



DavidCo Limited
CHARTERED ACCOUNTANTS

Level 2, Shortland Chambers
70 Shortland Street, Auckland
PO Box 2380, Shortland Street
Auckland 1140
T +64 9 921 6885
F +64 9 921 6889
M +64 21 639 710
E arun.david@davidco.co.nz
W www.davidco.co.nz

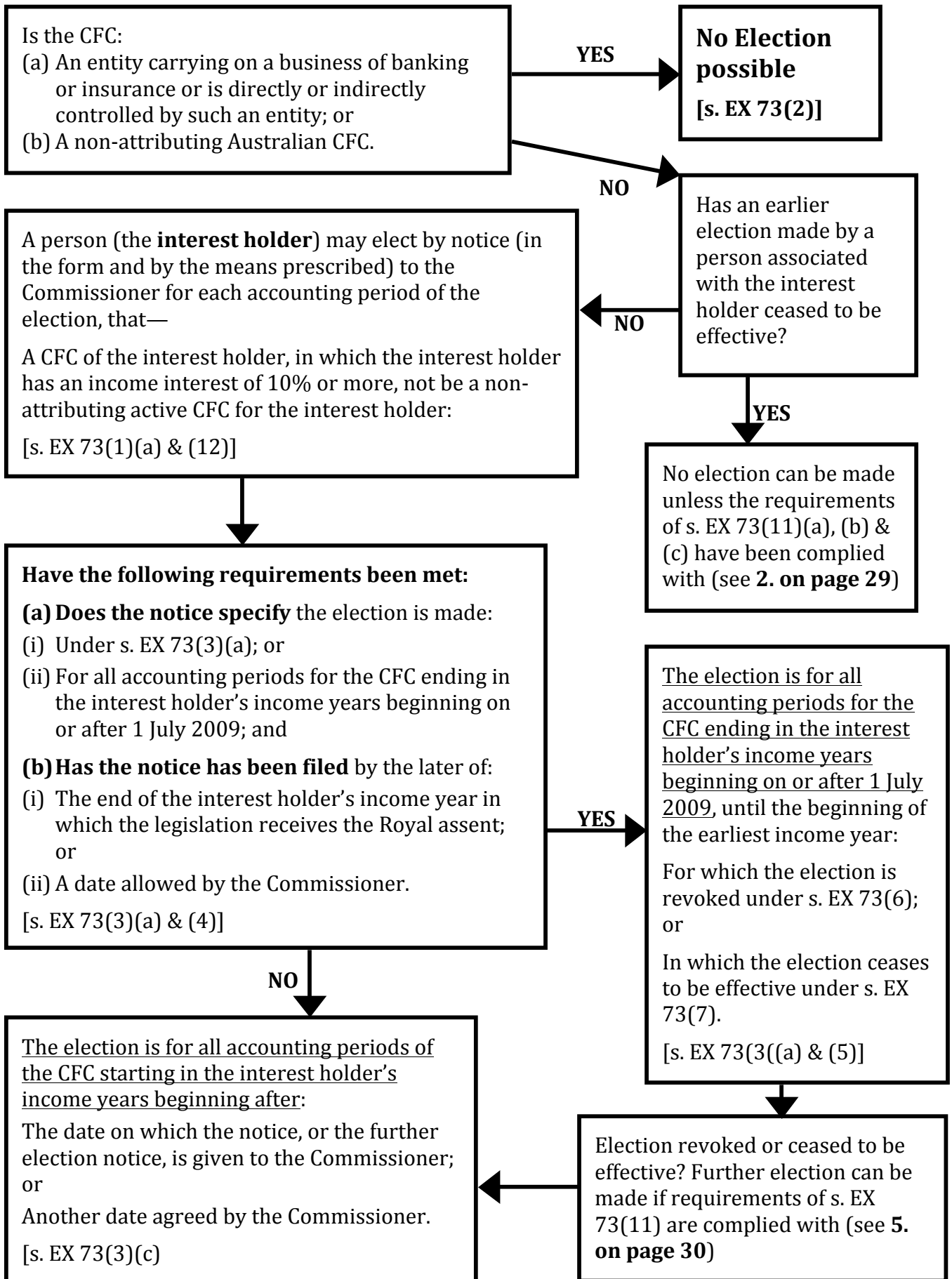
ELECTIVE ATTRIBUTING CFCs: ELECTION PROCEDURE

CONTENTS

Page Nos.

1. Main Flowchart	2
2. Earlier election by an associated person ceasing to be effective	3
3. Interest holder revoking an election	3
4. Election by interest holder ceasing to be effective	3
5. Requirements for a further election by the interest holder	4
6. Definitions: “elective attributing CFC” and “election commencement year”	4

MAIN FLOWCHART



EARLIER ELECTION OR CURRENT ELECTION CEASING TO BE EFFECTIVE**2. Earlier election by associated person ceasing to be effective**

If an earlier election by a person associated with the interest holder has ceased to be effective, an interest holder cannot make an election unless:

- (a) The interest holder gives notice of the proposed election to the Commissioner before the beginning of the interest holder's first income year for which the election is made; and
- (b) The interest holder satisfies the Commissioner that the proposed election has no purpose or effect of allowing the attribution of deductions without the attribution of corresponding income; and
- (c) The Commissioner agrees to the proposed election.

[s. EX 73(11)]

3. Election revoked by interest holder

The interest holder may revoke an election if:

- (a) The interest holder gives notice of the revocation to the Commissioner before the beginning of the interest holder's first income year for which the notice is given; and
- (b) The interest holder satisfies the Commissioner that:
 - (i) Expenditure or loss of a CFC included, while the election is effective, in net attributable CFC income or loss for the interest holder is extremely unlikely to result after the revocation in an amount that would otherwise have been an attributable CFC amount for the CFC; and
 - (ii) The revocation is not made for a purpose or effect of reducing a tax liability; and
- (c) The Commissioner agrees to the revocation.

The interest holder must not carry forward under s. IQ 1B an attributed CFC loss from an elective attributing CFC to an income year for which the election for the CFC has ceased to be effective.

[s. EX 73(6) & (9)(c)]

4. Election by interest holder ceasing to be effective

An election by the interest holder ceases to be effective in an income year if the election is for:

- (a) A CFC that in the income year ceases to be a CFC in which the interest holder has an income interest of 10% or more (except if the CFC becomes a FIF for which the interest holder uses the AFI method); or
- (b) A CFC that in the income year becomes an entity carrying on a business of banking or insurance or becomes directly or indirectly controlled by such an entity; or
- (c) A CFC that becomes a non-attributing Australian CFC in the income year.

The interest holder must not carry forward under s. IQ 1B an attributed CFC loss from an elective attributing CFC to an income year for which the election for the CFC has ceased to be effective, unless the CFC becomes a FIF for which the interest holder uses the AFI method, in which case attributed CFC losses can be carried forward as if they were FIF net losses attributed at the time they were attributed for the CFC.

[s. EX 73(7)(a), (c) & (d) and (9)(a) & (c)]

REQUIREMENTS FOR A FURTHER ELECTION AND DEFINITIONS

5. Further election by interest holder

If the Commissioner agrees, the interest holder may make a further election (i.e. after an earlier election has ceased to be effective) for all accounting periods of a CFC that begin in the interest holder's income years that start after the date on which the (further election) notice is given to the Commissioner, or a later date agreed by the Commissioner.

The interest holder must satisfy the Commissioner that:

- (a) The expiry of the earlier election was due to an oversight on the part of the interest holder or the CFC; and
- (b) The interest holder gave notice of the further election within a reasonable time after the expiry; and
- (c) The further election has no purpose or effect of allowing the attribution of deductions without the attribution of corresponding income.

[s. EX 73(10)]

6. Definitions:

An **elective attributing CFC**, for an interest holder and an accounting period, means a CFC for which:

- (a) The interest holder has made an election under s. EX 73; and
- (b) The election under s. EX 73 is effective for the accounting period.

The **election commencement year**, for an interest holder and an elective attributing CFC, of the interest holder for an accounting period, means:

- The first year for which the election under s. EX 73 for the accounting period was effective.

[New definitions in s. YA 1 inserted by the Annual Rates Tax Act]