

Status: Point in time view as at 16/11/2017.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2013, SCHEDULE 47. (See end of Document for details)

SCHEDULES

SCHEDULE 47

Section 220

CONTROLLED FOREIGN COMPANIES

Relevant finance leases etc

- 1 Part 9A of TIOPA 2010 (controlled foreign companies) is amended as follows.
- 2 Chapter 5 (the CFC charge gateway: non-trading finance profits) is amended as follows.
- 3 In section 371ED (arrangements in lieu of dividends) in subsection (1) omit “(other than a relevant finance lease)”.
- 4 (1) Section 371EE (leases to UK resident companies etc) is amended as follows.
 - (2) In subsection (2)(b)(i) for “which is the subject of the lease” substitute “ (“the relevant asset”) which is the subject of the lease or making (directly or indirectly) an arrangement which would fall within subsection (3) ”.
 - (3) After subsection (2) insert—
 - “(3) An arrangement would fall within this subsection if—
 - (a) the arrangement would meet one or both of the following requirements—
 - (i) it would not be a relevant finance lease;
 - (ii) it would not involve the CFC, and
 - (b) under the arrangement the other company would (directly or indirectly) purchase rights to use the relevant asset.”
- 5 Chapter 22 (supplementary provision) is amended as follows.
- 6 In section 371VA (definitions) for the definition of “relevant finance lease” substitute—
 - ““relevant finance lease” is to be read in accordance with section 371VIA,”.
- 7 (1) Section 371VG (finance profits) is amended as follows.
 - (2) In subsection (1) for paragraph (b) substitute—
 - “(b) which are included in the CFC's assumed total profits for the accounting period in question and which—
 - (i) arise from a relevant finance lease, but
 - (ii) are not trading profits.”
 - (3) In subsection (4)(b) omit “an arrangement which would be”.
- 8 (1) Section 371VH (interests in companies) is amended as follows.
 - (2) In subsection (9) omit the second sentence.

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(3) After subsection (10) insert—

“(10A) For the purposes of subsection (9), if for any relevant period accounts for a loan creditor are not prepared in accordance with international accounting standards or UK generally accepted accounting practice, any question relating to generally accepted accounting practice is to be determined in relation to the loan creditor for that period by reference to generally accepted accounting practice in relation to accounts prepared in accordance with international accounting standards.”

9 After section 371VI insert—

“371VIA Relevant finance leases

(1) In this Part “relevant finance lease” means an arrangement falling within subsection (2) or (3).

(An arrangement which is a loan relationship of any company does not fall within either of those subsections.)

(2) An arrangement falls within this subsection if—

- (a) it provides for an asset to be leased or otherwise made available by a person (“the lessor”) to another person, and
- (b) in accordance with generally accepted accounting practice, it falls (or would fall) to be treated in the accounts of the lessor, or of a person connected with the lessor, as a finance lease or a loan.

(3) A hire-purchase, conditional sale or other arrangement relating to an asset falls within this subsection if it does not fall within subsection (2) but is of a similar character to an arrangement which would fall within that subsection.

(4) If for any relevant period accounts for a person are not prepared in accordance with international accounting standards or UK generally accepted accounting practice, any question relating to generally accepted accounting practice is to be determined for the purposes of this section in relation to that person for that period by reference to generally accepted accounting practice in relation to accounts prepared in accordance with international accounting standards.

(5) In this section “accounts”, in relation to a company, includes accounts relating to two or more companies of which that company is one.”

Limit on double taxation relief in cases involving qualifying loan relationships of CFCs

10 Part 2 of TIOPA 2010 (double taxation relief) is amended as follows.

11 Chapter 2 (double taxation relief by way of credit) is amended as follows.

12 In section 42 (limit on credit against corporation tax) after subsection (4) insert—

“(5) See also section 49A which contains an additional limit on credit allowed in certain cases involving CFCs.”

13 After section 49 insert—

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“49A Limit on credit in cases involving qualifying loan relationships of CFCs

- (1) This section applies if—
- (a) a claim is made under Chapter 9 of Part 9A (controlled foreign companies: exemptions for profits from qualifying loan relationships) in relation to an accounting period (“the relevant period”) of a CFC (“the creditor CFC”),
 - (b) in the relevant period, the creditor CFC has a qualifying loan relationship in relation to which another CFC is the ultimate debtor by virtue of section 371IG(4) or (5), and
 - (c) a UK resident company (“the relevant UK company”) has loan relationship credits which arise in the relevant period from—
 - (i) loan B (see section 371IG(3)(b)), or
 - (ii) loans out of which loan B is wholly or partly funded (directly or indirectly).
- (2) So far as any credit allowed under section 18(2) to the relevant UK company is referable to loan relationship credits falling within subsection (1)(c) which arise in an accounting period of the relevant UK company, the credit must not exceed—

$$R \times S$$

where—

R has the same meaning as in section 42(2), and

S is—

- (a) the relevant UK company's share of the relevant profit amount (see subsection (4)), or
- (b) if only X% of the total amount of the loan relationship credits falling within subsection (1)(c) arises in the accounting period, X% of the relevant UK company's share of the relevant profit amount.

(If the amount given by the formula above is nil, no credit is allowed.)

- (3) The limit on credit contained in subsection (2) is in addition to the limit given by section 42(2).
- (4) Take the following steps to determine the relevant profit amount and the relevant UK company's share of that amount.

Step 1 Determine the total amount of the loan relationship credits which arise in the relevant period from loan B to the person who made loan B.

Step 2 Deduct from the amount determined at step 1 above the credits from the creditor CFC's qualifying loan relationship determined at step 1 in section 371IF for the relevant period. The result is the relevant profit amount.

Step 3 On a just and reasonable basis, apportion the relevant profit amount amongst all the persons falling within subsection (5) (although the amount apportioned to a person may be nil). The relevant

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UK company's share of the relevant profit amount is the amount apportioned to it (and is nil if no amount is apportioned to it).

(5) The following persons (apart from the creditor CFC) fall within this subsection—

- (a) the person who made loan B, and
- (b) any person who has made or received a loan out of which loan B is wholly or partly funded (directly or indirectly).

(6) In this section—

- (a) references to loan B do not include any part of loan B—
 - (i) which loan A (see section 371IG(3)(a)) is not made and used to fund, or
 - (ii) in relation to which the requirement of section 371IG(3)(c) is not met,
- (b) “loan relationship credit” means, in relation to a person, a credit which the person has under Part 5 of CTA 2009 or would have were the person a UK resident company within the charge to corporation tax, and
- (c) “loan” has the same meaning as it has in Chapter 9 of Part 9A.”

14 (1) In Chapter 3 (miscellaneous provisions), section 112 (deduction from income for foreign tax (instead of credit against UK tax)) is amended as follows.

(2) After subsection (3) insert—

“(3A) Subsection (3B) applies if—

- (a) the requirements of section 49A(1)(a) to (c) are met,
- (b) amounts have been paid in respect of non-UK tax on loan relationship credits falling within section 49A(1)(c) which arise in an accounting period of the relevant UK company, and
- (c) apart from subsection (3B), Z would exceed

$$R \times S$$

where—

Z is—

- i the total amount of any reductions under subsection (1) for amounts paid in respect of that non-UK tax, less
- ii the total amount of any increases under subsection (3) for payments made by reference to that non-UK tax, and
- c R and S have the same meaning as in section 49A(2).

R and S have the same meaning as in section 49A(2).

(3B) The total amount of the reductions under subsection (1) is to be reduced so that Z equals

$$R \times S$$

”

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- (3) In subsection (6), for “subsection (1)” substitute “ this section ”.

Miscellaneous

- 15 In Part 6 of TIOPA 2010 (tax arbitrage), in section 236 (deduction schemes involving hybrid entities) for subsection (4) substitute—

“(4) Condition B is not met just because the party's profits or gains are subject to a charge under the law of a territory outside the United Kingdom (by whatever name known) which is similar to the CFC charge (see Part 9A).”

- 16 Part 9A of TIOPA 2010 (controlled foreign companies) is amended as follows.

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Textual Amendments

F1 Sch. 47 para. 17 omitted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by virtue of Finance (No. 2) Act 2017 (c. 32), Sch. 5 para. 21(4)

- 18 Chapter 9 (exemptions for profits from qualifying loan relationships) is amended as follows.

- 19 In section 371IB (loans funded out of qualifying resources) after subsection (9) insert—

“(9A) Subsection (9) does not apply if the debt incurred by the member of the CFC group as mentioned in subsection (8) represents the principal on a loan made to the member to which subsection (9B) or (9D) applies.

(9B) This subsection applies to a loan if the member repays it within 48 hours of the loan being made.

(9C) But subsection (9B) does not apply to a loan if the repayment of the loan within the 48 hours occurs under, or is connected (directly or indirectly) with, an arrangement the main purpose, or one of the main purposes, of which is to ensure that subsection (9) does not apply because of—

- (a) the loan, or
- (b) any other debt which a member of the CFC group incurs (or is expected to incur) in the United Kingdom.

(9D) This subsection applies to a loan if—

- (a) there is an issue of shares which meets the requirements of subsection (7)(c)(i) to (iii),
- (b) the loan was made before the issue of shares but with the expectation that it would be repaid by the member out of funds deriving (directly or indirectly) from the issue of shares,
- (c) the loan is repaid by the member out of such funds within the period of 6 months beginning with the day on which the loan was made, and
- (d) the loan—
 - (i) was made by a person who was not a member of the CFC group, and

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(ii) was not made (wholly or partly nor directly or indirectly) out of funds or other assets provided by a member of the CFC group.”

20 (1) Section 371IE (matched interest) is amended as follows.

(2) In subsection (1)(d)(ii) after “include” insert “ some or all of”.

(3) After subsection (7) insert—

“(7A) In subsection (6) the reference to the leftover profits is to those profits so far as they would be included in the relevant finance profits (see section 314A(1)(d)).”

Commencement and transitional provision

21 The amendments made by this Schedule are treated as having come into force on 1 January 2013.

22 (1) Section 371CE of TIOPA 2010 (as amended by paragraph 17 above) applies for accounting periods of CFCs beginning before 20 March 2013 with the modifications set out in this paragraph. References below to subsections are to subsections of section 371CE.

Accounting periods ending before 20 March 2013

(2) For accounting periods ending before 20 March 2013, subsection (4) applies as if paragraph (b) were omitted.

Accounting periods ending on or after 20 March 2013

(3) The following sub-paragraphs apply for accounting periods ending on or after 20 March 2013.

(4) A notice may be given under subsection (2)(b) even though the requirement of subsection (2)(a) is not met.

(5) If a notice is given under subsection (2)(b) in a case where the requirement of subsection (2)(a) is not met, the CFC's trading finance profits are to be apportioned on a just and reasonable basis between—

(a) the part of the accounting period falling before 20 March 2013 (“period A”), and

(b) the remaining part of the accounting period (“period B”).

(6) So far as the CFC's trading finance profits are apportioned to period A, they are to be treated as non-trading finance profits if the CFC is a group treasury company in period A (and subsection (3) applies to them accordingly).

(7) For the purpose of determining if the CFC is a group treasury company in period A, subsection (4) applies—

(a) as if references to the accounting period were to period A, and

(b) as if paragraph (b) were omitted.

(8) So far as the CFC's trading finance profits are apportioned to period B, they are to be treated as non-trading finance profits if the CFC is a group treasury company in period B (and subsection (3) applies to them accordingly).

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- (9) For the purpose of determining if the CFC is a group treasury company in period B, subsection (4) applies as if references to the accounting period were to period B.

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