



Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

[^{F1}PART 9A

CONTROLLED FOREIGN COMPANIES

CHAPTER 4

THE CFC CHARGE GATEWAY: PROFITS ATTRIBUTABLE TO UK ACTIVITIES

[^{F1}371DB] The steps

- (1) Here are the steps referred to in section 371DA(1).

The steps are to be taken in accordance with the principles set out in the OECD Report (so far as relevant).

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 have arisen. The identified assets and risks are called "the relevant assets and risks"

Step 2 Exclude from the relevant assets and risks any asset or risk to which subsection (2) applies (subject to subsections (3) and (4)).

Step 3 Identify the SPFs carried out by the CFC group which are relevant to—

- (a) the economic ownership of the assets included in the relevant assets and risks, or
- (b) the assumption and management of the risks included in the relevant assets and risks.

For this purpose, assume that the CFC group is a single company.

Step 4 Determine the extent to which the SPFs identified at step 3 are UK SPFs and the extent to which they are non-UK SPFs. If none of the SPFs is a UK SPF

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Section 371DB. (See end of Document for details)

to any extent, then no profits fall within this Chapter and no further steps are to be taken.

Step 5 Assume that the UK SPFs determined at step 4 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 included in the relevant assets and risks would be attributed to the permanent establishment. For this purpose, assume that the non-UK SPFs determined at step 4 are all carried out by the CFC itself (if that is not otherwise the case).

Step 6 Exclude from the relevant assets and risks any asset or risk, or any assets or risks taken together, to which section 371DC applies.

Step 7 Re-determine the CFC's assumed total profits on the basis that the CFC—

- (a) does not hold, or has not held, the assets included in the relevant assets and risks, and
- (b) does not bear, or has not borne, the risks included in the relevant assets and risks,

so far as they would be attributed to the permanent establishment mentioned at step 5. “The provisional Chapter 4 profits” are the CFC's assumed total profits so far as they are left out of the re-determined profits.

Step 8 Exclude from the provisional Chapter 4 profits any amounts which are required to be excluded by section 371DD, 371DE or 371DF. The remaining profits (if any) fall within this Chapter.

- (2) This subsection applies to an asset or risk if the CFC's assumed total profits are only negligibly higher than what they would be if the CFC—
 - (a) did not hold, or had not held, the asset to any extent at all, or
 - (b) did not bear, or had not borne, the risk to any extent at all.
- (3) The total number of assets and risks which may be excluded at step 2 in subsection (1) is limited as follows.
- (4) As well as applying to each asset and risk separately, subsection (2) must also apply to all the assets and risks included in the total number taken together.]

Textual Amendments

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

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