) explains that in subsections (4) and (5) (and this subsection) the applicable accounting period means the accounting period of the CFC in which the election would take effect. X per cent means the total percentage of the CFC's chargeable profits for the applicable accounting period apportioned to chargeable companies were the CFC charge to be charged in relation to the applicable accounting period.
383. New subsection 371RI(1) assumes 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. The main effect of the assumption is to prevent the group relief provisions from applying.
384. New subsection 371RI(2) and (3) states that relief is to be ignored in determining the CFC's assumed taxable total profits for the relevant accounting period where 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 in applying the corporation tax assumptions the relief would reduce the CFC's assumed taxable total profits for the relevant accounting period. These subsections have the effect of restricting relief for losses in the CFC's profits computation where they have arisen to a UK PE of a CFC and are group relieved in the UK thereby preventing the losses from being relieved twice.
385. New subsection 371RJ(1) applies if the CFC incurred any capital expenditure on the provision of plant or machinery for the purposes of its trade before its first accounting period.
386. New subsection 371RJ(2) assumes that for the purposes of Part 2 of CAA 2001 (plant and machinery allowances) the plant or machinery was provided for purposes wholly other than those of the trade, and 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. This has the effect of bringing in a value equal to the market value of the plant and machinery employed in the trade on the CFC's first accounting period.
387. New subsection 371RJ(3) determines that the CFC's first accounting period is the CFC's accounting period which begins when it becomes a CFC. Other than this specific adaptation for the first accounting period normal rules apply for computing the capital allowances of a CFC.
388. New subsection 371RJ(4) links the section to Part 2 of CAA 2001.

389. New subsection 371RK(1) assumes that for the purposes of Part 18 of CTA 2009 (unremittable overseas income) in section 1274(1)(a), (3) and (4) of that Act references to the United Kingdom are references to the relevant territories.
390. New subsection 371RK(2) defines the relevant territories as the United Kingdom, the territory (if any) in which the CFC is resident as determined under Chapter 19, and any other territory in which the CFC is in fact resident at any time during the relevant accounting period. The modification within this section prevents income arising in the territory of residence from being excluded from charge where it is not possible to remit it to the UK.
391. New section 371RL(1) ensures that where the application of the Taxes Acts is dependent upon a purpose test which considers whether an arrangement is in whole or in part to obtain a tax advantage within the meaning given to it at section 1139(2)(a) to (d) of CTA 2010, the provisions also apply where the arrangement has as one of its main purposes the avoidance or reduction of a CFC charge.
392. New subsection 371RL(2) states that so far as they would not otherwise do so the Taxes Acts are assumed to apply to the arrangement in the same way as they would if the purpose of obtaining the advantage under section 1139(da) were the same as obtaining an actual advantage within the meaning of a tax advantage under section 1139(a) to (d). This links the reduction or prevention of a CFC charge to the definition of “tax advantage” arising to a UK company for the purposes of computing the CFC’s profits.
393. New subsection 371RM allows the rules on counteraction notices at section 81 TIOPA 2010 to apply in computing the creditable tax of a CFC.
394. New subsection 371 RM(1) 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 TIOPA 2010 would or might be met in relation to the CFC in the relevant accounting period.
395. Where subsection (1) applies new subsection 371RM(2) assumes 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 and that this should be by reference to purpose described at condition B of section 82.

Chapter 19 – residence of CFCs

396. New section 371SA sets out the basic application of the CFC residence rules by setting out two categories of residence where a CFC can be

taken to be resident for the purposes of this Part. The first category includes CFCs resident in territories identifiable by applying new section 371SB and the second category covers CFCs where the territory of residence cannot be identified by that section.

397. New subsection 371SA(1) covers the second category and provides that, if new subsection 371SA(2) applies, the territory in which the CFC will be taken to be resident for a relevant accounting period will be the territory in which the CFC is taken to be resident under the double taxation arrangements referred to in new subsection (2) or, if subsection (2) is not applicable, the territory in which the CFC is incorporated or formed.
398. New subsection 371SA(2) applies if the CFC is incorporated in the UK 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).
399. New subsection 371SA(3) states that this section is subject to new section 371EC (the residence requirement for the ETE) and step 1 in new subsection 371FB(1) (the tax exemption).
400. New section 371SB provides the rules to determine the territory in which a CFC is resident.
401. New subsection 371SB(1) states that the CFC is taken to be resident in the territory under the law of which it is liable to tax by reasons of its domicile, residence or place of management throughout the relevant accounting period.
402. New subsection 371SB(2) determines that where there could be two or more eligible territories of residence, the CFC can only be resident in one of those territories.
403. New subsection 371SB(3) sets out that the determination of that one eligible territory is established by going through the following subsections in turn. Where more than one of those subsections may apply to the residence of the CFC, the earlier or earliest subsection takes precedence.
404. New subsection 371SB(4) provides that where an election or designation of residence has been made for an earlier accounting period, the territory which is denoted in that election or designation is the territory of residence.
405. New subsection 371SB(5) requires that where the CFC's place of effective management is carried on in one of the eligible territories then that territory is the territory of residence.

406. New subsection 371SB(6) extends the above to the situation where the CFC's place of effective management is carried on in two or more territories. If this is the case, the territory in which more than 50 per cent of the CFC's assets are held (priced at their market value immediately before the end of the CFC's accounting period) is the territory of residence.
407. New subsection 371SB(7) provides that the territory in which more than 50 per cent of the CFC's assets are held (priced at their market value immediately before the end of the CFC's accounting period) is the territory of residence.
408. New subsection 371SB(8) sets out that, if an election is made in accordance with new subsection 371SC(1) specifying a territory then that territory is the territory of residence.
409. New subsection 371SB(9) provides that if an officer of Revenue and Customs designates a territory on a just and reasonable basis (see new section 371SC(5) to (7)) then that territory is the territory of residence.
410. New section 371SC provides for elections and designations about residence.
411. New paragraphs 371SC(1)(a)-(f) sets out in what form an election is to be made.
412. New subsection 371SC(2) allows a company to make an election where it is likely that the company would be a chargeable company if a CFC charge was charged in the relevant accounting period and more than half of the CFC's chargeable profits apportioned to chargeable companies would in those circumstances be apportioned and charged to the chargeable company.
413. New subsection 371SC(3) extends the subsection above to circumstances whereby two or more companies would be likely to be chargeable companies if a CFC charge were charged in the relevant accounting period and the aggregate of the CFC's chargeable profits apportioned to them represents more than half of the CFC's apportionable profits that would be apportioned to chargeable companies.
414. New subsection 371SC(4) defines X per cent for the purpose of subsections (2) and (3).
415. New subsection 371SC(5) states that a designation to an eligible territory made by an officer of Revenue and Customs is irrevocable.
416. New subsection 371SC(6) sets out that the officer making the designation must give notice of the designation to each of the

companies which would be likely to be a chargeable company were the CFC charge to be charged in relation to the relevant accounting period.

417. New subsection 371SC(7) specifies what information the notice must contain.
418. New subsection 371SC(8) sets out that the election or designation of residence will apply to the CFC's relevant accounting period and each successive accounting period (even if the interest-holders in the CFC or the extent of their interest change) until such time as subsection (9) below is applicable to an accounting period.
419. New subsection 371SC(9) provides that the election or designation will not continue to be valid for an accounting period if one or more territories which were eligible territories in the accounting period no longer fall within new subsection 371SB(1) or some other territory also falls within new subsection 371SB(1) in the later period.

Chapter 20 - Management

420. New section 371TA introduces Chapter 20 which covers collection and management matters relevant to the CFC rules. It explains that the HMRC Commissioners are responsible for the collection and management of the CFC charge. It also defines, for the purposes of Chapter 20 the terms "closure notice", "company tax return", "discovery assessment" and "the Taxes Act".
421. New section 371TB sets out the application of the Taxes Acts to the CFC charge.
422. New subsection 371TB(1) ensures that all enactments that apply generally to corporation tax shall apply to step 6 in new subsection 371BA(2), as though the amount were an amount of corporation tax.
423. New subsection 371TB(2) ensures that the application of subsection (1) is subject to any provisions of the Taxes Act and any necessary modifications.
424. New subsection 371TB(3) outlines that the enactments referred to in subsection (1) shall include those relating to:
- returns, accounts statements and reports,
 - assessment, collection and receipt of corporation tax,
 - rights of appeal, and
 - administration, penalties, interest on unpaid tax and priority of tax in insolvency cases.

425. New subsection 371TB(4) further outlines how subsection (1) shall apply for the purposes of TMA 1970. It shall apply so that:
- any reference to corporation tax shall include reference to a sum charged at step 6 in new subsection 371BA(2) (the main CFC charging provision), as if it were an amount of corporation tax, and
 - any reference to profits of a company shall include references to the percentage of the CFC's chargeable profits for the accounting period on which the company is charged at step 6 in new subsection 371BA(2).
426. New subsection 371TB(5) disapplies paragraph 10 of Schedule 18 to FA 1998 (claims or elections in company tax returns) and Schedule 1A to TMA 1970 (claims or elections not included in returns) from applying to an election under new subsection 371SB(8).
427. New section 371TC applies to just and reasonable apportionments in Part 9A.
428. New subsection 371TC(1) applies when an apportionment of a CFC's chargeable profits and creditable tax is to be made in accordance with new subsection 371PC(2) and a company tax return is made or amended adopting a particular basis of apportionment.
429. New subsections 371TC(2) and (3) give an officer of Revenue and Customs the power to determine that another basis is to be used for the apportionment and sets out the basis on which that determination can be appealed.
430. New subsection 371TC(4) specifies that the only ground for questioning the basis of apportionment at new subsection (2) is that the officer's determination is not just and reasonable.
431. New section 371TD introduces the reliefs that may be given against a CFC charge.
432. New subsection 371TD(1) provides that new subsection 371TD(2) will apply, where apart from that subsection, 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.
433. New subsection 371TD(2) permits the company to make a claim for relief in respect of the "relevant allowance".

434. New subsection 371TD(3) outlines that the relief should be given by setting off the “relevant sum” against the sum charged to the company at step 6 in new subsection 371BA(2).
435. New subsection 371TD(4) defines the “relevant sum” as a sum equal to corporation tax at the appropriate rate, on the amount of relevant allowance claimed.
436. New subsections 371TD(5) and (6) outlines that the “relevant allowance” specified in the claim is to be taken for the purposes of the Taxes Acts as having been allowed as a deduction. No other relief is available against the sum charged on a company at step 6 in new subsection 371BA(2).
437. New subsection 371TD(7) defines the terms “the appropriate rate”, “the relevant corporation tax accounting period” and “relevant allowance”.
438. New section 371TE outlines the rules for where a “relevant appeal” involves any question, about the application of this Part to a particular person where the resolution of that question is likely to affect the liability of any other person in relation to the CFC concerned.
439. New subsection 371TE(2) defines a “relevant appeal”.
440. New subsections 371TE(3) to (6) sets out how that appeal is to be conducted.
441. New section 371TF introduces the rules for the recovery of a sum charged on a company (“the defaulting company”) under step 6 in new subsection 371BA(2) where the amount remains unpaid on the date it was due and payable.
442. New subsection 371TF(2) permits an officer of Revenue and Customs to 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.
443. New subsection 371TF(3) outlines the amounts for which the company receiving the notice (“the responsible company”) shall be liable where such a notice is issued.
444. New subsection 371TF(4) details that new subsection 371TF(5) shall apply where the amount payable by the responsible company is not fully paid within 3 months after the notice is given.
445. New subsection 371TF(5) permits the outstanding amount to be recovered from the defaulting company, without removing the right of recovery from the responsible company under subsection (3).

Chapter 21 – Supplementary provision

446. New section 371UA introduces a number of definitions for the purposes of this Part, including “arrangement”, “non-trading income” and “trading income”.
447. New section 371UB defines connected and related persons.
448. New subsection 371UB(2) outlines that section 882(2) to (7) CTA 2010 (“associated persons”) and section 1122 CTA 2010 (“connected persons”) shall apply.
449. New subsection 371UB(3) details when a person is “related” to a CFC. This shall be when either:
- the person is connected or associated with the CFC, or
 - at least 25 per cent of the CFC’s chargeable profits would be apportioned to the person at step 4 of subsection 371BA(2) were that step required to be taken in relation to the accounting period in question, or
 - if the CFC is a CFC by virtue of section 371AC, the person is connected or associated with either or both of the controllers.
450. New subsection 371UB(4) outlines that a person shall be taken to be connected, associated or related to the CFC if it is reasonable to suppose they would have been so connected, associated or related had it not been for an arrangement falling with the anti avoidance provision at new subsection 371AE(4) (the control provisions).
451. New section 371UC applies to cell companies and similar types of company.
452. New subsection 371UC(1) applies Part 9A to unincorporated cells and incorporated cells as if they were non-UK resident companies.
453. New subsection 371UC(2) states that an “unincorporated cell” is an identifiable part of a relevant company (by whatever name known) where it meets the condition in new subsection 371UC(3).
454. New subsection 371UC(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:
- assets and liabilities of the relevant company may be wholly or mainly allocated to the part of the company in question,

- liabilities so allocated are to be met wholly or mainly out of assets so allocated, and
 - 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.
455. New subsections 371UC(4) and (5) define an “incorporated cell” and “relevant company” respectively as:
- an entity (by whatever name known) which is not itself a company (ignoring this section), but which under the law under which the relevant company is incorporated or formed has a legal personality distinct from that of the relevant company
 - a company resident outside the UK which is not a CFC.
456. New subsection 371UC(6) reserves a power for the Treasury to make regulations to provide for this Part to apply in relation to parts of companies falling within specified descriptions, or other entities falling within specified descriptions which are not themselves companies (ignoring this section), as if they were non-UK resident companies.
457. New subsection 371UC(7) provides that regulations made under subsection (6) may add to, repeal or otherwise amend subsections (1) to (5).
458. New section 371UD defines where a person has an “interest” in a company for the purposes of this Part.
459. New subsection 371UD(2) defines persons who have an interest in a company as:
- any person who has, or is entitled to acquire, share capital or voting rights in the company,
 - any person who has, or is entitled to acquire, a right to receive or participate in distributions of the company,
 - 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
 - any other person who, either alone or together with other persons, has control of the company.
460. New subsection 371UD(3) excludes the rights which a person has as a loan creditor of a company from being an interest in the company.

461. New subsection 371UD(4) defines “loan creditor” by reference to section 453 of CTA 2010, but ignoring subsection (4) of that section.
462. New subsection 371UD(5) extends a person’s entitlement to do anything under subsection (2) to cover cases in which a person is presently entitled to do it at a future date, or will at a future date be entitled to do it.
463. But new subsection 371UD(6) restricts an entitlement to secure that the income or assets of a company will be applied, as mentioned in paragraph (2)(c), where the entitlement is contingent upon a default of the company (or any other person under any agreement) unless the default has occurred.
464. New subsection 371UD(7) outlines that new subsection 371UD(8) shall apply where a CFC is a CFC by virtue of the anti avoidance provisions at section 371AE.
465. New subsection 371UD(8) states that a persons “interests” and the nature of those interests shall be determined by applying new subsection 371AE(3) and 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 new subsection 371AE(4).
466. New subsection 371UD(9) sets out the conditions for new subsections 371UD(10) and (11) to apply. The conditions are that:
- apart from subsection (10), a person has, or two or more persons together have, an interest in a company (“company 1”), and
 - company 1 has an interest in another company (“company 2”). For the purposes of subparagraph 9(b) “interest” includes an interest by virtue of subsection (10).
467. New subsection 371UD(10) outlines that the person, or persons, mentioned in paragraph (9)(a) are to be taken as having an interest in company 2.
468. New subsection 371UD(11) details that for the purpose of references to one person’s interest in a company being the same as another person’s interest, a person or persons mentioned in paragraph (9)(a) is taken as having, to the extent of that person’s (or persons) interest in company 1, the same interest as company 1 has in company 2.
469. New subsection 371UD(12) outlines that where 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.

470. New section 371UE outlines that Regulations under this Part may contain incidental, supplemental, consequential and transitional provision and savings.

Part 2 of the Schedule

471. Part 2 deals with consequential amendments
472. Paragraphs 2 and 3 omits the current CFC rules from ICTA
473. Paragraphs 4 and 5 amend the definition of tax advantage in section 1139 CTA 2010 so that it includes any advantage created through the avoidance or reduction of a CFC charge.
474. Paragraphs 6 and 7 amend the definition of financing income amounts which is given in section 314 TIOPA 2010 for the purposes of Part 7 TIOPA (Tax Treatment of Financing Costs and Income). This prevents any double charge arising from the combination of Parts 7 and 9A TIOPA.

Part 3 of the Schedule

475. Part 3 will contain transitional and commencement provisions.

BACKGROUND

476. This measure provides for a new CFC regime to be introduced in Finance Bill 2012 and supports the Government's objective to deliver a more competitive corporate tax system.
477. The policy objectives of the new CFC regime are to:
- introduce a modernised CFC regime that better reflects the way that businesses operate in a global economy whilst maintaining adequate protection of the UK tax base;
 - exempt profits where there is no artificial diversion of UK profits; and
 - exempt profits arising from genuine economic activities undertaken overseas.
478. The Government announced this measure at the Budget in June 2010 and outlined the policy proposals on 29 November 2010 as part of the Corporate Tax Reform document. This document detailed proposals for interim improvements to the CFC rules which were legislated in Finance (No3) Act 2011.

479. Detailed proposals for this measure were published for consultation in *Controlled Foreign Companies (CFC) reform* in June 2011. On 6 December 2011 the Government published *Controlled Foreign Companies (CFC) reform: response to consultation* which provides an update on the developments on the reform of Controlled Foreign Companies rules following consultation and includes a summary of the responses received and a technical note which gives an overview of the legislation. All documents are available on the HM Treasury website.
480. If you have any questions about this change, or comments on the legislation, please contact Carol Johnson on 020 7270 6032 (email: carol.johnson@hmtreasury.gsi.gov.uk) or Andrew Page on 020 7147 2673 (email: andrew.page@hmrc.gsi.gov.uk).

2012 No.

CORPORATION TAX

**The Controlled Foreign Companies (Excluded Territories)
Regulations 2012**

<i>Made</i>	- - - -	***
<i>Laid before the House of Commons</i>		***
<i>Coming into force</i>	- -	***

The Commissioners for Her Majesty's Revenue and Customs make these Regulations in exercise of the powers conferred by section 371EB(2) and (3) of the Taxation (International and Other Provisions) Act 2010(a).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Controlled Foreign Companies (Excluded Territories) Regulations 2012 and come into force on ***.

(2) These Regulations have effect ***.

Interpretation

2. In these Regulations—

“the Schedule” means the Schedule to these Regulations;

“TIOPA 2010” means the Taxation (International and Other Provisions) Act 2010.

Excluded territories

3. A territory listed in Part 1 of the Schedule is an excluded territory for the purposes of Chapter 5 of Part 9A of TIOPA 2010 (the excluded territories exemption).

Excluded territories exemption not to apply in specified cases

4. In a case specified in Part 2 of the Schedule, the excluded territories exemption is not to apply even though the conditions set out in subsection (1)(a) to (d) of section 371EB of TIOPA 2010 (the excluded territories exemption: the basic rule) are met for the CFC's accounting period.

Revocation

5. The following Regulations—

(a) the Controlled Foreign Companies (Excluded Companies) Regulations 1998(b);

(a) 2010 c. 4. As inserted by *** of the Finance Act 2012 (c. *).

(b) S.I. 1998/308.

- (b) the Controlled Foreign Companies (Excluded Companies Amendment) Regulations 2002**(a)**;
- (c) the Controlled Foreign Companies (Excluded Companies Amendment No. 2) Regulations 2002**(b)**;
- (d) the Controlled Foreign Companies (Excluded Companies Amendment) Regulations 2005**(c)**;
- (e) the Controlled Foreign Companies (Excluded Companies Amendment No. 2) Regulations 2005**(d)**;

are revoked with effect from ***.

		<i>Name</i>
		<i>Name</i>
Date	Two of the Commissioners for Her Majesty's Revenue and Customs	

(a) S.I. 2002/1963.
(b) S.I. 2002/2406.
(c) S.I. 2005/185.
(d) S.I. 2005/186.

SCHEDULE

Regulations 3 and 4

PART 1

Excluded Territories

Afghanistan	Faroe Islands	Pakistan
Algeria	Fiji	Panama
Angola	Finland	Papua New Guinea
Argentina	France	Peru
Armenia	Gabon	Philippines
Aruba	Gambia	Poland
Australia	Germany	Portugal
Austria	Ghana	Puerto Rico
Azerbaijan	Greece	Republic of Korea
Bangladesh	Guyana	Russia
Barbados	Honduras	Saudi Arabia
Belarus	Iceland	Senegal
Belgium	India	Sierra Leone
Belize	Indonesia	Slovakia
Benin	Iran	Slovenia
Bolivia	Israel	Solomon Islands
Botswana	Italy	South Africa
Brazil	Ivory Coast	Spain
Brunei	Jamaica	Sri Lanka
Burundi	Japan	Swaziland
Cameroon	Kenya	Sweden
Canada	Lesotho	Tanzania
China	Libya	Thailand
Colombia	Luxembourg	Trinidad and Tobago
Croatia	Malawi	Tunisia
Cuba	Malaysia	Turkey
Czech Republic	Malta	Uganda
Democratic Republic of the Congo	Mexico	Ukraine
Denmark	Monaco	United States
Dominican Republic	Morocco	Uruguay
Ecuador	Namibia	Venezuela
Egypt	Netherlands	Vietnam
El Salvador	New Zealand	Zambia
Estonia	Nigeria	Zimbabwe
Falkland Islands	Norway	

PART 2

Specified cases

1. For the purposes of regulation 4 a specified case is a CFC which—
 - (a) is authorised and regulated to carry on insurance business, and
 - (b) carries on that insurance business in Luxembourg.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations exercise powers conferred by the Taxation (International and Other Provisions) Act 2010 (c. 4) (“TIOPA 2010”) in relation to the excluded territories exemption (“the ETE”) which is part of the controlled foreign company (“CFC”) legislation of TIOPA 2010. The ETE will exempt a CFC resident in a territory where the CFC’s income is taxed at a rate similar to the UK main corporation tax rate. It will do so in part by way of a list of territories that would qualify as an excluded territory for the purposes of the ETE. Other conditions will also have to be met as part of the ETE. If the ETE applies for a CFC’s accounting period all of its profits will be exempted from charge under the CFC legislation.

Regulation 1 provides for citation, commencement and effect, and regulation 2 for interpretation.

Regulation 3 and Part 1 of the Schedule give a list of excluded territories for the purposes of Chapter 5 of Part 9A of TIOPA 2010.

Regulation 4 and Part 2 of the Schedule provide that the excluded territories exemption is unavailable in respect of a CFC in a specified case, even though the conditions set out in subsection (1)(a) to (d) of section 371EB of TIOPA 2010 are met. The specified case concerns insurance business in Luxembourg.

Regulation 5 revokes the Controlled Foreign Companies (Excluded Companies) Regulations 1998 (S.I. 1998/3081), the Controlled Foreign Companies (Excluded Countries) (Amendment) Regulations 2002 (S.I. 2002/1963), the Controlled Foreign Companies (Excluded Countries) (Amendment No. 2) Regulations 2002 (S.I. 2002/2406), the Controlled Foreign Companies (Excluded Countries) (Amendment) Regulations 2002 (S.I. 2005/185) and the Controlled Foreign Companies (Excluded Countries) (Amendment No. 2) Regulations 2002 (S.I. 2005/186) with effect from ***.

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

**EXPLANATORY MEMORANDUM TO
THE CONTROLLED FOREIGN COMPANIES (EXCLUDED TERRITORIES)
REGULATIONS 2012**

[2012] No. [XXXX]

1. This explanatory memorandum has been prepared by HM Revenue & Customs (“HMRC”) and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Regulations provide a list of excluded territories for the purposes of the excluded territories exemption (“ETE”) and set out a specific case in which the ETE is not to apply.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 The Regulations replace the Controlled Foreign Companies (Excluded Companies) Regulations (SI 1998/3081) which are revoked from the date the Regulations take effect.

4. Legislative Context

4.1 Subsections (2) and (3) of section 371EB of Part 9A of the Taxation (International and Other Provisions) Act 2010 (TIOPA)¹ detail the powers used by the Regulations. The powers are being used for the first time in making the Regulations. The powers allow for, the list of excluded territories to be amended, specification of further conditions which need to be met in order for a controlled foreign company (“CFC”) to benefit from the ETE, and specification of cases to which the ETE will not apply.

4.2 The ETE is an exemption from the CFC provisions in Part 9A of TIOPA by the Finance Act 2012 (“the CFC legislation”).

4.3 The CFC legislation itself will, in certain circumstances, impose a charge (equivalent to corporation tax) on UK resident companies in respect of overseas companies which are controlled from the UK and in which the UK resident company has a specified interest. There are various exemptions from the CFC legislation including the ETE. The ETE broadly replaces the Excluded Countries Exemption (mainly found in SI 1998/3081) which was part of the previous CFC legislation (mainly found in Chapter IV of Part XVII of ICTA 1988).

¹ Inserted by the Finance Act 2012.

5. Territorial Extent and Application

5.1 The Regulations apply to all of the United Kingdom.

6. European Convention on Human Rights

As the Regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The CFC legislation, of which the ETE is part, is anti-avoidance legislation, the aim of which is to prevent the diversion of UK profits to low tax territories. Reform of the CFC legislation is intended to improve the UK's international tax competitiveness whilst retaining adequate protection for the UK's corporate tax base.

7.2 Within the CFC legislation the purpose of the ETE is to exempt those CFC's that pose a low risk to the UK corporate tax base due to their territory of residence. The ETE will exempt CFCs resident in territories where the CFC's income is taxed at a rate similar to the UK main corporation tax rate. It will do so in part by way of a list of territories that qualify as excluded territories for the purposes of the ETE. The Regulations set out that list of territories.

7.3 Other general conditions will also have to be met as part of the ETE. If the ETE applies for a CFC's accounting period all of its profits will be exempted from charge under the CFC legislation.

- *Consolidation*

7.4 Not applicable

8. Consultation outcome

8.1 A consultation document was published in June 2011 on proposals for wider reform of the previous CFC legislation and representations on this were extensive. A further consultation on the draft CFC legislation (including the Regulations) took place from 6 December 2011.

8.2 As part of the consultation process HMRC (along with HM Treasury) met with various interested parties including business and their representatives and actively sought their input into the proposals and the draft CFC legislation.

8.3 The outcome of the consultation was that business wanted the ETE to have as many territories as possible on the excluded territories list in the Regulations and to have only a few targeted general conditions. It was considered that this would make the exemption simpler to apply than the previous Excluded Countries Exemption which the ETE replaces. Further information can be found in the Tax Information and Impact Note published on HMRC website.

9. Guidance

9.1 Guidance on the operation of the ETE, of which the Regulations form part, will be included in the wider update of the International Manual concerning the CFC legislation. The Guidance will be published on the HMRC website in due course.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible as those businesses already claiming exemption under the Excluded Countries Exemption will in the vast majority of cases still be eligible for the ETE.

10.2 The impact on the public sector is nil.

10.3 A Tax Information and Impact Note covering the Regulations will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

11. Regulating small business

11.1 The Regulations apply to small business in the same way as larger business. It will however be larger businesses that have CFCs as part of their group structure which will fall within the CFC legislation. No special approach for small business is therefore necessary.

12. Monitoring & review

12.1 HMRC will keep the Regulations under review to ensure that they meet the policy objectives set out above in section 7.

13. Contact

Mary Sharp or Stephen Moore at HMRC Tel: 0207 147 2656 or 0207 147 0797 (email: mary.sharp@hmrc.gsi.gov.uk or stephen.j.moore@hmrc.gsi.gov.uk) can answer any queries regarding the Regulations.