

**EXPLANATORY NOTE**

**CLAUSE 180 SCHEDULE 20: CONTROLLED FOREIGN COMPANIES AND FOREIGN PERMANENT ESTABLISHMENTS**

**AMENDMENTS 46 to 117**

**SUMMARY**

This clause and schedule provide for a new regime for controlled foreign companies (CFC) to be inserted as Part 9A of the Taxation (International and Other Provisions) Act 2010 (TIOPA), and repeal the current CFC rules in Chapter 4 of Part 17 of the Income and Corporation Taxes Act 1988 (ICTA). The clause and schedule also provide for the new regime to apply, with necessary adaptations, to the rules for foreign permanent establishments in Chapter 3A of Part 2 of Corporation Tax Act 2009 (CTA 2009).

Statutory references in this explanatory note are to TIOPA unless specified otherwise.

These amendments fall into 6 categories:

1. Trading assets and BLAGAB
2. Non-trading finance profits
3. Minor clarificatory amendments
4. Apportionment provisions, “control”, and interests in companies
5. Permanent establishments
6. Other amendments, commencement and transitional provisions.

**Trading assets and BLAGAB**

Chapter 2 provides for the CFC charge. Within Chapter 2, sections 371BG and 371BH provide for cases where shares in a CFC are held as trade assets, or otherwise give rise to income for corporation tax purposes.

Amendments 46, 47, 48, 55, 89 and 111 replace most of the two sections and make minor consequential changes.

Amendments 46 and 47 make consequential changes to cross-references.

Amendment 48 replaces section 371BG in full and replaces the first two subsections of section 371BH with new subsections (1) to (2H).

New section 371BG(1) introduces the term ‘CC’ to refer to a company that holds a relevant interest in a CFC in respect of which a CFC charge will apply. New subsection (2) has effect for CC if conditions A to C are met.

New subsections (2) and (3) modify the operation of Step 5 in section 371BC(1) in a case where section 371BG applies. The modification is to omit so much of the amounts P% and Q% as reflects the relevant interest as described in section 371BG.

P% and Q% in Step 5 refer respectively to the proportions of the CFC’s chargeable profits and its creditable tax that are taken into account in calculating CC’s CFC charge. Therefore the effect of these subsections is to give exemption from the CFC charge for profits attributable to the relevant interest described in section 371BG, without affecting any CFC charge that may arise from any other relevant interest.

New subsection (4) defines Condition A which is met if the relevant interest is held wholly or partly by way of a direct or indirect holding by CC of shares in the CFC.

New subsection (5) defines Condition B which is met if any increase in the value of the shares mentioned in Condition A is brought into account in determining the income of CC for corporation tax purposes.

New subsection (6) defines Condition C which is met if any dividend or other distribution received by CC directly or indirectly from the shares mentioned in Condition A is brought into account in determining the income of CC for corporation tax purposes.

New subsections (7) and (8) provide that Conditions B and C are taken to be met if:

- CC has the relevant interest mentioned in Condition A only by virtue of new section 371OB(3) (an interest held by an open-ended investment company (OEIC)) or new subsection 371OB(4) (an interest held by the trustees of an authorised unit trust);
- the CFC is an offshore fund (within the definition of section 355) that does not meet the qualifying investments test at section 493 of CTA 2009 (that is, it is a ‘bond fund’); and
- Conditions B and C would be met if the offshore fund met the qualifying investments test.

New subsection (9) makes the effect of section 371BG subject to new section 371BH, which has the effect of restoring the CFC charge if certain conditions are met.

New section 371BH modifies the application of Step 5 of new section 371BC(1) for companies that carry on basic life assurance and general annuity business (BLAGAB). This company is referred to as 'CC'.

New subsections (1) and (2) set out the conditions to be met if Step 5 at new section 371BC(1) is to be modified in line with new section 371BH(2A). The conditions for CC to be a chargeable company are:

- (a) CC carries on BLAGAB during the relevant corporation tax accounting period;
- (b) the life insurance I - E rules apply to CC for the relevant corporation tax accounting period;
- (c) certain conditions set out in the section are met in relation to a relevant interest that CC holds in a CFC. Conditions D and G must both be met and at least one of Conditions E or F must be met for the section to apply.

New subsection (2A) provides, where the conditions in new subsection (1) are met, for the modification of Step 5 in the main CFC charging provision (new section 371BC(1)). The modifications limit the sum charged to the policyholders' share of the BLAGAB component of the CFC's apportioned profit (see the note on new subsection (2G) below), which is charged at an 'appropriate rate'.

The appropriate rate is determined by reference to section 102 of the Finance Act 2012, or an average rate where there is more than one such rate over the period. The CFC's creditable tax to be apportioned to the company is calculated by reference to the proportion the policyholders' share of the BLAGAB component of the apportioned profit is of the whole of the apportioned profit.

New subsection (2B) defines Condition D which is met if the relevant interest is held wholly or partly by way of a direct or indirect holding by CC of shares in the CFC.

New subsections (2C) and (2D) define Condition E which is met if no part of any increase in the value of the shares mentioned in Condition D is brought into account in determining the income of CC for the purposes of the I-E profit computation.

New subsections (2E) and (2F) define Condition F which is met if no part of any dividend or other distribution received by CC directly or indirectly from the shares mentioned in Condition D is brought into account in determining the income of CC for the purposes of the I-E profit computation.

New subsection (2G) defines condition G which is met if any part of the shares mentioned in Condition D are held for the purposes of CC's long term insurance business.

New subsection (2H) defines 'the apportioned profit' as the part of P% that is attributable to the relevant interest mentioned in Condition D.

Amendment 55 prevents sections 371BG and 371BH from increasing the amount of profits that are CFC chargeable profits by virtue of Chapter 6 of Part 9A.

Amendment 89 amends the rules for giving relief against the CFC charge in the case where the charge arises under section 371BH. New section 371UD(8) makes two changes in such a case:

- the rate of relief is matched with the rate at which the CFC charge is made; and
- the only allowances for which relief may be given are BLAGAB management expenses.

Amendment 111 ensures that any reduction in the CFC charge made in accordance with sections 371BG and 371BH is reflected in a reduction in the financing income amount taken into account under section 314A.

### **Non-trading finance profits**

The rules relating to the treatment of non-trading finance profits are contained within Chapters 3, 5 and 9 of Schedule 20.

Chapter 9 sets out the rules providing for full or partial exemption of non-trading finance profits where qualifying conditions are met.

The Chapter 9 rules apply to profits from overseas intra-group financing and include a number of anti-avoidance provisions to prevent banking and insurance businesses benefiting from the exemptions where there is a UK tax advantage.

The rules as drafted however were too broad, in effect denying such businesses access to the Chapter 9 exemptions. The non-trading finance profit amendments address this issue and ensure that the anti-avoidance provisions are fully effective and operate as intended.

Other amendments within this category make changes that ensure the legislation relating to non-trading finance profits applies as intended and makes its intended effect clearer, in some cases making minor improvements to the drafting to ensure there are no inappropriate results.

### **Amendment 49**

Section 371CB(5) provides that funds arising from the categories listed will not be treated as profits arising from the investment of funds held by the CFC for the purposes of an exempt trade or property business. Amendment 49 largely replaces the first category of excluded funds at section 371CB(5)(a) with an expanded version which applies to funds held only or mainly because of a prohibition or restriction on CFCs paying dividends or making other distributions that is

- imposed by the law of the territory in which the CFC is resident; or
- imposed by the articles of association or other documentation governing the manner in which distributions may be made by the CFC; or
- imposed as a result of an arrangement entered into by or in relation to the CFC.

### **Amendments 50 and 51**

Section 371CE(2) provides for a group treasury company within section 316(5) to (11) to be able to issue a notice to HMRC requesting that its trading finance profits be treated as non-trading finance profits for the purposes of Part 9A so that its finance profits fall to be dealt with under Chapters 3, 5 and 9 rather than Chapters 4 and 6.

Amendment 50 inserts new section 371CE(2A) which provides that where a group treasury company issues a notice under section 371CE(2) then those profits will not be treated as incidental non-trading finance profits falling within section 371CB(3) and (4). These subsections exclude non-trading finance profits from the application of Chapters 5 and 9 where they have arisen from the investment of funds held for the purposes of an exempt trade or property business. A group treasury company issuing a notice will not be able to exclude any of its finance profits under the incidental rule.

The group treasury notice provision borrows terms from the worldwide debt cap rules at Part 7. Those rules do not apply to groups that are not large. Amendment 51 inserts new section 371CE(3A) which ensures that a group that is not large is able to issue a notice under section 371CE(2).

### **Amendment 52**

Section 371EC(4) defines “relevant UK funds and other assets” for Chapter 5 purposes. Amendment 52 ensures that the four categories set out in section 371EC(4)(a) to (d) are expressed consistently.

### **Amendments 53, 54 and 56**

For the purposes of the banking and insurance capitalisation tests in section 371FA within Chapter 6, section 371FB adds to a CFC’s free capital or free assets, as the case may be, the relevant amount of any principal outstanding on a qualifying loan relationship to the CFC where the CFC is the ultimate debtor.

The relevant amount of principal that is added is determined by a formula that compares the total amount of exempt profits with the total amount of profits of the qualifying loan relationship and this percentage is applied to the principal.

Amendment 56 introduces new section 371FBA which gives a similar result to section 371FA where the qualifying loan relationships are made by exempt permanent establishments within Chapter 3A of Part 2 of CTA 2009 to banking or insurance CFCs that are ultimate debtors. The result is that loans that are treated as qualifying loan relationships from exempt permanent establishments will therefore be counted as equity for Chapter 6 purposes in the same way as loans that are treated as qualifying loan relationships from CFCs.

Amendments 53 and 54 make minor amendments consequential upon Amendment 56.

### **Amendments 59 and 72**

Sections 371IB(8) and (9) limit sums that will be qualifying resources for Chapter 9 purposes where the associated qualifying loan relationship has been put in place as part of an arrangement under which a member of the CFC group takes on debt in the UK. These subsections are targeted at circumstances where the arrangement results in an increase in net debt or net interest expense in the UK group. Amendment 59 ensures that the section operates as intended by more targeting a narrower range of circumstances where a member of the CFC group takes on debt in the UK. The circumstances are where the member borrows in the UK from a UK resident who is not a member of the CFC group person or from a non UK resident person.

A similar principle is applied in section 371IH(8) which is designed to prevent groups from refinancing external debt via the UK. Amendment 72 ensures that the section only applies where the relevant UK funds or other assets is funded by a loan made to a UK connected company by a UK resident person not connected with the UK company or by a non UK resident person.

### **Amendments 60 to 63**

Section 371IE sets out the matched interest rule which broadly provides that any CFC charge in respect of non-trading finance profits of the CFC should be limited to the net interest expense of the UK group in the accounting period. The rule borrows terms from the worldwide debt cap rules in Part 7 TIOPA 2010.

Where the UK group is in a net interest income position even before the application of Chapters 5, 6, 9 and section 314A then all of the CFC's non-trading finance profits will be exempt under the matched interest rule.

Section 371IE also sets out how to determine the amount of non-trading finance profits that will be exempt where the UK group moves into a net interest income position as a result of a CFC charge under Chapters 5, 6 or 9 and the application of section 314A.

Where the group includes a UK company or UK companies whose main business is that of banking or insurance then any debits or credits arising from the finance trade are excluded when calculating the tested income and tested expense amounts for the purposes of the application of the matched interest rule only.

Amendment 60 replaces subsection (1)(c) so that its requirements are set out more clearly. These are that the CFC charge adds to the finance income amounts that are taken into account for the purposes of the worldwide debt cap **and** that the increase includes the leftover profits. Leftover profits are the non-exempt part of partially exempt chargeable non-trading finance profits. Amendment 61 makes a consequential change.

Amendments 62 and 63 replace subsections (6) and (9) with new subsections (6) to (6E), in order to set out more clearly the modifications that are required to the meanings of terms taken from the worldwide debt cap. In particular, it is made clear that debits and credits arising from UK banking or insurance business are to be disregarded in the computation of the tested income amount and the tested expense amount for the purposes of this section, but they are not disregarded in the computation of any finance income amount

#### **Amendments 64 to 66**

Section 371IF sets out the steps to be taken to determine the profits of a qualifying loan relationship for Chapter 9 purposes. Amendments 64 to 66 largely replace the steps in section 371IF in order to ensure that the methodology brings into account all of the non-trading finance profits that might arise in determining the profits of a qualifying loan relationship for Chapter 9 purposes. This will include foreign exchange gains and losses on relevant loan relationships that are the source of funds either directly or on a just and reasonable basis for qualifying loan relationships. It will also include debits and credits in respect of hedges of risk associated with those relevant loan relationships.

The CFC may have a surplus of non-trading debits carried forward from previous accounting periods i.e. a deficit which should also be allocated between the CFC's qualifying and non-qualifying loan relationships. Amendment 66 provides for a non-trading deficit carried forward from previous accounting periods of the CFC to be allocated on a just and reasonable basis between the CFC's qualifying and non-qualifying loan relationships at Step 5 of section 371IF.

#### **Amendments 67, 73 to 75 and 98**

These five amendments have been made to correct a minor error and to improve clarity of drafting.

#### **Amendments 68 to 71 and 102**

The ultimate debtor rule in section 371IG(3) to (5) does not apply by virtue of section 371IG(7) where a CFC makes a loan to a connected company which is controlled by the UK resident person or persons who control the CFC (a “qualifying company”) and which carries on a banking or insurance business. In this case, the bank or insurance CFC is treated as the ultimate debtor for the purposes of determining whether the loan is a qualifying loan relationship, rather than the person to whom money is ultimately lent (e.g. a customer), provided that:

- the funds received are used in the ordinary course of the company’s banking or insurance business; and
- the ultimate borrower is not a UK resident qualifying company.

However, where a loan is made by a CFC it will not qualify as a qualifying loan relationship under section 371IH(6)(b) if it is connected to an arrangement which gives rise to a deduction in calculating the trading profits of a UK resident connected with a banking or insurance business.

Further, section 371IH(5) may apply so that a creditor relationship of the CFC cannot be a qualifying loan relationship if it is, or is connected (directly or indirectly) to, an arrangement the main purpose, or one of the main purposes, of which is for the ultimate debtor in relation to the creditor relationship to provide (directly or indirectly) funding for a loan to another person. Where an overseas bank is treated as the ultimate debtor by section 371IG(7) it is likely that the funds will be used to provide a loan to another person, namely a third party customer so that section 371IH(5) would potentially apply.

Amendments 68 to 71 address the issues caused by the interaction of the above rules to ensure that a foreign banking subsidiary can on-lend to a UK qualifying company in the ordinary course of its business provided that there is no arrangement in place that creates a UK tax advantage either as a result of the ultimate debtor “switch-off” or by creating tax deductions in the UK for UK banking and insurance businesses. They also make some minor drafting improvements.

Amendment 69 incorporates a further change to the anti-avoidance provision at section 371IH(5). This ensures that where a group structures on-lending so that it does not fall within the Chapter 9 definition of loan relationship but is intended otherwise to give a return to the creditor that is economically equivalent to interest, the creditor relationship that is the source of the on-lending will not be a qualifying loan relationship.

Amendment 102 ensures that the same rule applies in the context of property business profits at section 371VI(3). The amendment provides that debits and credits on a loan to a CFC will form part of the CFC’s exempt property business profits unless it is used to any extent for the purposes of providing a loan to any other person or enters into an arrangement that is intended to give a return to the creditor that is economically equivalent to interest.



**Amendment 112**

Section 314A adds to the finance income amount of a UK company for worldwide debt cap purposes any amount apportioned to the UK company in respect of finance profits that fall within Chapters 5, 6 and 9 of Part 9A. Amendment 112 ensures that the limitation in subsection (4) to the finance amounts that may be included applies to Chapter 9 finance profits as well as Chapter 5 and 6 finance profits. Where the finance profits fall within these chapters, amounts related to derivative contracts within Part 7 CTA 2009 are not included within relevant finance profits to be added to the finance income amount. Also excluded are exchange gains, reversals of impairment losses and profits from related transactions in accordance with section 314(3) TIOPA. These exclusions ensure consistency between amounts added to the finance income amounts as a result of a CFC apportionment and amounts that are included within the finance income amount more generally under the debt cap rules.

**Minor clarificatory**

A number of amendments make changes that ensure the legislation in Part 9A applies as intended and make its intended effect clearer, in some cases correcting minor drafting errors that would lead to inappropriate results.

**Amendments 57 and 58**

Section 371GA(4) outlines the extent to which reinsurance contracts fall within Chapter 7, the CFC charge gateway relating to captive insurance business. The aim of section 371GA(4) is to capture situations where a group aims to bypass section 371GA(2)(a) by first entering into a contract of insurance with an unconnected person before reinsuring the risk out to a CFC. Amendments 57 and 58 clarify the intended effect of subsection 4 by removing the wording in brackets at the end of the subsection and by introducing new section 371GA(8) which defines what is meant by an original contract of insurance. Amounts arising from reinsurance contracts are captured where the original contract of insurance would fall within subsection (2)(a). An original contract of insurance can therefore only fall within subsection (2)(a) to the extent that the UK resident company (or UK permanent establishment) taking out that original contract is connected with the CFC to which reinsurance is carried out. This extends to cases where there is a chain of reinsurance between the original contract of insurance and the final contract of reinsurance.

**Amendments 76 and 77**

Section 371NC sets out the circumstances in which “the local tax amount” may need to be reduced for the purposes of taking the steps to determine whether the tax exemption in Chapter 14 applies for a CFC’s accounting

period. Amendments 76 and 77 ensure that subsections (5) and (6) apply where tax is paid by any person in respect a CFC's chargeable profits and it is subsequently repaid or paid in respect of a credit to any person including the CFC. Where such a payment or repayment has occurred then "the local tax amount" should be reduced in the same amount.

### **Amendments 83 to 85**

Amendment 83 inserts new section 371SH(2A) to ensure that when applying the corporation tax assumptions in Chapter 19 in relation to a designated currency election under section 9A CTA 2010 that any revocation of such an election is taken into account provided the revocation is made within the prescribed time limits. Amendments 84 and 85 are consequential adjustments as a result of amendment 83.

### **Amendments 86 to 88, 91, and 93 to 96**

This group of 8 amendments have been made to improve clarity of the legislation or to correct minor errors.

### **Apportionment provisions, "control" and "interests in companies"**

#### **Apportionment provisions**

#### **Amendment 78**

The apportionment rules are detailed in Chapter 17 of Part 9A. Section 371QC supplemented by sections 371QD to 371QF contains the rules for making an apportionment of a CFC's chargeable profits. The basic rule is a mechanical, proportional one that broadly covers situations where relevant interests in the CFC are only held, either directly or indirectly through holdings of issued ordinary shares. In any other circumstances, where other types of relevant interest are held in a CFC, an apportionment will be made on a just and reasonable basis under section 371QC(2).

Amendment 78 inserts new section 371QG which provides a targeted anti-avoidance rule (TAAR) for the apportionment provisions.

New subsection (1) applies the section in relation to a CFC's accounting period where an arrangement is entered into at any time, the main purpose or one of the main purposes of which is to obtain for any person a tax advantage under section 1139(2)(da) of CTA 2010 for that accounting period or any other accounting period of the CFC. A tax advantage under section 1139(2)(da) of CTA 2010 is the avoidance or reduction of a charge or assessment to the CFC charge under Part 9A.

New subsection (2) provides that where an arrangement, as defined in new subsection (1), is in existence, the CFC's chargeable profits and creditable tax

for the accounting period are to be apportioned on a just and reasonable basis rather than on the basis of the mechanical rule if that rule would otherwise apply.

New subsection (3) states that in applying new subsection (2) (i.e. apportioning the CFC's chargeable profits and creditable tax on a just and reasonable basis) the apportionment must counteract the effects of the arrangement so far as it is practicable to do so.

### **“Control”**

#### **Amendments 79 to 82**

The control provisions are contained in Chapter 18 of Part 9A. Amendments 79 to 82 broadly cover the removal of the control TAAR at section 371RG and the extension of the reserved regulatory power at section 371RF(3).

Amendment 79 leaves out a reference to section 371RG at the beginning of Chapter 18 to reflect the removal of the control TAAR.

Amendment 80 extends the reserved power at section 371RF by inserting new section 371RF(3A). This new subsection allows the Treasury to provide, by regulations that, if specified conditions are met, a company will not be taken to be a CFC by virtue of section 371RE (the “accounting standards” test) or any equivalent test provided by regulations under subsection (3) of section 371RF.

Amendment 81 is consequential on amendment 80 and states that references to section 371RE are to that section as may be amended by new subsection (3A) as well as subsection (3).

Amendment 82 removes the control TAAR at section 371RG.

#### **Amendments 90 and 92**

These amendments are minor consequential amendments to the definition of “CFC” and “control” in section 371VA. They remove any reference to section 371RG and add that the definition of “CFC” at section 371AA(3) is subject to any regulations made under new section 371RF (3A) whilst the definition of “control” at section 371RB and section 371RE is subject to section 371RF.

#### **Amendment 97**

This amendment is consequential on the removal of the control TAAR at section 371RG and amends section 371VF (the definition of connected persons) to remove subsection (4) by virtue of which a person is taken to be connected, associated or related to a CFC if it would be reasonable to suppose that, apart from an arrangement falling within the control TAAR provisions, that person would be connected, associated or related to the CFC.

**“Interests in companies”****Amendments 99 to 101**

Interests in a company are defined in Chapter 22 at section 371VH. Amendments 99 and 100 extend the definition of “interests in companies” by amending section 371VH(2)(c). At present section 371VH(2)(c) states that a person has an “interest” in a company if the person is entitled to secure that income or assets of the company will be applied directly or indirectly for the person’s benefit. This subsection is amended by amendment 99 to provide that a person has an “interest” in a company if they are entitled:

- to direct how income or assets of the company are to be applied;
- to have such income or assets applied on their behalf; or
- otherwise to secure that such income or assets will be applied (directly or indirectly) for their benefit.

Amendment 100 then extends the definition of “interests in companies” under amended section 371VH(2)(c) by inserting new subsections (4), (4A) and (4B) to section 371VH.

New subsection (4) provides that references in amended section 371VH(2)(c) to a person being entitled to do anything also covers situations where it is reasonable to suppose that the person is presently able or will in the future be able to do the thing even though the person has no present or future entitlement to do the thing.

New subsection (4A) applies if a person’s entitlement (or supposed ability as outlined in new subsection (4)) to do anything described in section 371VH(2)(c) is (or would be) contingent upon a default of the company or any other person under any agreement.

New subsection (4B) states that, when new subsection (4A) applies, a person is not to be taken to have an interest in the company under section 371VH(2)(c) unless the default referred to in new subsection (4A) has occurred.

Amendment 101 is a consequential amendment following on from the removal of the control TAAR and omits subsections (9) and (10) of section 371VH. These subsections provided that where a company is taken to be a CFC through the application of the control TAAR, a person would have an interest in the company if it were reasonable to suppose that, apart from the avoidance arrangement defined in the control TAAR, that person would have had an interest in the company.

**Permanent Establishments**

Amendments 103 to 106 ensure that that new CFC regime applies as intended to exempt foreign permanent establishments in Chapter 3A of Part 2 of CTA 2009.

**Amendments 103 to 105**

Amendments 103 to 105 ensure that the rules for non-trading finance profits apply appropriately in the context of an exempt permanent establishment.

Paragraph 18CB sets out the treatment of profits and losses arising from investment business for the purposes of determining any relevant profits amount or relevant losses amount of the permanent establishment. Amendment 103 makes it clear that to the extent that assets upon which investment income arises are effectively connected with the trade or property business of a permanent establishment then profits and losses arising from those assets should not be left out of account in determining the relevant profits or relevant losses amounts.

Amendment 104 replaces section 18HE(3) and inserts new section 18HE(3A) to make it clear that Chapter 9 applies to permanent establishments by exempting 75% of the profits of the qualifying loan relationship. The qualifying resources rule and matched interest rules in Chapter 9 do not apply to permanent establishments.

Section 371IJ deals with the claim process under Chapter 9. Amendment 105 omits subsection (5) of section 371IJ for the purposes of applying this section to permanent establishments. This is because subsection (5) addresses the interaction of the worldwide debt cap rules with the claims process, which is not applicable to permanent establishments.

**Amendment 106**

Paragraph 18ID deals with the modifications to the tax exemption in Chapter 14 in the context of permanent establishments. Amendment 106 replaces subsection (4) and inserts new subsection (5). These subsections make it clear that when determining “the corresponding UK tax” under the basic rule in section 371NB it is necessary to apply the corporation tax rate (or average corporate tax rate if there is more than one rate in the accounting period) to the adjusted relevant profits of the permanent establishment ignoring any entitlement to relief for foreign taxes under section 18(3).

**Other amendments, commencement and transitional provision****Other Amendments – Part 3 of Schedule 20****Amendments 107 to 110**

Amendment 107 is a minor amendment to paragraph 25 of Part 3 and adjusts the positioning of the reference to Part 9A in section A1 of CTA 2009 (overview of the Corporation Tax Acts).

Amendment 108 amends paragraph 31 by replacing subsection (4) and part of subsection (5) with new subsections (4), (5) and (6) in section 931E of CTA 2009 (distributions from controlled companies). These subsections now apply the new statutory definition of control at sections 371RB (read with section 371RD but omitting subsections (3)(c) and (d)) to the whole of section 931E rather than simply subsection (3) of the section.

Amendment 109 inserts new paragraph 38A. New paragraph 38A amends section 938M of CTA 2010 (group mismatch schemes: controlled foreign companies) to reflect the new statutory references in Part 9A and to ensure that the provision continues to apply in the same way as it did previously.

Amendment 110 inserts new paragraph 40A. New paragraph 40A amends section 179.

Section 179 applies the “compensating adjustment” rules at sections 174 to 178 where the transfer pricing rule at section 147 requires a CFC’s profits or losses to be calculated as if the arm’s length provision had been made or imposed instead of the actual provision. Under the wording of section 179 the CFC is the “advantaged person” (i.e. the person whose UK tax has been reduced or whose tax loss has been increased by the actual provision) and the “disadvantaged person” can make a claim for a “compensating adjustment” in relation to the uplift in the CFC’s profits (or decrease in losses) as long as certain conditions in section 179 are met.

New paragraph 40A amends section 179 in the following manner. Subparagraph (2) of new paragraph 40A substitutes subsection (1) of section 179 with new subsection (1). This states that subsection (2) of section 179 applies if:

- the actual provision is provision made or imposed in relation to a CFC,
- for the purposes of determining the CFC’s assumed taxable total profits for an accounting period, the transfer pricing rules will apply to that provision,
- in relation to the accounting period sums are charged on chargeable companies at step 5 in section 371BC(1), and
- in consequence of the application of the transfer pricing rules the total of those sums is more than it would otherwise be.

Subsection (2) of section 179 CFC is amended by the substitution of “CFC” for “controlled foreign company”.

In paragraph (a) of subsection (3) section 179 “chargeable companies on which a sum is charged” is substituted for “companies mentioned in subsection (1)(c)” and in paragraph (b) of subsection (3) “the CFC charge” is substituted for “tax chargeable under section 747(4) of ICTA”.

Subsection (4) is replaced by new subsections (4) and (5). New subsection (4) defines terms used in section 179 by reference to Part 9A and new subsection (5) states that in determining whether sums are charged on chargeable companies for the purposes of step 5 in section 371BC(1) including whether the application of the transfer pricing rules results in those sums being more than they would otherwise be, it should be assumed that no claims under Chapter 9 of Part 9A for the accounting period have been made.

### **Amendment 113**

This is a minor amendment to the Insurance Companies (Reserve) (Tax) Regulations 1996 (S.I. 1996/2991) and inserts new paragraphs 42A, 42B and 42C. These new paragraphs simply substitute “CFC” for “controlled foreign company” (or its plural) in regulations 8A and 8B of the regulations.

### **Commencement provision – Part 4 Schedule 20**

### **Amendment 114**

Paragraph 44(9) provides that the majority of the consequential amendments made in Part 3 to other parts of the Taxes Acts should be ignored as appropriate in applying the commencement provisions under paragraph 44. This broadly means that the amendments made under Part 3 will not take effect until an accounting period under Part 9A (i.e. under the new CFC rules) begins. Amendment 114 adds further consequential amendments to the list of amendments that should be ignored as appropriate.

### **Transitional provision – Part 5 Schedule 20**

### **Amendments 115 to 117**

Amendment 115 inserts new paragraphs 49A and 49B.

New paragraph 49A applies to the first accounting period of a CFC as determined in accordance with paragraph 43(2) or 44(4) of the commencement provisions i.e. an accounting period of a CFC either beginning on 1 January 2013 or a CFC’s first accounting period beginning after this date. It links references to a CFC’s first accounting period in section 371SD(6) (UK residence), section 371SK(3) (intangible fixed assets) and section 371SM(3) (capital allowances) to the above periods by stating that a CFC should be assumed to have become a CFC at the time stipulated by either paragraph 43(2) or 44(4).

New paragraph 49B refers to elections under section 9A of CTA 2010. These are designated currency elections made under the corporation tax assumptions in Chapter 19. The paragraph ensures that any such election that has been made at a time before the commencement of the new CFC rules and that is still valid on the commencement of a CFC's first accounting period can be assumed to continue to be effective under Part 9A.

Amendment 116 ensures that the repeal of the old CFC regime does not affect the length of an exempt period started under Part 3A of Schedule 25 to ICTA in an accounting period beginning before 1 January 2013.

Amendment 117 makes a minor clarification to the exempt period provision by stating that the disapplication of the anti-avoidance rule at section 371JF in relation to the exempt period as defined under the transitional provision also applies to section 371JE (the adjustment of profits passing through the CFC charge gateway) when applied in a modified form in the transitional exempt period.

## **BACKGROUND NOTE**

Schedule 20 provides for a new CFC regime that supports the Government's objective to deliver a more competitive corporate tax system. 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.

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.

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. Further updates were



**RESOLUTION 36****FINANCE BILL 2012****CLAUSE 180****SCHEDULE 20**

published on 31 January 2012 and 29 February 2012. All documents are available on the HM Treasury website.

The measure also amends the exemption for profits arising in foreign permanent establishments, so that the rules are brought into line with the new CFC regime.

# NOTICES OF AMENDMENTS

given on

**Thursday 24 May 2012**

*For other Amendment(s) see the following page(s):*  
Finance Bill Committee 55-65

## PUBLIC BILL COMMITTEE

### FINANCE BILL

(Except Clauses 1, 4, 8, 189 and 209, Schedules 1, 23 and 33,  
and any new Clauses and new Schedules first appearing on the Order Paper not later than  
Tuesday 17 April 2012 and relating to value added tax)

David Gauke

Schedule 20, page 428, line 15, leave out 'section' and insert 'sections 371BG  
and'. 46

David Gauke

Schedule 20, page 428, line 46, leave out 'to 371BG' and insert 'and 371BF'. 47

David Gauke

Schedule 20, page 430, line 2, leave out from beginning to end of line 3 on page  
431 and insert— 48

- '(1) Subsection (2) applies if conditions A to C are met in relation to a relevant interest, or a part of a relevant interest, which a chargeable company ("CC") has in the CFC at all times during the CFC's accounting period.
- (2) Step 5 in section 371BC(1) is to be taken in relation to CC on the following basis.
- (3) That basis is—
  - (a) so much of P% as is attributable to CC having the relevant interest, or the part of a relevant interest, during the CFC's accounting period is to be left out of P%, and
  - (b) so much of Q% as is so attributable is to be left out of Q%.

**Finance Bill, continued**

- (4) Condition A is that, at all times during the CFC's accounting period, CC has the relevant interest, or the part of a relevant interest, by virtue of its holding shares ("the relevant shares") in the CFC (directly or indirectly).
- (5) Condition B is that any increase in the value of the relevant shares at any time during the relevant corporation tax accounting period is (or would be) income, or brought into account in determining any income, of CC chargeable to corporation tax for that period.
- (6) Condition C is that any dividend or other distribution received at any time during the relevant corporation tax accounting period by CC from the CFC (directly or indirectly) by virtue of its holding the relevant shares is (or would be) income, or brought into account in determining any income, of CC chargeable to corporation tax for that period.
- (7) Subsection (8) applies if—
  - (a) CC has the relevant interest, or the part of a relevant interest, by virtue of section 371OB(3) or (4),
  - (b) the CFC is an offshore fund (as defined in section 355) which does not meet the qualifying investments test in section 493 of CTA 2009, and
  - (c) conditions B and C would be met but for the offshore fund not meeting that test.
- (8) Conditions B and C are to be taken to be met.
- (9) This section is subject to section 371BH.

**371BH Companies carrying on BLAGAB**

- (1) Subsection (2) applies in relation to a chargeable company ("CC") if—
  - (a) CC carries on basic life assurance and general annuity business during the relevant corporation tax accounting period,
  - (b) the I-E rules apply to CC for the relevant corporation tax accounting period, and
  - (c) the following are met in relation to a relevant interest, or a part of a relevant interest, which CC has in the CFC at all times during the CFC's accounting period—
    - (i) condition D,
    - (ii) condition E or F (or both), and
    - (iii) condition G.
- (2) An additional sum is charged on CC at step 5 in section 371BC(1) and, for this purpose, step 5 is to be taken on the following basis.
- (2A) That basis is—
  - (a) in paragraph (a) at step 5, the reference to the appropriate rate is to be read as a reference to—
    - (i) the policyholders' rate of tax under section 102 of FA 2012 applicable to the I-E profit for the relevant corporation tax accounting period, or
    - (ii) if there is more than one such rate, the average rate over the whole of the relevant corporation tax accounting period, and

**Finance Bill, continued**

- (b) any reduction of P% or Q% under section 371BG(3) by reference to any relevant interest of CC is to be ignored, but—
  - (i) P% is to be reduced so that it represents only the policyholders' share of the BLAGAB component of the apportioned profit (see subsections (2H) to (4)), and
  - (ii) Q% is to be reduced by the same proportion as P% is reduced under sub-paragraph (i).
- (2B) Condition D is that, at all times during the CFC's accounting period, CC has the relevant interest, or the part of a relevant interest, by virtue of its holding shares ("the relevant shares") in the CFC (directly or indirectly).
- (2C) Condition E is met if the following requirement is met in relation to a time during the relevant corporation tax accounting period.
- (2D) The requirement is that any increase (or any part of any increase) in the value of the relevant shares which occurs at that time is not (or would not be) brought into account at step 1 in section 73 of FA 2012 in determining whether CC has an I-E profit for the relevant corporation tax accounting period.
- (2E) Condition F is met if the following requirement is met in relation to a time during the relevant corporation tax accounting period.
- (2F) The requirement is that any dividend or other distribution (or any part of any dividend or other distribution) received at that time by CC from the CFC (directly or indirectly) by virtue of its holding the relevant shares is not (or would not be) brought into account at step 1 in section 73 of FA 2012 in determining whether CC has an I-E profit for the relevant corporation tax accounting period.
- (2G) Condition G is that the assets which represent the relevant interest, or the part of a relevant interest, during the CFC's accounting period are (to any extent) assets held by CC for the purposes of CC's long-term business.
- (2H) "The apportioned profit" means so much of P% as is attributable to CC having the relevant interest, or the part of a relevant interest, during the CFC's accounting period.'

David Gauke

49

Schedule 20, page 433, line 14, leave out from 'under' to end of line 15 and insert

- (i) the law of the territory in which the CFC is incorporated or formed,
- (ii) the articles of association or other document regulating the CFC, or
- (iii) any arrangement entered into by or in relation to the CFC,'.

**Finance Bill, continued**

David Gauke

**50**

Schedule 20, page 435, line 33, at end insert—

‘(2A) Profits treated as non-trading finance profits under subsection (2) are not to be taken to fall within section 371CB(3) or (4).’.

David Gauke

**51**

Schedule 20, page 435, line 36, at end insert—

‘(3A) For this purpose, section 337(1) (definition of “the worldwide group”) applies with the omission of paragraph (a).’.

David Gauke

**52**

Schedule 20, page 447, line 1, leave out ‘derive (directly or indirectly) from’ and insert ‘represent, or derive (directly or indirectly) from,’.

David Gauke

**53**

Schedule 20, page 449, line 14, leave out ‘section 371FB’ and insert ‘sections 371FB and 371FBA’.

David Gauke

**54**

Schedule 20, page 449, line 39, leave out from ‘CFC”)’ to end of line 40.

David Gauke

**55**

Schedule 20, page 450, line 41, leave out ‘371BC(3))’ and insert ‘371BC(3), ignoring sections 371BG(3)(a) and 371BH(2A)(b))’.

David Gauke

**56**

Schedule 20, page 450, line 41, at end insert—

**‘371FBA Loans from foreign permanent establishments of UK resident companies**

(1) Subsection (2) applies if—

- (a) there is a company (“C”) which has made an election under section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments),
- (b) during a relevant accounting period of C which begins on or after 1 January 2013, C has a creditor relationship which, applying the assumptions set out in section 18H(3) of CTA 2009 in relation to C for the relevant accounting period, would be a qualifying loan relationship (within the meaning of Chapter 9 of this Part) of C in relation to which the CFC would be the ultimate debtor,
- (c) in the application of section 18H(2) of CTA 2009 for the relevant accounting period, C makes a claim under Chapter 9 of this Part (as applied by section 18H(2)), and

**Finance Bill, continued**

- (d) the relevant accounting period falls wholly or partly in the CFC's accounting period.
- (2) 75% of the principal outstanding during the CFC's accounting period on the loan which is the subject of the qualifying loan relationship is to be added to the CFC's free capital or free assets (as the case may be).
- (3) Terms used in this section which are defined in section 18A of CTA 2009 have the meaning given by that section.'

David Gauke

**57**

Schedule 20, page 452, leave out lines 9 to 11.

David Gauke

**58**

Schedule 20, page 452, line 27, at end insert—

- '(8) In this section "original contract of insurance", in relation to a contract of reinsurance which is one in a chain of contracts of reinsurance, means the original contract of insurance reinsured by the first contract in the chain; and in subsection (6)(b) the reference to the original insured is to be read accordingly.'

David Gauke

**59**

Schedule 20, page 455, line 3, leave out from 'which' to end of line 4 and insert 'a member of the CFC group incurs a debt in the United Kingdom to—

- (a) a non-UK resident person, or
- (b) a UK resident person who is not a member of the CFC group.'

David Gauke

**60**

Schedule 20, page 457, line 11, leave out from 'this' to end of line 15 and insert 'section—

- (i) the charging of a sum on company C at step 5 in section 371BC(1) would cause section 314A (finance income amounts of chargeable companies) to apply in the case of company C, and
- (ii) the relevant finance profits (see section 314A(1)(c)) would include the leftover profits.'

David Gauke

**61**

Schedule 20, page 457, line 33, after 'have' insert 'as a result of the application of section 314A'.

David Gauke

**62**

Schedule 20, page 457, leave out lines 39 to 41 and insert—

- '(6) For the purposes of subsection (5)(a) assume that company C's finance income amount would include P% of the leftover profits.'

**Finance Bill, continued**

- (6A) “P%” has the meaning given by section 371BC(3), subject to sections 371BG(3)(a) and 371BH(2A)(b).
- (6B) Subject to what follows, terms used in this section which are defined in Part 7 (tax treatment of financing costs and income) have the same meaning as they have in Part 7.
- (6C) In subsections (2) to (4) references to the tested income amount or the tested expense amount are to that amount determined without regard to any debits, credits or other amounts arising from UK banking business or insurance business.
- (6D) But subsection (6C) does not apply for the purpose of determining any finance income amount under section 314A or affect the way in which any such amount is to be taken into account in determining the tested income amount or the tested expense amount.
- (6E) “UK banking business or insurance business” means banking business or insurance business carried on by—
  - (a) a UK resident company, or
  - (b) a non-UK resident company acting through a UK permanent establishment.’.

David Gauke

**63**Schedule **20**, page **458**, leave out lines 1 to 5.

David Gauke

**64**Schedule **20**, page **458**, line **17**, leave out ‘(so far as not reflected in the step 1 credits)’.

David Gauke

**65**Schedule **20**, page **458**, line **20**, leave out ‘(which is not itself a qualifying loan relationship of the CFC)’ and insert ‘(other than a qualifying loan relationship)’.

David Gauke

**66**Schedule **20**, page **458**, line **30**, leave out from beginning to ‘credits’ in line 42 and insert—

‘Allocate to the qualifying loan relationship a just and reasonable proportion of the credits from the CFC’s relevant debtor relationships which are brought into account in determining the CFC’s non-trading finance profits (so far as not reflected in the step 2 credits).

Add the credits to the step 2 credits.

The result is “the step 3 credits”.

A debtor relationship of the CFC is “relevant” if the loan which is the subject of it is used by the CFC to fund the loan which is the subject of the qualifying loan relationship.

*Step 4*

Allocate to the qualifying loan relationship a just and reasonable proportion of the credits and debits which are brought into account in determining the CFC’s non-trading finance profits so far as they—

**Finance Bill, continued**

- (a) are from any derivative contract or other arrangement (other than a qualifying loan relationship or a relevant debtor relationship) entered into by the CFC as a hedge of risk in connection with a relevant debtor relationship, and
- (b) are attributable to the hedge of risk.

If the credits exceed the debits add the excess to the step 3 credits and if the debits exceed the credits subtract the deficit from the step 3 credits.

The result is “the step 4 credits”.

*Step 5*

Allocate to the qualifying loan relationship a just and reasonable proportion of—

- (a) the debits from the CFC’s loan relationships which are brought into account in determining the CFC’s non-trading finance profits (so far as not reflected in the step 4 credits), and
- (b) any amounts set off under Chapter 16 of Part 5 of CTA 2009 (non-trading deficits) against amounts which, apart from the set off, would be included in the CFC’s non-trading finance profits.

Reduce the step 4’.

David Gauke

**67**

Schedule 20, page 459, line 35, leave out ‘business,’ and insert ‘business (as the case may be),’.

David Gauke

**68**

Schedule 20, page 459, line 36, leave out from ‘company’ to end of line 37.

David Gauke

**69**

Schedule 20, page 460, line 39, leave out ‘a loan to another person’ and insert ‘—

- (a) a loan to another person, or
  - (b) so far as not covered by paragraph (a), an arrangement intended to produce for any person a return in relation to any amount which it is reasonable to suppose would be a return by reference to the time value of that amount of money.
- (5A) Subsection (5) does not apply if—
- (a) the main business of the ultimate debtor is banking business or insurance business, and
  - (b) the funding for the loan or arrangement would be provided in the ordinary course of the ultimate debtor’s banking business or insurance business (as the case may be).
- (5B) A creditor relationship of the CFC cannot be a qualifying loan relationship if—
- (a) the main business of the ultimate debtor in relation to the creditor relationship is banking business or insurance business, and



**Finance Bill, continued**

- (b) the creditor relationship 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 to provide (directly or indirectly) funding for a loan or arrangement as mentioned in subsection (5)(a) or (b) in order to obtain a tax advantage for the ultimate debtor.’.

David Gauke

**70**

Schedule 20, page 460, line 42, leave out from ‘relationship’ to ‘an’ in line 48 and insert ‘if the loan which is the subject of the creditor relationship is made to any extent (other than a negligible one) out of funds received by the CFC (directly or indirectly)—

- (a) from a relevant UK connected company other than by way of a loan, or
- (b) as a result of’.

David Gauke

**71**

Schedule 20, page 461, leave out lines 3 to 5 and insert—

- ‘(7) For the purposes of subsection (6) a company is “relevant UK connected” if—
- (a) the company is a UK resident company connected with the CFC,
  - (b) the company’s main business is banking business or insurance business, and
  - (c) the company’s banking business or insurance business (as the case may be) is a trade.’.

David Gauke

**72**

Schedule 20, page 461, line 13, leave out ‘company,’ and insert ‘company by—

- (i) a non-UK resident person, or
- (ii) a UK resident person who is not connected with the CFC,’.

David Gauke

**73**

Schedule 20, page 461, line 41, leave out from ‘relationship’ to end of line 42 and insert ‘or “ultimate debtor” for the purposes of this Chapter.’.

David Gauke

**74**

Schedule 20, page 462, line 2, at end insert—

- ‘(2A) The claim may be amended or withdrawn by company C only by amending the return.’.

David Gauke

**75**

Schedule 20, page 462, line 14, leave out ‘assessment’ and insert ‘amendment’.

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**Finance Bill, continued**

David Gauke

76

Schedule 20, page 473, line 42, leave out ‘by the CFC’.

David Gauke

77

Schedule 20, page 473, line 46, leave out ‘a person other than the CFC,’ and insert ‘any person,’.

David Gauke

78

Schedule 20, page 479, line 43, at end insert—

**‘371QG Anti-avoidance**

- (1) This section applies in relation to an accounting period (“the relevant accounting period”) of a CFC if—
  - (a) at any time an arrangement is entered into, and
  - (b) the main purpose, or one of the main purposes, of the arrangement is to obtain for any person a tax advantage within section 1139(2)(da) of CTA 2010 in relation to—
    - (i) the relevant accounting period, or
    - (ii) that period and one or more other accounting periods of the CFC.
- (2) The CFC’s chargeable profits and creditable tax for the relevant accounting period are to be apportioned in accordance with section 371QC(2) (and not section 371QD if that section would otherwise apply).
- (3) The apportionments must (in particular) be made in a way which, so far as practicable, counteracts the effects of the arrangement mentioned in subsection (1)(a) so far as those effects are referable to the purpose mentioned in subsection (1)(b).’.

David Gauke

79

Schedule 20, page 480, line 7, leave out ‘Sections 371RC and 371RG set out circumstances’ and insert ‘Section 371RC sets out certain cases’.

David Gauke

80

Schedule 20, page 483, line 30, at end insert—

- ‘(3A) The Treasury may by regulations provide that, if specified conditions are met, a company is not to be taken to be a CFC by virtue of—
- (a) section 371RE, or
  - (b) provision corresponding to section 371RE contained in regulations under subsection (3).’.

David Gauke

81

Schedule 20, page 483, line 31, leave out ‘subsection (3)’ and insert ‘subsections (3) and (3A)’.

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*Finance Bill, continued*

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David Gauke

82

Schedule 20, page 483, line 33, leave out from beginning to end of line 45 on page 484.

David Gauke

83

Schedule 20, page 489, line 5, at end insert—

‘(2A) Subsection (2)(b) does not apply if—

- (a) a notice is given to an officer of Revenue and Customs revoking the notice under subsection (1), and
- (b) the time at which the notice revoking the notice under subsection (1) is given is a time at which, applying the corporation tax assumptions apart from this section and the assumption in subsection (2)(a), the CFC would have been able to revoke its assumed election under section 9A of CTA 2010.’.

David Gauke

84

Schedule 20, page 489, line 6, after ‘(1)’ insert ‘or (2A)’.

David Gauke

85

Schedule 20, page 489, line 29, after ‘(1)’ insert ‘or (2A) (as the case may be)’.

David Gauke

86

Schedule 20, page 496, line 5, at end insert—

‘(4A) In subsections (2) to (4) references to apportioned percentages of the CFC’s chargeable profits for the relevant accounting period are to the percentages apportioned at step 3 in section 371BC(1).’.

David Gauke

87

Schedule 20, page 496, line 40, after ‘including’ insert ‘an assessment’.

David Gauke

88

Schedule 20, page 497, line 13, after ‘conferring’ insert ‘or regulating’.

David Gauke

89

Schedule 20, page 498, line 40, at end insert—

‘(8) But, in relation to a sum charged on a company by virtue of section 371BH(2), in this section—

- (a) “the appropriate rate” means the rate given by section 371BH(2A)(a), and
- (b) “relevant allowance” means any adjusted BLAGAB management expenses for the purposes of section 73 of FA 2012.’.

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**Finance Bill, continued**

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David Gauke

90

Schedule 20, page 500, line 20, leave out ‘371RC, 371RE(2) and 371RG,’ and insert ‘371RC and 371RE(2) and regulations under section 371RF(3A),’.

David Gauke

91

Schedule 20, page 500, line 24, leave out ‘has the meaning given at’ and insert ‘means a company which is a chargeable company for the purposes of’.

David Gauke

92

Schedule 20, page 500, line 34, leave out ‘371RG(6),’ and insert ‘371RF,’.

David Gauke

93

Schedule 20, page 502, line 1, leave out ‘(see Chapter 15) ceasing to have that interest’ and insert ‘ceasing to have any relevant interest in the CFC at all’.

David Gauke

94

Schedule 20, page 503, line 28, leave out ‘profits,’ and insert ‘profits or property business losses,’.

David Gauke

95

Schedule 20, page 503, line 29, at end insert—

‘(2A) In subsection (2)(b) “property business losses” means any losses of a UK property business or overseas property business of the CFC; such losses are to be determined in a way corresponding to the way in which property business profits are determined.’.

David Gauke

96

Schedule 20, page 503, line 45, leave out from ‘(6)’ to ‘Part’ in line 46.

David Gauke

97

Schedule 20, page 505, leave out lines 16 to 20.

David Gauke

98

Schedule 20, page 505, line 37, leave out ‘and 371CE(2).’ and insert ‘, 371CE(2) and 371IA(9).’.

David Gauke

99

Schedule 20, page 506, line 13, leave out from ‘entitled’ to end of line 15 and insert ‘—

(i) to direct how income or assets of the company are to be applied,

**Finance Bill, continued**

- (ii) to have such income or assets applied on the person's behalf, or
- (iii) otherwise to secure that such income or assets will be applied (directly or indirectly) for the person's benefit, and'.

David Gauke

**100**

Schedule 20, page 506, leave out lines 22 to 26 and insert—

- '(4) In subsection (2)(c) references to a person being entitled to do anything also cover cases in which it is reasonable to suppose that a person is presently able, or will at a future date become able, to do the thing (even though the person presently has, or will have, no entitlement to do the thing).
- (4A) Subsection (4B) applies if a person's entitlement (or supposed ability) to do anything mentioned in subsection (2)(c) is (or would be) contingent upon a default of the company or any other person under any agreement.
- (4B) The person is not to have an interest in the company under subsection (2)(c) by virtue of that entitlement (or supposed ability) unless the default has occurred.'

David Gauke

**101**

Schedule 20, page 506, line 45, leave out from beginning to end of line 5 on page 507.

David Gauke

**102**

Schedule 20, page 507, line 45, leave out 'a loan to any other person.' and insert

- (i) a loan to any other person, or
- (ii) so far as not covered by sub-paragraph (i), an arrangement intended to produce for any person a return in relation to any amount which it is reasonable to suppose would be a return by reference to the time value of that amount of money.'

David Gauke

**103**

Schedule 20, page 508, line 37, leave out 'they' and insert 'the assets'.

David Gauke

**104**

Schedule 20, page 511, leave out line 19 and insert—

- '(3) For section 371IA(5) there is to be substituted—
- “(5) 75% of the profits of each qualifying loan relationship are “exempt” under this Chapter.”
- (3A) In section 371IA(9)(a) the words “or Chapter 8 (solo consolidation)” are to be omitted.

**Finance Bill, continued**

(3B) Sections 371IB to 371IE are to be omitted.

(3C) Section 371IH(9)(a) is to be read ignoring the modification in section 18HC(b) above.’.

David Gauke

**105**

Schedule 20, page 511, line 21, after ‘X’ insert ‘and subsection (5) is to be omitted’.

David Gauke

**106**

Schedule 20, page 513, leave out lines 17 to 19 and insert—

- ‘(4) For the purposes of step 3 in section 371NB(1) the amount of the corresponding UK tax for the accounting period is to be determined in accordance with subsection (5) below; and section 371NE is to be omitted accordingly.
- (5) “The corresponding UK tax” is the amount of corporation tax which would be payable in respect of the adjusted relevant profits amount if it were subject in full to corporation tax, ignoring any credit which would be allowed against it under section 18(3) of TIOPA 2010 and assuming, where there is more than one rate of corporation tax applicable to period X, that it were chargeable at the average rate over period X.”’.

David Gauke

**107**

Schedule 20, page 517, line 13, leave out from ‘paragraph’ to end of line 16 and insert ‘(b), and

- (b) before paragraph (k) (as inserted by paragraph 136 of Schedule 16 to this Act) insert—
  - “(ja) Part 9A of that Act (controlled foreign companies),”’.

David Gauke

**108**

Schedule 20, page 518, line 44, leave out from beginning to ‘references’ in line 7 on page 519 and insert—

- ‘(4) Section 371RB of TIOPA 2010 (read with section 371RD of that Act) applies for the purposes of this section.
- (5) Section 371RD of TIOPA 2010 applies for the purpose of determining if the requirements of subsection (3)(b) and (c) are met in any case.
- (6) In subsections (4) and (5)’.

David Gauke

**109**

Schedule 20, page 519, line 32, at end insert—

- ‘38A(1) Section 938M (group mismatch schemes: controlled foreign companies) is amended as follows.
- (2) In subsection (1) for the words from the beginning to “company” substitute “Section 371SL(1) of TIOPA 2010 (assumption that a CFC”.

**Finance Bill, continued**

(3) In subsection (2)—

- (a) for “chargeable profits” substitute “assumed taxable total profits”, and
- (b) for “Chapter 4 of Part 17 of ICTA” substitute “Part 9A of TIOPA 2010”.

David Gauke

**110**

Schedule 20, page 519, line 40, at end insert—

‘40A(1) Section 179 (compensating payment if advantaged person is controlled foreign company) is amended as follows.

(2) For subsection (1) substitute—

“(1) Subsection (2) applies if—

- (a) the actual provision is provision made or imposed in relation to a CFC,
- (b) for the purpose of determining the CFC’s assumed taxable total profits for an accounting period, the CFC’s profits and losses are to be calculated in accordance with section 147(3) or (5) in the case of that provision,
- (c) in relation to the accounting period, sums are charged on chargeable companies at step 5 in section 371BC(1), and
- (d) in consequence of the application of section 147(3) or (5) as mentioned in paragraph (b), the total of those sums is more than it would otherwise be.”

(3) In subsection (2) for “controlled foreign company” substitute “CFC”.

(4) In subsection (3)—

- (a) in paragraph (a) for “companies mentioned in subsection (1)(c)” substitute “chargeable companies on which a sum is charged”, and
- (b) in paragraph (b) for “tax chargeable under section 747(4) of ICTA” substitute “the CFC charge”.

(5) For subsection (4) substitute—

“(4) In this section terms which are defined in Part 9A have the same meaning as they have in that Part.

- (5) For the purposes of subsections (1)(c) and (d) and (3)(a) assume that any claims made under Chapter 9 of Part 9A for the accounting period were not made.”.

David Gauke

**111**

Schedule 20, page 520, line 21, after ‘371BC(3)’ insert ‘, subject to sections 371BG(3)(a) and 371BH(2A)(b)’.

David Gauke

**112**

Schedule 20, page 520, line 23, leave out from ‘9A’ to ‘by’ in line 24 and insert ‘or which are qualifying loan relationship profits is limited to amounts—

- (a) which so fall or which are such profits’.

**Finance Bill, continued**

David Gauke

113

Schedule 20, page 520, line 28, at end insert—

*‘Insurance Companies (Reserve) (Tax) Regulations 1996 (S.I. 1996/2991)*

42A The Insurance Companies (Reserve) (Tax) Regulations 1996 (S.I. 1996/2991) are amended as follows.

42B (1) Regulation 8A is amended as follows.

(2) In paragraph (1)—

(a) in sub-paragraph (a) for “controlled foreign company” substitute “CFC (within the meaning of Part 9A of the Taxation (International and Other Provisions) Act 2010)”, and

(b) in sub-paragraph (b) for “controlled foreign company” substitute “CFC”.

(3) In paragraph (4)—

(a) for “controlled foreign company’s” substitute “CFC’s”, and

(b) for “the company” substitute “the CFC”.

42C In regulation 8B for “controlled foreign company” substitute “CFC (within the meaning of Part 9A of the Taxation (International and Other Provisions) Act 2010)”.

David Gauke

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Schedule 20, page 521, line 26, leave out ‘and 38’ and insert ‘, 38, 38A, 40A, 42B and 42C’.

David Gauke

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Schedule 20, page 522, line 4, at end insert—

*‘First accounting periods*

49A (1) This paragraph applies in relation to a CFC the first accounting period of which is determined in accordance with paragraph 43(2) or 44(4) above.

(2) For the purposes of sections 371SD(6), 371SK(3) and 371SM(3) of TIOPA 2010, assume that the CFC became a CFC at the time mentioned in paragraph 43(2) or 44(4) (as the case may be).

*Elections under section 9A of CTA 2010*

49B (1) This paragraph applies if—

(a) during a company’s accounting period within the meaning of Chapter 4 of Part 17 of ICTA a notice is given in relation to the company under paragraph 4(2C) of Schedule 24 to ICTA,

(b) as a result of that, the company is to be assumed under paragraph 4(2C) of Schedule 24 to ICTA to have made an election under section 9A of CTA 2010,

(c) the assumed election—

(i) does not cease to have effect before the end of the company’s last accounting period within the meaning of Chapter 4 of Part 17 of ICTA to begin before 1 January 2013, and



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- (ii) apart from the repeal of that Chapter by paragraph 14 above, would not have ceased to have effect at the end of that period, and
  - (d) the company is a CFC immediately after the end of its last accounting period mentioned in paragraph (c) and its first accounting period within the meaning of Part 9A of TIOPA 2010 begins at that time accordingly.
- (2) In the application of Part 9A of TIOPA 2010 in relation to the company as a CFC, the assumption mentioned in sub-paragraph (1)(b) is to continue to be made as if it were required to be made by section 371SH(2) of TIOPA 2010.’.

David Gauke

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Schedule 20, page 522, line 10, leave out from ‘exempt’ to end of line 12 and insert ‘period—

- (i) does not end before the end of the company’s last accounting period within the meaning of Chapter 4 of Part 17 of ICTA to begin before 1 January 2013, and
- (ii) apart from the repeal of that Chapter by paragraph 14 above, would not have ended at the end of that period, and’.

David Gauke

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Schedule 20, page 522, line 29, after ‘exemption’ insert ‘or section 371JE of TIOPA 2010’.

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