



A PERSON'S ATTRIBUTED CFC INCOME OR LOSS

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SECTION I: GENERAL FORMULA FOR CALCULATING A PERSON'S ATTRIBUTED CFC INCOME OR LOSS

<p>GENERAL FORMULA: (1) Exemption for non-attributing CFCs</p>	<p><u>Non-attributing CFCs</u></p> <p>Unless the interest holder elects that the CFC is an elective attributing CFC, an interest holder has no attributed CFC income or loss if the CFC:</p> <ul style="list-style-type: none"> (a) Is a non-attributing Australian CFC; or (b) Is a non-attributing active CFC <p>1) For a non-attributing Australian CFC refer to Section II on page 6.</p> <p>2) For a non-attributing active CFC refer to Section III on pages 7 - 29.</p> <p>3) For an elective attributing CFC refer to Section III pages 28 - 30.</p>
<p>GENERAL FORMULA: (2) General formula in s. EX 18 for calculating a person's attributed CFC income or loss</p>	<p><u>General formula in s. EX 18 for calculating a person's attributed CFC income or loss</u></p> <p>For the CFC's accounting period, the interest holder's attributed CFC income or loss is:</p> $\left[\begin{array}{l} \text{Interest holder's attributed} \\ \text{CFC income or loss} \end{array} \right] = \left[\begin{array}{l} \text{interest holder's} \\ \text{income interest} \end{array} \right] \times \left[\begin{array}{l} \text{CFC's net attributable} \\ \text{CFC income or loss} \end{array} \right]$ <p><u>Interest holder's income interest</u></p> <p>For how to determine an interest holder's income interest see the separate PDF attachment on Calculation of Control Interests and Income interests.</p> <p><u>CFC's net attributable CFC income or loss</u></p> $\left[\begin{array}{l} \text{CFC's net attributable} \\ \text{CFC income or loss} \end{array} \right] = \left[\begin{array}{l} \text{Attributable} \\ \text{CFC amount} \end{array} \right] - \left[\begin{array}{l} \text{Deductions specified in} \\ \text{the formula in s. EX20C(2)} \end{array} \right]$ <p>1) For the general overview of the calculation as set out in section EX 18A refer to Section I (5) on page 5.</p> <p>2) For the calculation of attributable CFC amount refer to Section IV on pages 31 - 48.</p> <p>3) For the calculation of net attributable CFC income or loss refer to Section V on pages 49 - 56.</p> <p>4) For the calculation rules refer to the separate PDF on the CFC Calculation Rules.</p>
<p>GENERAL FORMULA: (3) Additional CFC income or reduction in CFC loss</p>	<p><u>Additional CFC income or reduction in CFC loss</u></p> <p>An interest holder has additional CFC income under section EX 19 if the CFC derives a taxable distribution from a non-complying trust (see item 2. in (4) below).</p> <p>An interest holder has a reduced CFC loss under section EX 20 if the economic loss suffered is less than the CFC loss (see item 3. in (4) below).</p>

**GENERAL
FORMULA:
(4) Overview:
S. EX 18A**

S. EX 18A: Scheme for finding a person's attributed CFC income or loss

The attributed CFC income or loss of a person (an interest holder) holding an income interest in a CFC, for the purposes of the general rules contained in sections CQ 2(1) and DN 2(1) for when attributed CFC income or loss arises, is found for the CFC and an accounting period from:

1. The formula in s. EX 18:

For the CFC's accounting period, the interest holder's attributed CFC income or loss is:

(interest holder's income interest) x (CFC's net attributable CFC income or loss)

Determined as follows under s. EX 18A(2) & 18A(3):

Where an interest holder has an income interest of a fraction in a CFC that has an attributable CFC amount under section EX 20B for an accounting period:

- (a) The interest holder has no attributed CFC income or attributed CFC loss, if the CFC is
 - (i) A non-attributing Australian CFC under s. EX 22.
 - (ii) A non-attributing active CFC under s. EX 21B (**for which the interest holder is not affected by an election under section EX 73**) using the calculation rules in s. EX 21 & EX 24 to EX 27 and a test in:
 - a. The "applicable accounting standards" test in s. EX 21E, if the CFC has accounts prepared to a standard meeting the requirements of s. EX 21C and the interest holder chooses to use this test; or
 - b. S. EX 21D (the "tax measures" or "default" test) if the interest holder does not use the test in s. EX 21E.
- (b) The interest holder has attributed CFC income or loss under the above formula in s. EX 18 equal to the fraction of the CFC's net attributable CFC income or loss under s. EX 20C to EX 20E and the rules in s. EX 24 to EX 27, unless there is no attributed CFC income or loss, as set out above.

[S. EX 18A(1)(a), (2), (3) & EX 18 & Clause 22B of the Annual Rates Tax Bill effective from 30 June 2009]

2. The interest holder's additional CFC attributed income under section EX 19:
When a CFC derives a taxable distribution from a non-complying trust in an accounting period, and a person has attributed CFC income or loss from the CFC for the period (or would have if the taxable distribution were included in the CFC's net attributable CFC income):

The taxable distribution is excluded under section EX 21(32) when calculating the CFC's net attributable CFC income or loss, and instead the person has additional attributed CFC income taxed at 45%:

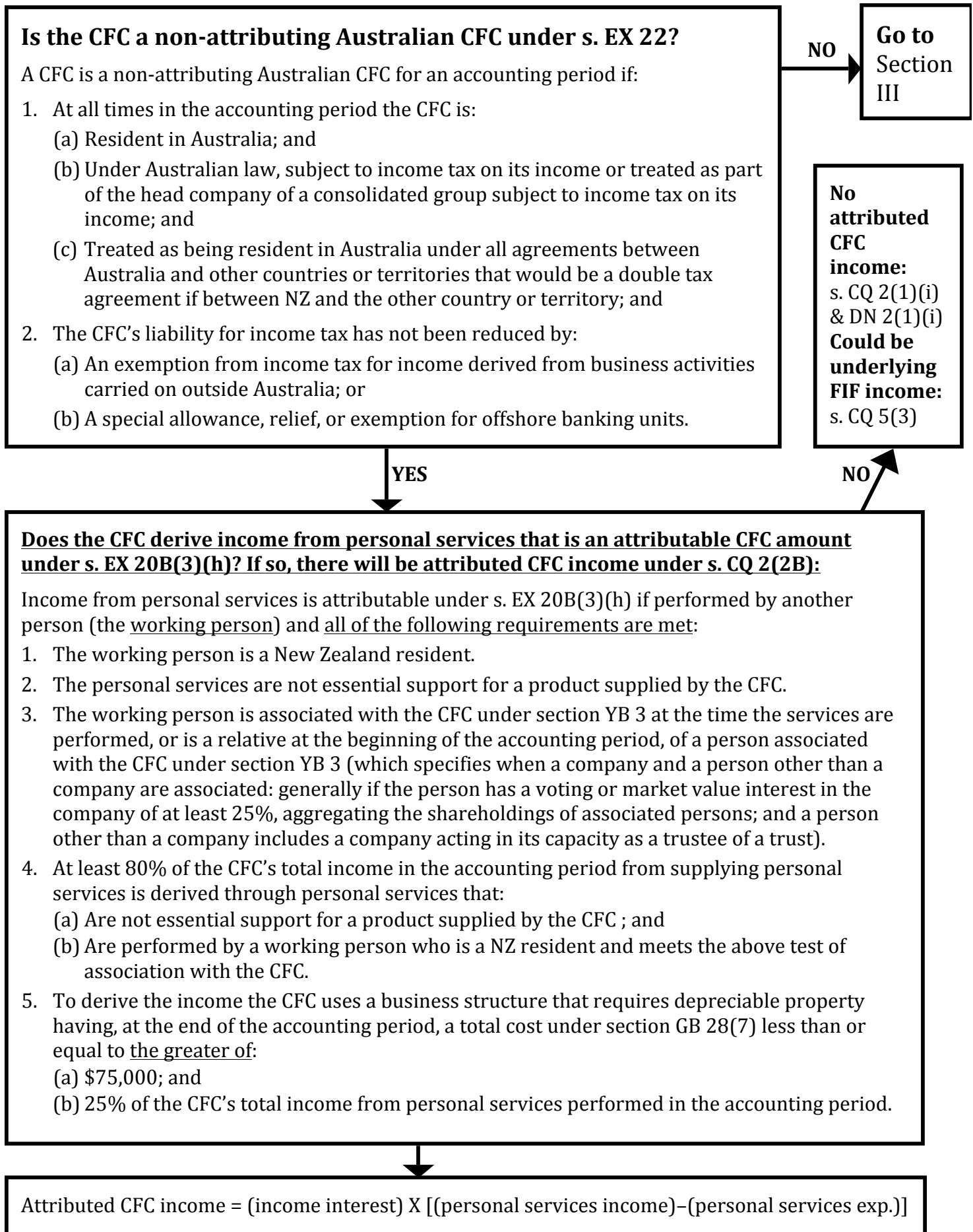
(income interest in CFC for the accounting period) x (taxable distribution)

[Sections EX 18A(1)(b) & EX 19]

3. The reduction in the interest holder's attributed CFC loss under s. EX 20:
If a person has an amount of attributed CFC loss and the person suffers no, or substantially no, corresponding economic loss (due to a call or put option or any other reason) or the attributed CFC loss is more than the economic loss, the attributed CFC loss is reduced to equal to the economic loss, if any.

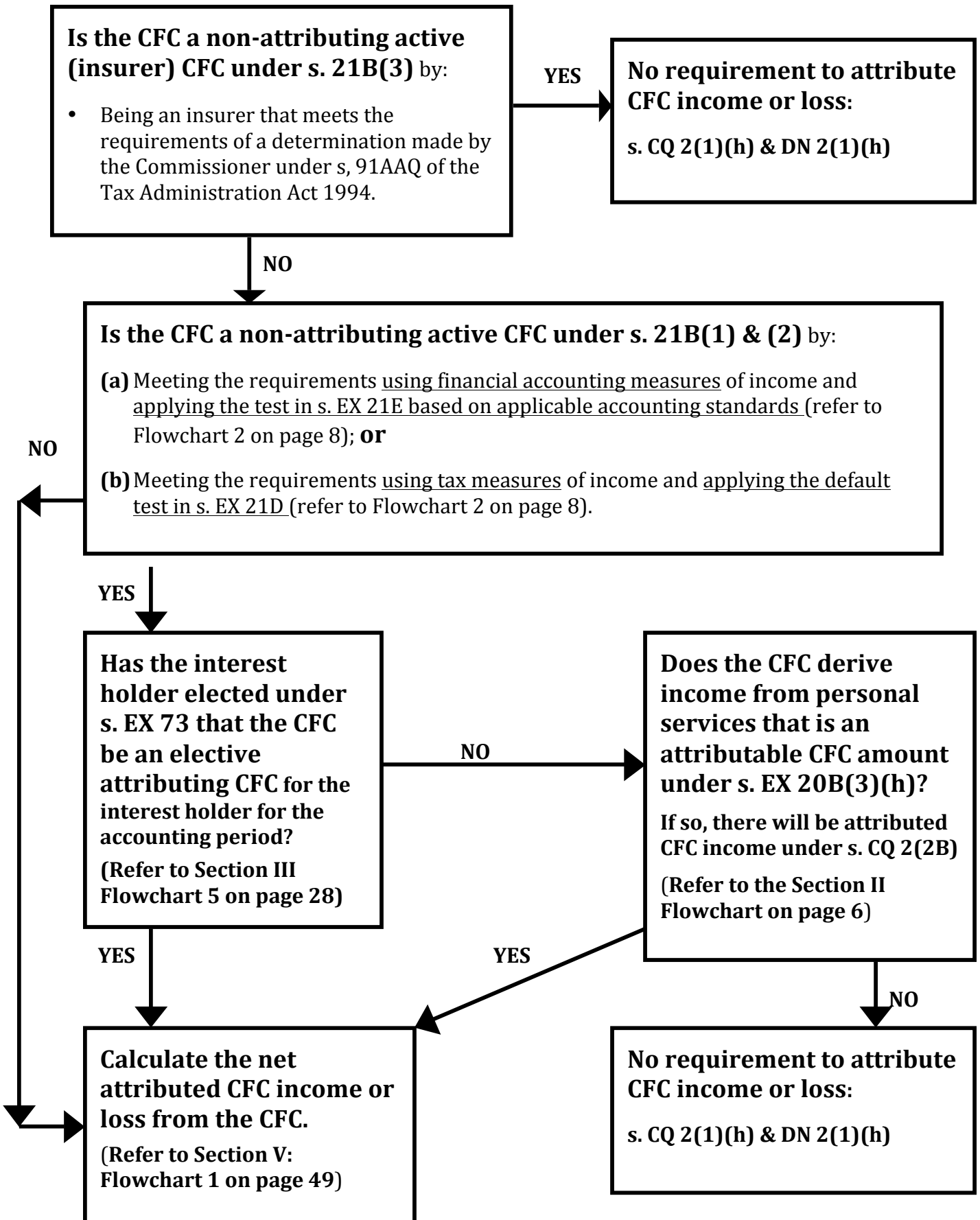
[Sections EX 18A(1)(c) & EX 20]

SECTION II: NON-ATTRIBUTING AUSTRALIAN CFCs

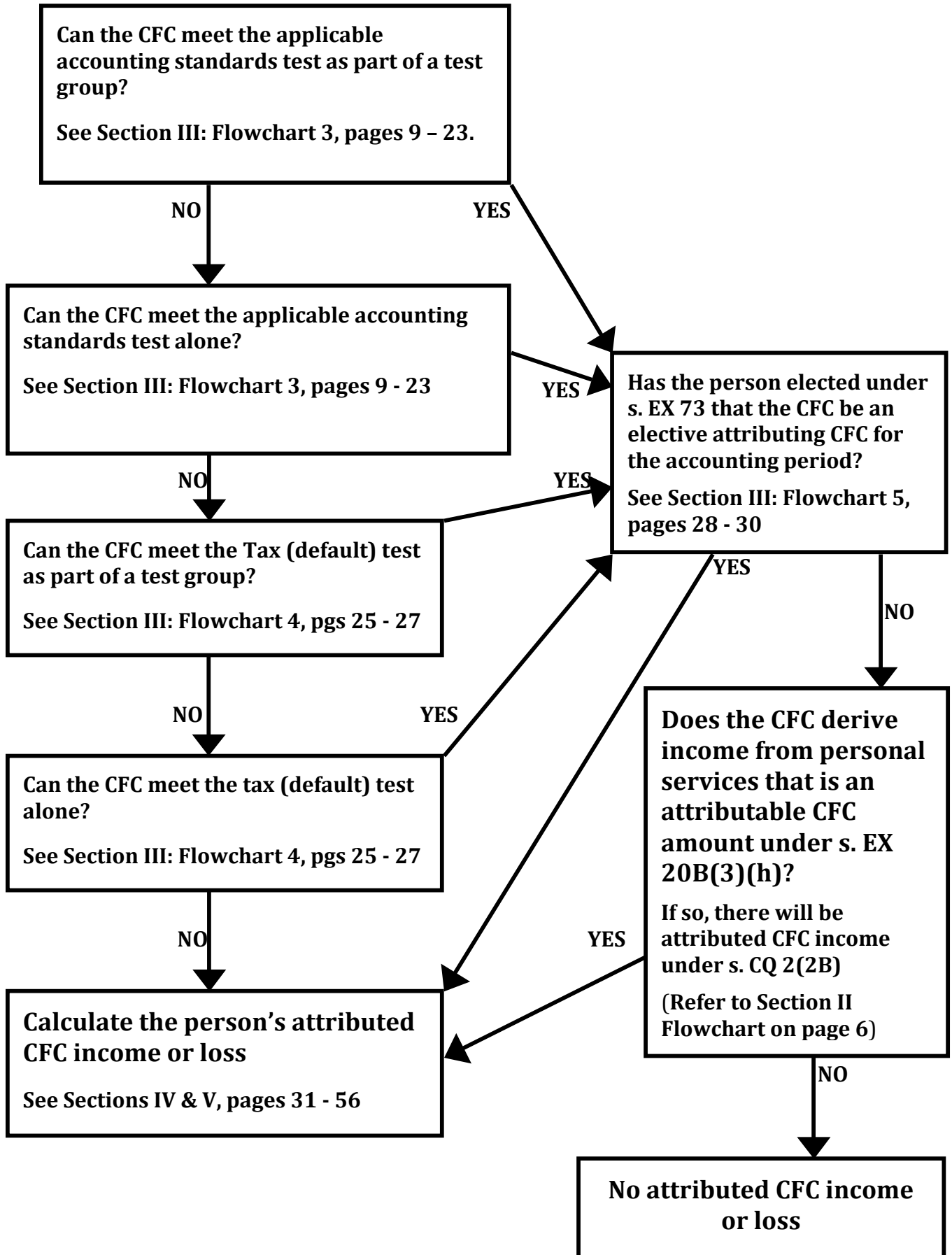


SECTION III: NON-ATTRIBUTING ACTIVE CFCs

FLOWCHART 1: HOW TO GO ABOUT FINDING OUT IF A CFC IS A NON-ATTRIBUTING ACTIVE CFC



SECTION III: NON-ATTRIBUTING ACTIVE CFCs
FLOWCHART 2: TESTS TO BE A NON-ATTRIBUTING ACTIVE CFC



SECTION III: NON-ATTRIBUTING ACTIVE CFCs

FLOWCHART 3: THE APPLICABLE ACCOUNTING STANDARDS TEST

1. What is the test based on using an applicable accounting standard?

A CFC, either alone, or as part of a test group of companies, meets the test based on using an applicable accounting standard in section EX 21E to be a non-attributing active CFC by:

- (a) Meeting the requirements in section EX 21C for the use of an applicable accounting standard and choosing to use that accounting standard for the purposes of the formula calculation in section EX 21E.

(The 3 applicable accounting standards and the requirements for their use are set out in **Section III Flowchart 3 (3) to (6)** below)

- (b) Applying the following formula using relevant items from the accounts, and the application rules in **Section III Flowchart 3 (9)** below, and meeting the three requirements below:

$$\frac{\text{Reported passive} + \text{Added passive} - \text{Removed passive}}{\text{Reported revenue} + \text{Added revenue} - \text{Removed revenue}}$$

Three requirements to be a non-attributing active CFC:

- (i) The amount calculated using the above formula must be < 0.05
- (ii) The numerator in the formula must sum to \geq zero
- (iii) The denominator in the formula must be $>$ zero

(The items in the formula are explained in **Section III Flowchart 3 (10) to (15)** below)

[s. EX 21B(2)(b) and s. EX 21E(3) & (5)]

2. What is the anti-avoidance rule for the accounting standards test?

The following anti-avoidance rules in section GB 15C must not apply:

1. A CFC is not a non-attributing active CFC under section GB 15C if a person ("a party") enters an arrangement having a purpose, that is more than incidental, of enabling a CFC to meet the requirements of the test in section EX 21E for accounts prepared under an applicable accounting standard, when the CFC would not meet the requirements of the default test in section EX 21D.
2. A party who is a CFC associated with the CFC is not a non-attributing active CFC if:
 - (a) The arrangement (having a purpose, that is more than incidental, of enabling a CFC to meet the requirements of the test in section EX 21E for accounts prepared under an applicable accounting standard) involves a financial arrangement producing a foreign exchange loss for the CFC; and
 - (b) The foreign exchange loss decreases for the CFC the amount of the numerator in the formula for the test in section EX 21E for accounts prepared under an applicable accounting standard.

[Sections EX 21C(1) & GB 15C]

SECTION III: NON-ATTRIBUTING ACTIVE CFCs

FLOWCHART 3: THE APPLICABLE ACCOUNTING STANDARDS TEST (CONTINUED)

3. What are the applicable accounting standards?

There are three legislated applicable accounting standards, which may be used for a CFC alone, or for a CFC's test group:

1. The GAAP with IFRS accounting standard

The interest holder may use generally accepted accounting practice in New Zealand including IFRSs (*New Zealand Equivalents to International Financial Reporting Standards* approved by the Accounting Standards Review Board) and the *Framework for Differential Reporting for Entities Applying the New Zealand Equivalents to International Financial Reporting Standards Reporting Regime (GAAP with IFRS)* for the CFC, or for the CFC's test group, if the requirements set out in **(4)** below are met.

2. The IFRSE accounting standard

An interest holder may use IFRSEs (International Financial Reporting Standards approved by the International Accounting Standards Board) for a CFC, or for the CFC's test group, if the requirements set out in **(5)** below are met.

3. The GAAP without IFRS accounting standard (likely to be repealed – see Issues Paper)

The interest holder may use GAAP in NZ for persons not required to use IFRSs but required to comply with standards, other than IFRSs, approved by the Accounting Standards Review Board under the Financial Reporting Act 1993 (**GAAP without IFRS**) for a CFC, or for the CFC's test group, if the requirements set out in **(6)** below are met.

[Sections EX 21C & EX 21E(1)]

SECTION III: NON-ATTRIBUTING ACTIVE CFCs

FLOWCHART 3: THE APPLICABLE ACCOUNTING STANDARDS TEST (CONTINUED)

4. What is required for use of the GAAP with NZ IFRS accounting standard?

The interest holder may use generally accepted accounting practice in New Zealand including IFRSs (*New Zealand Equivalents to International Financial Reporting Standards* approved by the Accounting Standards Review Board) and the *Framework for Differential Reporting for Entities Applying the New Zealand Equivalents to International Financial Reporting Standards Reporting Regime (GAAP with IFRS)* for the CFC, or for the CFC's test group, if the interest holder or another person has accounts that:

1. Include the accounts of the CFC, or the accounts of the members of the test group, as appropriate; and
2. Comply with GAAP with IFRS by:
 - (a) Stating that they comply with GAAP with IFRS; and
 - (b) The Commissioner not having reasonable grounds to suspect:
 - (i) Fraudulent activity by the interest holder, the CFC, a company in the CFC's test group or the auditor; or
 - (ii) Preparation of the accounts with an intent to mislead; or
 - (iii) Incompetence of the auditor; and
3. Meet the following audit requirements:
 - (a) The accounts are audited by an accountant who is:
 - (i) A chartered accountant or an accountant of equivalent professional standard in the country in which the accounts are prepared; and
 - (ii) Independent of the CFC and the person; and
 - (b) The accounts are given an unqualified opinion or an opinion of equivalent standard in the country in which the accounts are prepared.

[S. EX 21C(1), (2), (3), (8) & (9) & s. 25 of the Taxation (International Investment and Remedial Matters) Act 2012 replacing CFC with company in the reference to fraudulent activity in s. EX 21C(9)(c)(i), from the first income year beginning on or after 1 July 2011]

SECTION III: NON-ATTRIBUTING ACTIVE CFCs

FLOWCHART 3: THE APPLICABLE ACCOUNTING STANDARDS TEST (CONTINUED)

5. What is required for the use of the IFRSEs accounting standard?

An interest holder may use IFRSEs (International Financial Reporting Standards approved by the International Accounting Standards Board) for a CFC, or for the CFC's test group, if the interest holder or another person has accounts that:

1. Include the accounts of the CFC, or the accounts of the members of the test group, as appropriate; and
2. Comply with IFRSEs by:
 - (a) Stating that they comply with IFRSEs; and
 - (b) The Commissioner not having reasonable grounds to suspect:
 - (i) Fraudulent activity by the interest holder, the CFC, a company in the CFC's test group or the auditor; or
 - (ii) Preparation of the accounts with an intent to mislead; or
 - (iii) Incompetence of the auditor; and
3. Meet the following audit requirements:
 - (a) The accounts are audited by an accountant who is:
 - (i) A chartered accountant or an accountant of equivalent professional standard in the country in which the accounts are prepared; and
 - (ii) Independent of the CFC and the person; and
 - (b) The accounts are given an unqualified opinion or an opinion of equivalent standard in the country in which the accounts are prepared.

[S. EX 21C(1), (4), (5), (8) & (9) & s. 25 of the Taxation (International Investment and Remedial Matters) Act 2012 replacing CFC with company in the reference to fraudulent activity in s. EX 21C(9)(c)(i), from the first income year beginning on or after 1 July 2011]

SECTION III: NON-ATTRIBUTING ACTIVE CFCs

FLOWCHART 3: THE APPLICABLE ACCOUNTING STANDARDS TEST (CONTINUED)

6. What is required for the use of the GAAP in NZ without IFRS accounting standard?

[Important note: An Officials' Issues Paper was released on 8 August 2012 questioning the continuing Use of old GAAP in the CFC rules following the changes to the financial reporting framework contained in the Financial Reporting Bill]

The interest holder may use GAAP in NZ for persons not required to use IFRSs but required to comply with standards, other than IFRSs, approved by the Accounting Standards Review Board under the Financial Reporting Act 1993 (**GAAP without IFRS**) for a CFC, or for the CFC's test group, if the interest holder or another person is a company resident in NZ that:

1. Has no revenue under Financial Reporting Standard 34 and Financial Reporting Standard 35; and
2. Is not an issuer under section 4 of the Financial Reporting Act 1993 in the current or preceding accounting periods; and
3. Is not required by section 19 of the Financial Reporting Act 1993 to file its accounts with the Registrar of Companies; and
4. Is not a large company under section 19A(1)(b) of the Financial Reporting Act 1993; and
5. Does not have accounts that are prepared and audited under GAAP with IFRS; and
6. Is not a subsidiary of a company having accounts that:
 - (a) Include the accounts of the subsidiary; and
 - (b) Are prepared and audited or required to be prepared under GAAP with IFRS; and
7. Has accounts that:
 - (a) Include the accounts of the CFC, or the accounts of the members of the test group, as appropriate; and
 - (b) Comply with IFRSEs by:
 - (i) Stating that they comply with IFRSEs; and
 - (ii) The Commissioner not having reasonable grounds to suspect:
 - a. Fraudulent activity by the interest holder, the CFC, a company in the CFC's test group or the auditor; or
 - b. Preparation of the accounts with an intent to mislead; or
 - c. Incompetence of the auditor; and
 - (c) Meet the following audit requirements:
 - (i) The accounts are audited by an accountant who is:
 - a. A chartered accountant or an accountant of equivalent professional standard in the country in which the accounts are prepared; and
 - b. Independent of the CFC and the person; and
 - (ii) The accounts are given an unqualified opinion or an opinion of equivalent standard in the country in which the accounts are prepared.

[S. EX 21C(1), (6), (7), (8) & (9) & s. 25 of the Taxation (International Investment and Remedial Matters) Act 2012 replacing CFC with company in the reference to fraudulent activity in s. EX 21C(9)(c)(i), from the first income year beginning on or after 1 July 2011]

SECTION III: NON-ATTRIBUTING ACTIVE CFCs

FLOWCHART 3: THE APPLICABLE ACCOUNTING STANDARDS TEST (CONTINUED)

7. Can a test group be used?

The test based on the use of an applicable accounting standard may be applied by an interest holder to a CFC as a member of a test group if:

1. The group consists of companies required under the applicable accounting standard to consolidate, whether or not with companies that are not in the group; and
2. Each company is subject to the laws of the same country or territory and has a taxed CFC connection with the country or territory – see **Section III Flowchart 3 (7A & 7B)** below; and
3. The interest holder holds an income interest of > 50% in each company; and
4. Each company has the same functional currency; and
5. There are audited and consolidated financial statements that:
 - (a) Include the accounts of the companies in the group, whether or not with accounts of companies that are not in the group; and
 - (b) Comply with the applicable accounting standard by meeting the requirements in section EX 21C for the relevant accounting standard – see **Section III Flowchart 3 (4) to (6)**.

[S. EX 21E(2) & (13)(a) & reference to taxed CFC connection in s. EX 21E(2)(b) inserted by ss. 27 and 132(34) of the Taxation (International Investment and Remedial Matters) Act 2012, applying to income years beginning on or after 1 July 2009]

Only a single test can be used for each CFC

An interest holder cannot use the result of a test applied to a test group that includes a CFC if:

- (a) The interest holder uses, for the period, the result of the same or a different test for the CFC alone; or
- (b) The interest holder uses, for the period, the result of the same or different test for the CFC as part of a different test group.

[S. EX 21B(4) as inserted by s. 24 of the Taxation (International Investment and Remedial Matters) Act 2012, applying for income years beginning on or after 1 July 2009]

Extract from *Tax Information Bulletin* Vol 24 No 6 July 2012 page 49:

Subsection EX 21B(4) clarifies that a CFC may not be part of more than one test group, and may not apply the test on an individual basis if it is part of a test group

SECTION III: NON-ATTRIBUTING ACTIVE CFCs

FLOWCHART 3: THE APPLICABLE ACCOUNTING STANDARDS TEST (CONTINUED)

7A. What does "taxed CFC connection" mean?

"Taxed CFC connection", for a CFC and a country or territory (**the host country**), means a relationship meeting the following requirements:

- (a) The CFC is resident in the host country under section YD 3 (Country of residence of foreign countries); and
- (b) There is no other country or territory for which the CFC is—
 - (i) A resident under the domestic law of the country or territory;
 - (ii) Liable to income tax because of the CFC's domicile, residence, place of incorporation, or centre of management;
 - (iii) Treated as a resident under an agreement with the host country that would be a double tax agreement if it were an agreement between New Zealand and the host country; and
- (c) The CFC has no presence outside the host country that is—
 - (i) A fixed establishment;
 - (ii) A permanent establishment under an agreement, between another country or territory and the host country, that would be a double tax agreement if it were between New Zealand and the host country; and
- (d) The CFC is liable in the host country to tax on its income because of the CFC's domicile, residence, place of incorporation, or centre of management, or there is another foreign company (the parent company) that—
 - (i) Wholly owns the CFC under the laws of New Zealand and the host country; and
 - (ii) Has a relationship with the host country meeting the requirements of paragraphs (a) to (c); and
 - (iii) Because of the parent company's domicile, residence, place of incorporation, or centre of management, is liable in the host country to tax on the CFC's income in the same period that the CFC would be liable on its income if it were a company liable for tax.

[S. YA 1 and s. 132(34) of the Taxation (International Investment and Remedial Matters) Act 2012]

SECTION III: NON-ATTRIBUTING ACTIVE CFCs

FLOWCHART 3: THE APPLICABLE ACCOUNTING STANDARDS TEST (CONTINUED)

7B. What does "taxed CFC connection" mean? (continued)**Explanation of the "taxed CFC connection" change in *Tax Information Bulletin* Vol 24 No 6 July 2012, pages 45-47 (continued)**

Some entities that New Zealand considers to be foreign companies are not treated as taxable entities in the country in which they are registered or organised. For example, a United States Limited Liability Company (LLC) such as a so-called "Delaware company" is often considered by the United States to be analogous to a partnership for tax purposes. In that case, it is not liable to tax in that country (though its shareholders may be) and the foreign company is not able to take advantage of the same country exemptions.

... there are cases when excluding entities such as LLCs from the same country exemptions is unnecessary and even counterproductive. In particular, if the LLC is wholly owned by another company in the same country, and that other company is liable for tax on the LLC's income, the outcome should be similar to the case in which all of the companies are liable to tax in that country. In those cases, normal tax is paid on the active income of the group in the foreign country and New Zealand should be prepared to exempt the income here.

The widening of the same country exemptions to entities that are not liable to tax in the foreign country has highlighted some situations in which the existing exemption—for entities that are liable to tax in the foreign country—may be too wide. Companies may be resident by reason of liability to tax in more than one country. Or they may be resident in one country but conduct significant operations in another. In that case, it may not be appropriate to assume that the country in which income is being earned is ultimately taxing the income.

To limit the use of the same country exemptions to cases when it is more likely that active income is being taxed normally by the relevant foreign country, there are three additional conditions for residence. These are:

- (a) First, that the CFC is a resident of the country in question under section YD 3;
- (b) Secondly, that the CFC is not treated as a dual-resident; and
- (c) Thirdly, that the CFC does not have a fixed establishment or a permanent establishment outside the country.

At the same time as clarifying the requirements for all companies that use the same country exemptions, the new Act widens the scope of the exemptions to include entities that are not liable to income tax because they are not considered to be taxable entities in the country where they are resident.

A CFC that is not liable to tax in the relevant country may still make use of the exemption if it meets the conditions for residence (see above) and two further conditions are met:

- (a) The CFC is wholly owned, under the laws of New Zealand and the foreign country, either directly or through a chain of wholly owned companies, by another CFC that meets the conditions for residence in the previous section; and
- (b) The other CFC is liable to tax on the income of the CFC in the relevant country by reason of its domicile, residence, place of incorporation or centre of management, in the same period as the CFC would be liable if it was an ordinary company liable to tax there.

SECTION III: NON-ATTRIBUTING ACTIVE CFCs

FLOWCHART 3: THE APPLICABLE ACCOUNTING STANDARDS TEST (CONTINUED)

8. If a test group cannot be used, apply the formula to each CFC individually.**9. What are the formula application rules for the accounting standards test?**

- (a) Each item in the formula is:
- (i) Determined under the applicable accounting standard; and
 - (ii) Adjusted so that no amount is included in the item more than once; and
- (b) Each item in the formula is determined:
- (i) From amounts consolidated for the CFC's test group under the applicable accounting standard, if the formula is applied to the test group; or
 - (ii) From amounts for the CFC if the formula is applied to the CFC alone; and
- (c) Each item is determined after adjustment of amounts included in the item by removing amounts corresponding to minority interests not held by the interest holder; and
- (d) A reference to a company that is associated is treated as being a reference to a company that is:
- (i) Associated with a member of the CFC's test group, although not a member of the CFC's test group, if the formula is applied to the test group; or
 - (ii) Associated with the CFC if the formula is applied to the CFC alone; and
- (e) A reference to a company that is in the same group of companies is treated as being a reference to a company that is:
- (i) In the same group of companies as a member of the CFC's test group, although not a member of the CFC's test group, if the formula is applied to the test group; or
 - (ii) In the same group of companies as the CFC if the formula is applied to the CFC alone; and
- (f) Amounts determined for a CFC other than as part of a test group are:
- (i) Determined in the functional currency of the CFC; and
 - (ii) Converted between currencies under the applicable accounting standard, but ignoring exchange differences arising on a monetary item that forms part of a net investment of the CFC in a foreign operation; and
- (g) Amounts determined for a test group are:
- (i) Converted from the functional currency of the CFC to the presentation currency of the consolidated accounts for the test group using the average conversion rate for the accounting period; and
 - (ii) Otherwise converted between currencies under the applicable accounting standard.

For the purposes of these application rules, amounts drawn from the accounts, or from information that is used to prepare the accounts and is consistent with them, are treated as complying with the relevant accounting standard if the Commissioner does not have reasonable grounds to suspect:

- (a) Fraudulent activity by the interest holder, the CFC, a CFC in the CFC's test group, or the auditor.
- (b) Preparation of the accounts with an intent to mislead.
- (c) Incompetence of the auditor.

[S. EX 21E(4) & (13)(b)]

SECTION III: NON-ATTRIBUTING ACTIVE CFCs

FLOWCHART 3: THE APPLICABLE ACCOUNTING STANDARDS TEST (CONTINUED)

10. What does the formula item "reported passive" mean?

Reported passive is the total amount of:

- (a) Income from a dividend.
- (b) Income from interest.
- (c) Income from a royalty.
- (d) Income from rent.
- (e) Income, other than rent or interest, from a finance lease or operating lease.
- (f) Income or loss from a financial asset, other than a derivative as defined in NZIAS 39 (**see below**) or a share that is not revenue account property, in the form of:
 - (i) A change in the reported fair value of the asset.
 - (ii) A gain or loss on the derecognition of the asset, as defined in NZIAS 39 – i.e. a gain or loss on the removal of a previously recognised financial asset or financial liability from an entity's statement of financial position (see the "Definitions" in paragraph 9 of NZIAS 39).
 - (iii) A foreign exchange gain or loss on the asset.
- (g) Income or loss from a derivative instrument, as defined in NZIAS 39 (**see below**) and included in the CFC's statement of income:
 - (i) If the instrument is held in the course of a business of the CFC for the purpose of dealing with the derivative instrument.
 - (ii) If the instrument is not entered in the ordinary course of business of the CFC.
 - (iii) To the extent to which the income or loss is from a hedging relationship, of a type referred to in NZIAS 39, with an amount that would change the numerator of the formula in section EX 21E(5) or with a transaction producing such an amount of income or gain.
- (h) Income or gains from a business of insurance, including income or gains from a property used to back insurance assets.

A derivative instrument as defined in NZIAS 39 is a financial instrument or other contract within the scope of NZIAS 39 (see paragraphs 2-7 of NZIAS 39) with all three of the following characteristics:

- (a) Its value changes in response to the change in a specified interest rate, financial instrument price, commodity price, foreign exchange rate, index of prices or rates, credit rating or credit index, or other variable, provided in the case of a non-financial variable that the variable is not specific to a party to the contract (sometimes called the 'underlying')
- (b) It requires no initial net investment or an initial investment that is smaller than would be required for other types of contracts that would be expected to have a similar response to changes in market factors.
- (c) It is settled at a future date.

[S. EX 21E(7) & Definition of 'Derivative instrument' in NZIAS 39]

SECTION III: NON-ATTRIBUTING ACTIVE CFCs

FLOWCHART 3: THE APPLICABLE ACCOUNTING STANDARDS TEST (CONTINUED)

11. What does the formula item “added passive” mean?

Added passive is the total of amounts not included in the item reported passive for the accounting period that are one or more of the following:

- (a) Income from a life insurance policy that is included in the attributable CFC amount for the accounting period under section EX 20B(3)(g) – see **Section IV (3)(g) on page 44** below.
- (b) Income from the disposal of revenue account property that is included in the attributable CFC amount for the accounting period under section EX 20B(3)(k) - see **Section IV (3)(k) on page 46** below – if the property is:
 - (i) Not a share, financial arrangement, or life insurance policy; and
 - (ii) Used by the CFC in a way that gives rise to income or gains that increase the numerator of the formula in section EX 20E(5).
- (c) Income from a supply of services performed in New Zealand that is included in the attributable CFC amount for the accounting period under section EX 20B(3)(l) – see **Section IV (3)(l) on page 46** below.
- (d) Income from a supply of telecommunications services that is included in the attributable CFC amount for the accounting period under section EX 20B(3)(m) or (n) - see **Section IV (3)(m) & (3)(n) on page 47** below.
- (e) Attributed portfolio investment entity (PIE) income that is included under section EX 20B(3)(o) - see **Section IV (3)(o) on page 48** below.

[**S. EX 21E(8)** including **s. EX 21E(8)(e)** as inserted by **s. 36(1)** of the Tax Administration Act 2011 applying from 29 August 2011, the date on which the Act received the Royal assent]

SECTION III: NON-ATTRIBUTING ACTIVE CFCs

FLOWCHART 3: THE APPLICABLE ACCOUNTING STANDARDS TEST (CONTINUED)

12. What does the formula item "removed passive" mean?

Removed passive is:

1. Zero if the interest holder does not choose to include an amount for this item; or
2. The total of amounts that are included in the item 'reported passive' or added passive for the accounting period and are in a category included in categories chosen by the interest holder from the following:
 - (a) A dividend that is not included in the attributable CFC amount for the accounting period under section EX 20B(3)(a) to (c) - see **Section IV (3)(a) – (3)(c) on pages 36-37** below.
 - (b) A royalty that would be included in the attributable CFC amount for the accounting period but for section EX 20B(5)(a) to (d) - see **Section IV (3)(d)(i) – (3)(d)(iv) on pages 39-42** below.
 - (c) Rent that would be included in the attributable CFC amount for the accounting period but for section EX 20B(7)(a) to (c) - see **Section IV (3)(e) on page 43** below.
 - (d) A gain or loss from a financial asset that is a financial arrangement or agreement referred to in section EX 20B(12) - see **Section IV (2) on pages 32** below and the IRD explanation in *Tax Information Bulletin* Vol 24 No 6 July 2012 set out in **Section III Flowchart 3 (12A)** below.
 - (e) The cost of revenue account property producing an amount ('the included amount') included in the attributable CFC amount under section EX 20B(3)(k) - see **Section IV (3)(k) on page 46** below - to the extent, not exceeding 'the included amount', to which:
 - (i) The cost would be a deduction of the CFC in the accounting period if the CFC were a resident of New Zealand; and
 - (ii) The deduction would exceed the amount of any income arising under subpart CH (Adjustments) relating to the deduction.

[**S. EX 21E(9)** including **s. EX 21E(9)(cb)** (shown as paragraph (d) above) inserted by **s. 27(2)** of the Taxation (International Investment and Remedial Matters) Act 2012 effective from income years commencing on or after 1 July 2009]

SECTION III: NON-ATTRIBUTING ACTIVE CFCs

FLOWCHART 3: THE APPLICABLE ACCOUNTING STANDARDS TEST (CONTINUED)

12A. IRD explanation: amendment to “removed passive” in s. EX 21E(9)(cb)

Excerpt from pages 48 – 49 of Tax Information Bulletin Vol 24 No 6 July 2012

Paragraph EX 21E(9)(cb)

Reported passive in section EX 21E(7) is the measure of passive income that is used in the active business test using accounting concepts. One component of reported passive is income or loss from a financial asset, other than a derivative or a share on capital account. Accounts receivable can be financial assets. This means that gains or losses on accounts receivable—for example, due to exchange rate fluctuations—may be included in the measure of passive income. However, accounts receivable may relate to active businesses so including them is not necessarily appropriate.

Reported passive income also includes interest received from associated non-attributing CFCs. Such interest may not be ignored even though other forms of passive income from such CFCs can be (see paragraphs EX 21E(9)(a) to (c)).

The Act changes the measure of passive income to address these problems. The change allows gains or losses on financial assets (including interest income) to be excluded from the measure of passive income if:

- They are included in the measure to begin with (see the existing provision at the beginning of subsection EX 21E(9)); and
- They could be excluded under the active business test that uses tax rules ((see subsection EX 20B(12), but subject to the modification described below).

This allows the exclusion of amounts that are, broadly speaking, payments from related active entities and gains or losses relating to accounts receivable.

The exclusions in subsection EX 20B(12) are exclusions from financial arrangement income. The subsection does not apply to financial arrangement expenditure.

However, in the context of section EX 21E, it would be inappropriate not to exclude expenditure if income was being excluded; section EX 21E refers to gains *or losses* from financial assets. Therefore, paragraph EX 21E(9)(cb) (**paragraph (d) on page 20**) refers to any gain or loss on a financial asset that is a financial arrangement or agreement referred to in subsection EX 20B(12), *whether or not it actually generates income under that subsection*. That is, a person may exclude gains under paragraph EX 21E(9)(cb), but only if they also exclude similar losses. (emphasis added)

[IRD TIB Vol 24 No 6 July 2012 pp 48-49]

SECTION III: NON-ATTRIBUTING ACTIVE CFCs

FLOWCHART 3: THE APPLICABLE ACCOUNTING STANDARDS TEST (CONTINUED)

13. What does the formula item "reported revenue" mean?

Reported revenue is the total amount that is:

- (a) Included under the applicable accounting standard in:
 - (i) Operating revenue, if the applicable accounting standard is GAAP without IFRS (see **(5)** above); or
 - (ii) Revenue, otherwise.
- (b) Income from rent. (See the explanation in *Tax Information Bulletin* Vol 24 No 6 July 2012 **set out below**).
- (c) Income, other than rent, from a finance lease or operating lease.
- (d) A gain or loss on a financial asset, other than a derivative as defined in NZIAS 39 (see **(10)** above) or a share not on revenue account, in the form of:
 - (i) A change in the reported fair value of the asset;
 - (ii) A gain or loss on the derecognition, as defined in NZIAS 39, of the asset (see **(10)** above);
 - (iii) A foreign exchange gain or loss on the asset.
- (e) A gain or loss from a derivative instrument, as defined in NZIAS 39 (see **(10)** above), and included in the CFC's statement of income:
 - (i) If the derivative instrument is held in the course of a business of the CFC for the purpose of dealing with the derivative instrument;
 - (ii) If the derivative instrument is not entered in in the ordinary course of business of the CFC;
 - (iii) To the extent to which the gain or loss is from a hedging relationship, of a type referred to in NZIAS 39, with an amount that would change the denominator of the formula in section EX 20E(5) or with a transaction producing such an amount of income or gain.
- (f) Income or a gain from a business of insurance, including from property used to back insurance assets, if the applicable accounting standard is not GAAP without IFRS.

[S. EX 21E(10) including s. EX 21E(10)(ab) (shown as paragraph (b) above) inserted by s. 27(3) of the Taxation (International Investment and Remedial Matters) Act 2012 from income years beginning on or after 1 July 2009]

Excerpt from page 48 of *Tax Information Bulletin* Vol 24 No 6 July 2012**Paragraph EX 21E(10)(ab)**

Reported revenue in section EX 21E(10) is the measure of total income for the purposes of the active business test using accounting concepts. Reported revenue includes "revenue" if IFRS is used, a term which is defined by International Accounting Standard 18. Lease income is generally excluded from the definition of "revenue" under that standard. Lease income is brought in under another item that is part of reported revenue, but only if it is income other than rent from finance or operating leases. This means that rental income may not be able to be included in the measure of total income. This is not intended, and this Act contains an amendment to the definition of reported revenue so that rent may be included.

SECTION III: NON-ATTRIBUTING ACTIVE CFCs

FLOWCHART 3: THE APPLICABLE ACCOUNTING STANDARDS TEST (CONTINUED)

14. What does the formula item “added revenue” mean?

Added revenue is:

1. Zero if the interest holder does not choose to include an amount for this item; or
2. The total of amounts that are not included in the item ‘reported revenue’ for the accounting period and are either or both of the following:
 - (f) Income from a life insurance policy that is included in the attributable CFC amount for the accounting period under section EX 20B(3)(g) - see **Section IV (3)(g) on page 44** below.
 - (g) Income from the disposal of revenue account property that is included in the attributable CFC amount for the accounting period under section EX 20B(3)(k) - **Section IV (3)(k) on page 46** below - if the property is:
 - (i) Not a share, financial arrangement, or life insurance policy; and
 - (ii) Used by the CFC in a way that gives rise to income or gains that increase the numerator of the formula in section EX 20E(5).

[S. EX 21E(11)]

SECTION III: NON-ATTRIBUTING ACTIVE CFCs

FLOWCHART 3: THE APPLICABLE ACCOUNTING STANDARDS TEST (CONTINUED)

15. What does the formula item "removed revenue" mean?

Removed revenue is the total of amounts that are included under the applicable accounting standard in the item 'reported revenue' or 'added revenue' for the accounting period and are 1 or more of the following:

- (a) An amount included in the item 'removed passive' under section EX 21E(9)(d) – see paragraph 2(e) in **Section III Flowchart 3 (12)** above.
- (b) A dividend to the extent to which it is included in the item 'removed passive' under section 21E(9)(a) – see paragraph 2(a) in **Section III Flowchart 3 (12)** above.
- (c) Income from a supply of personal services that is included in the item reported 'reported revenue', and in the attributable CFC amount for the accounting period under section EX 20B(3)(h) - see **Section IV (3)(h) on page 45** below.
- (d) Income or loss from a share that is not revenue account property under the Income Tax Act 2007 in the form of:
 - (i) A change in the reported fair value of the share.
 - (ii) Income or loss on the derecognition, as defined in NZIAS 39 – see **(10)** above – of the share.
 - (iii) A foreign exchange gain or loss on the share.
- (e) Income derived from another CFC that:
 - (i) Is subject to the laws of the country or territory under which the CFC is liable to income tax on the CFC's income because of the CFC's domicile, residence, place of incorporation, or centre of management; and
 - (ii) Is liable to tax on its income in that country or territory because of its domicile, residence, place of incorporation, or centre of management; and
 - (iii) Could be consolidated with the CFC for the purposes of this section if appropriate audited accounts were prepared.
- (f) If the applicable standard is GAAP without IFRS (see **(5)** above), income from a liability, other than income derived in the normal course of business from a sale or supply of services, in the form of:
 - (i) A reduction in the liability;
 - (ii) A gain on the disposal or other derecognition of the liability;
 - (iii) A foreign exchange gain on the liability.
- (g) If the applicable standard is GAAP without IFRS (see **(6)** above), income from an asset that is not a financial asset under NZIAS 32 and not revenue account property as defined in section YA 1 (Definitions) in the form of:
 - (i) An increase in the fair value of the asset.
 - (ii) A gain on the disposal of the asset.
 - (iii) A foreign exchange gain on the asset.

[S. EX 21E(12)]

SECTION III: NON-ATTRIBUTING ACTIVE CFCs
FLOWCHART 4: THE TAX MEASURES (DEFAULT) TEST

1. If the test based on applicable accounting standards cannot be used, or it is failed, the test based on tax measures (the default test) can be used:

A CFC, either alone, or as part of a test group of companies, meets the default test in section EX 21D to be a non-attributing active CFC, for an accounting period and a person, by:

Applying the following formula, using the application rules set out in **(4) on page 27** below, and meeting the two requirements below:

$$\frac{\text{Attributable CFC amount} - \text{Attributable adjustments}}{\text{Annual gross income ignoring income under subpart CQ} - \text{Gross adjustments}}$$

Two requirements to be a non-attributing active CFC:

- (i) The amount calculated using the above formula must be < 0.05
- (ii) The denominator – i.e. annual gross income – must not be zero.

Attributable CFC amount is the amount determined under section EX 20B - refer to **Section IV on pages 31 – 48** below.

Attributable adjustments is the total of amounts included in 'attributable CFC amount' that are:

- (a) If the interest holder so chooses, income derived from the supply of personal services:
 - (i) Included in an attributable CFC amount under section EX 20B(3)(h) – refer to **Section IV (3)(h) on page 45** below; and
 - (ii) Not included in an attributable CFC amount under another paragraph of section EX 20B(3) and (4) – i.e. not otherwise included as part of "gross" or "arrangement" - refer to **Section IV on pages 31 - 48**.
- (b) If the interest holder so chooses, the cost of revenue account property producing an amount ('the included amount') included in the attributable CFC amount under section EX 20B(3)(k) - refer to **Section IV (3)(k) on page 46** below - to the extent, not exceeding 'the included amount', to which:
 - (i) The cost is a deduction of the CFC in the accounting period; and
 - (ii) The deduction exceeds the amount of any income arising under subpart CH (Adjustments) relating to the deduction.

Annual gross income is the annual gross income for the accounting period in the absence of income under subpart CQ (i.e. income from CFCs and FIFs).

Gross adjustments is the total of the following amounts for the accounting period:

- (a) The amount of the item 'Attributable adjustments' in the formula.
- (b) Expenditure or loss that is included in the calculation of the attributable CFC amount under section EX 20B – refer to **Section IV on pages 31 - 48**.
- (c) Income derived from a company that would meet the requirements to be a member of the CFC's test group.
- (d) Income from a supply that meets the requirements of section GB 15B (Anti-avoidance rule for supplies made to a non-test group CFC for the purpose of increasing the amount of the denominator in the formula).

[S. EX 21D & GB 15B]

SECTION III: NON-ATTRIBUTING ACTIVE CFCs
FLOWCHART 4: THE TAX MEASURES (DEFAULT) TEST (CONTINUED)

2. Can the tax measures (default) test be used for a test group?

A person (the 'interest holder') with an interest in a CFC may choose to apply the default test for the CFC as a member of a test group if the group consists of companies:

1. Each subject to the laws of the same country or territory and having a taxed CFC connection with the country or territory - refer to **Flowchart 3 (7A) & (7B) – page 15-16** meaning:
 - (a) Each company is resident in the country and liable to tax in the country because of domicile, residence, place of incorporation, or centre of management; or
 - (b) Each company has a 100% parent company that is resident in the country and because of domicile, residence, place of incorporation, or centre of management, is liable to tax on the company's income in the same period as the company would be liable for tax on that income; and
 - (c) Each company is not resident in any other country or treated as resident in any other country under a tax treaty, or liable to tax in any other country because of domicile, residence, place of incorporation, or centre of management (and if a parent company is liable for the company's tax, the parent company also fulfills this requirement); and
 - (d) Each company has no presence that is a fixed establishment, or a permanent establishment under a double tax agreement, outside the country (and if a parent company is liable for the company's tax, the parent company also fulfills this requirement); and
2. In each of which the interest holder holds an income interest of > 50%; and
3. Each of which is required to use the same currency under section EX 21(4) – see **(3)** in the separate PDF attachment on the **Calculation Rules: Attributable CFC amount And Net Attributable CFC income/(Loss)**; and
4. That are consolidated for the purposes of applying the default test:
 - (a) Using like tax treatments for like transactions and for other events in similar circumstances; and
 - (b) Eliminating in full all balances, transactions, income, and expenses arising between members of the test group.

[S. EX 21D(1) & reference to, and definition of, taxed CFC connection inserted in s. 21D(1)(a) & YA 1 respectively by s. 26 & 132(34) of the Taxation (International Investment and Remedial Matters) Act 2012, applying to income years beginning on or after 1 July 2009]

Only a single test can be used for each CFC

An interest holder cannot use the result of a test applied to a test group that includes a CFC if:

- (c) The interest holder uses, for the period, the result of the same or a different test for the CFC alone; or
- (d) The interest holder uses, for the period, the result of the same or different test for the CFC as part of a different test group.

[S. EX 21B(4) as inserted by s. 24 of the Taxation (International Investment and Remedial Matters) Act 2012, applying for income years beginning on or after 1 July 2009]

Extract from Tax Information Bulletin Vol 24 No 6 July 2012 page 49:

Subsection EX 21B(4) clarifies that a CFC may not be part of more than one test group, and may not apply the test on an individual basis if it is part of a test group.

SECTION III: NON-ATTRIBUTING ACTIVE CFCs

FLOWCHART 4: THE TAX MEASURES (DEFAULT) TEST (CONTINUED)

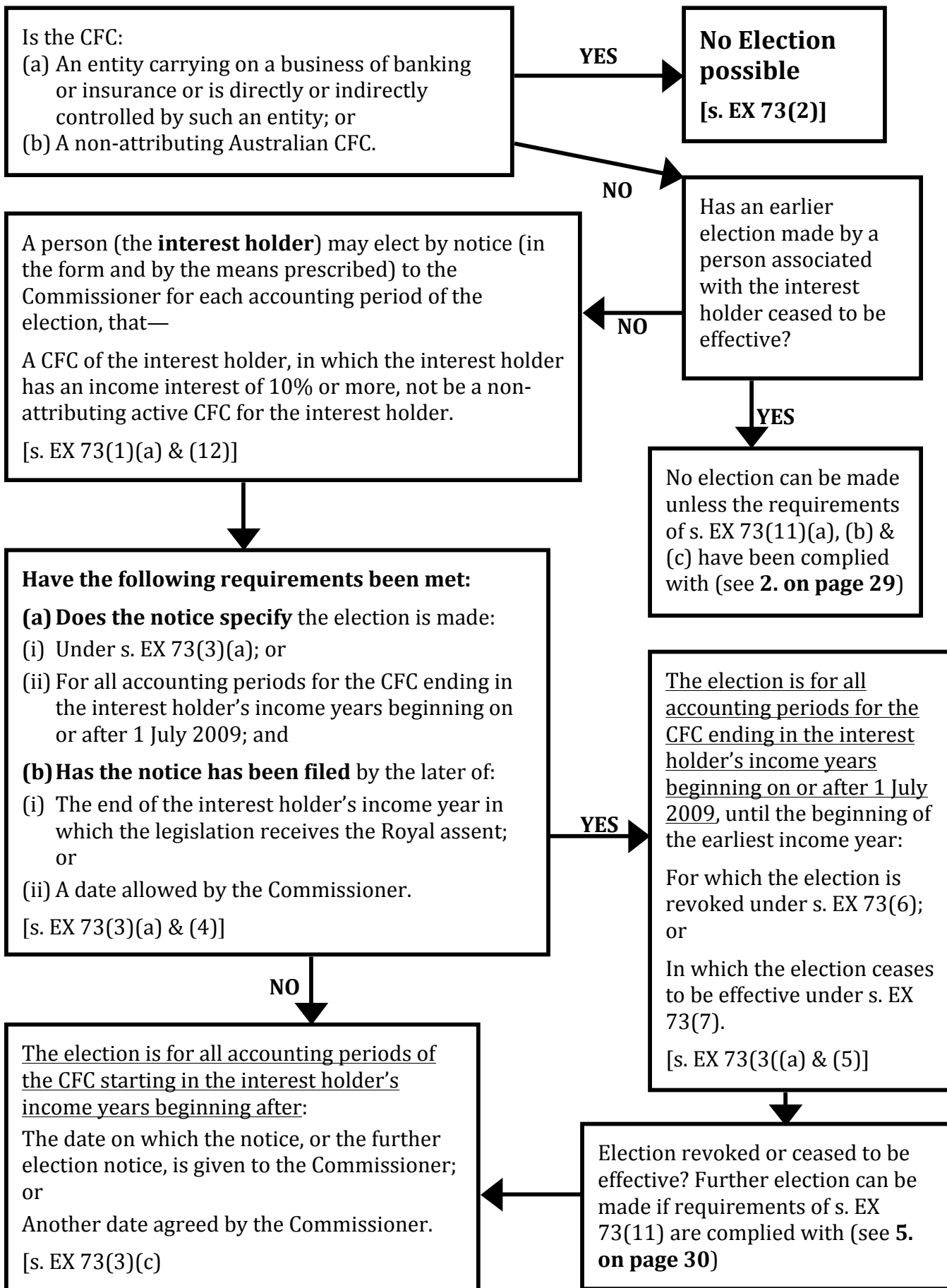
3. If a test group cannot be used, apply the formula to each CFC individually

4. The formula application rules for the tax measures (default) test are:

- (a) Each item in the formula is determined:
 - (i) For the CFC's consolidated test group, if the interest holder chooses to apply the formula to the test group; or
 - (ii) For the CFC if the formula is applied to the CFC alone; and
- (b) Each item in the formula is determined for a test group after amounts included in the item are adjusted to remove amounts corresponding to income interests not held by the interest holder; and
- (c) A reference to a company that is associated is treated as being a reference to a company that is:
 - (i) Associated with a member of the CFC's test group, although not a member of the CFC's test group, if the formula is applied to the test group; or
 - (ii) Associated with the CFC if the formula is applied to the CFC alone; and
- (d) A reference to a company that is in the same group of companies is treated as being a reference to a company that is:
 - (i) In the same group of companies as a member of the CFC's test group, although not a member of the CFC's test group, if the formula is applied to the test group; or
 - (ii) In the same group of companies as the CFC if the formula is applied to the CFC alone; and
- (e) A numerator or denominator that is a negative number is treated as being zero; and
- (f) The amount calculated using the formula is zero if the denominator is zero.

[S. EX 21D(3)]

**SECTION III: NON-ATTRIBUTING ACTIVE CFCs
FLOWCHART 5: ELECTIVE ATTRIBUTING CFCs**



SECTION III: NON-ATTRIBUTING ACTIVE CFCs

FLOWCHART 5: ELECTIVE ATTRIBUTING CFCs (CONT.)

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)]

SECTION III: NON-ATTRIBUTING ACTIVE CFCs

FLOWCHART 5: ELECTIVE ATTRIBUTING CFCs (CONT.)

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 s. 154 of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012]

SECTION IV: CALCULATION OF ATTRIBUTABLE CFC AMOUNT

A CFC's attributable CFC amount must be calculated if the CFC is:

- (a) Not a non-attributing Australian CFC; and
- (b) Not a non-attributing active CFC; or
- (c) A non-attributing active CFC that is an elective attributing CFC.

<p>SECTION IV: ATTRIBUTABLE CFC AMOUNT: (1) Formula: Section EX 20B</p>	<p><u>The calculation of the attributable CFC amount for a CFC (before any deductions) is set out in section EX 20B.</u></p> <p><u>Attributable CFC amount</u> for an accounting period and a CFC means an amount calculated under the rules in section EX 21 (see the separate PDF on the <u>Attributable CFC Amount Calculation Rules</u>) using the formula:</p> <p style="text-align: center;">Gross + arrangement</p> <p><u>Gross</u> is explained in Section IV (3)(a) to (3)(p) on pages 36 - 48 below.</p> <p><u>Arrangement</u> is explained in Section IV (2) on pages 32 - 35 below.</p> <p>[S. EX 20B(1)]</p>
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**SECTION IV:
ATTRIBUTABLE CFC
AMOUNT:
(2) Meaning of
"arrangement"**

Arrangement

Arrangement is the total, for the CFC and the accounting period, of amounts of income under section CC 3 (Financial arrangements) for:

1. An arrangement that
 - (a) Is a financial arrangement, or a short-term agreement for sale and purchase for which the CFC has made an election under section EW 8 (Election to treat certain excepted financial arrangements as financial arrangements).
 - (b) Is not a derivative instrument as defined in NZIAS 39 – which is a financial instrument or other contract within the scope of NZIAS 39 (see paragraphs 2-7 of NZIAS 39) with all three of the following characteristics:
 - (i) Its value changes in response to the change in a specified interest rate, financial instrument price, commodity price, foreign exchange rate, index of prices or rates, credit rating or credit index, or other variable, provided in the case of a non-financial variable that the variable is not specific to a party to the contract (sometimes called the 'underlying')
 - (ii) It requires no initial net investment or an initial investment that is smaller than would be required for other types of contracts that would be expected to have a similar response to changes in market factors.
 - (iii) It is settled at a future date.
 - (c) Is not:
 - (i) An agreement by the CFC to lend money to a person who would be an associated non-attributing active CFC in the absence of this exclusion and the exclusions in sections EX 20B (5)(c) (exclusion for royalty paid by an associated non-attributing active CFC) and section EX 20B(7)(c) (exclusion for rent paid by an associated non-attributing active CFC).
 - (ii) An agreement for the sale or purchase of property or services or a hire purchase agreement:
 - a. Entered in the ordinary course of business by the CFC.
 - b. For property or services produced or used by the CFC in business.
2. A derivative instrument:
 - (a) That is held in the course of a business of the CFC for the purpose of dealing with the derivative instrument.
 - (b) That is not entered in the ordinary course of a business of the CFC.
 - (c) To the extent to which the income is from a hedging relationship, of a type referred to in NZIAS 39, with income of the CFC treated as part of "gross" under section EX 20B(3) or treated as part of "arrangement" under section EX 20B(4)(a) or with a transaction producing such income of the CFC.

[S. EX 20B(4) & EX 20B(12) and "Definition of a derivative" in paragraph 9 of NZIAS 39]

<p>SECTION IV: ATTRIBUTABLE CFC AMOUNT: (2A) Meaning of “arrangement” (continued): meaning of “associated non- attributing CFC”</p>	<p><u>Meaning of “associated non-attributing CFC”</u></p> <p>In section YA 1, an “associated non-attributing active CFC” for a CFC, is defined as meaning another company that is associated with the CFC under section YB 2 (a common voting and market value interest of 50% or more) if the other company and the CFC meet the following requirements:</p> <p>The other company is a non-attributing active CFC (see Section III from pages 7 - 30); and</p> <p>The other company and the CFC each have a <u>taxed CFC connection</u> with the same country or territory. (See the next row below)</p> <p>[S. 132(3) of the Taxation (International Investment and Remedial Matters) Act 2012 treated as coming into force on 1 July 2009]</p>
<p>SECTION IV: ATTRIBUTABLE CFC AMOUNT: (2B) Meaning of “arrangement” (continued): meaning of “taxed CFC connection”</p>	<p><u>Meaning of “taxed CFC connection”</u></p> <p>“Taxed CFC connection”, for a CFC and a country or territory (the host country), means a relationship meeting the following requirements:</p> <p>(a) The CFC is resident in the host country under section YD 3 (Country of residence of foreign countries); and</p> <p>(b) There is no other country or territory for which the CFC is—</p> <p>(i) A resident under the domestic law of the country or territory;</p> <p>(ii) Liable to income tax because of the CFC's domicile, residence, place of incorporation, or centre of management;</p> <p>(iii) Treated as a resident under an agreement with the host country that would be a double tax agreement if it were an agreement between New Zealand and the host country; and</p> <p>(c) The CFC has no presence outside the host country that is—</p> <p>(i) A fixed establishment;</p> <p>(ii) A permanent establishment under an agreement, between another country or territory and the host country, that would be a double tax agreement if it were between New Zealand and the host country; and</p> <p>(d) The CFC is liable in the host country to tax on its income because of the CFC's domicile, residence, place of incorporation, or centre of management, or there is another foreign company (the parent company) that—</p> <p>(i) Wholly owns the CFC under the laws of New Zealand and the host country; and</p> <p>(ii) Has a relationship with the host country meeting the requirements of paragraphs (a) to (c); and</p> <p>(iii) Because of the parent company's domicile, residence, place of incorporation, or centre of management, is liable in the host country to tax on the CFC's income in the same period that the CFC would be liable on its income if it were a company liable for tax.</p> <p>[S. YA 1 and s. 132(34) of the Taxation (International Investment and Remedial Matters) Act 2012]</p>

<p>SECTION IV: ATTRIBUTABLE CFC AMOUNT: (2C) Meaning of “arrangement” (continued): IRD explanation of “taxed CFC connection”</p>	<p><u>Explanation of the “taxed CFC connection” change in <i>Tax Information Bulletin</i> Vol 24 No 6 July 2012, pages 45-47</u></p> <p>The Act expands the scope of income that can be excluded from attributed foreign income, by permitting some companies, which are not recognised for tax purposes in the country they operate in, to nevertheless be treated as resident in that country.</p> <p>The Act also adds requirements to prevent abuse of the rules that allow some income to be ignored.</p> <p><u>Income that a controlled foreign company receives from a non-attributing active CFC (in the form of interest – see Section IV (2) “Arrangement” on page 32, royalties – see Section IV (3)(d)(iii) “Royalties exception 3” on page 40 and rent - see Section IV (3)(e) “Rent” on page 43), in the same country may be ignored for tax purposes even if one or both CFCs are not liable to tax in that country. (emphasis added)</u></p> <p><u>(In addition, income that a CFC receives from rental property - see Section IV (3)(e) “Rent” on page 43 and telecommunications services - see Section IV (3)(n) “Telecommunications services” on page 47 can also be ignored even if the CFC is not liable to tax in that country.)</u></p> <p>[Continued in the row below]</p>
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A PERSON'S ATTRIBUTED CFC INCOME OR LOSS

<p>SECTION IV: ATTRIBUTABLE CFC AMOUNT: (2C) Meaning of “arrangement” (continued): IRD explanation of “taxed CFC connection” (continued)</p>	<p><u>Explanation of the “taxed CFC connection” change in <i>Tax Information Bulletin</i> Vol 24 No 6 July 2012, pages 45-47 (continued)</u></p> <p>Some entities that New Zealand considers to be foreign companies are not treated as taxable entities in the country in which they are registered or organised. For example, a United States Limited Liability Company (LLC) such as a so-called “Delaware company” is often considered by the United States to be analogous to a partnership for tax purposes. In that case, it is not liable to tax in that country (though its shareholders may be) and the foreign company is not able to take advantage of the same country exemptions.</p> <p>... there are cases when excluding entities such as LLCs from the same country exemptions is unnecessary and even counterproductive. In particular, if the LLC is wholly owned by another company in the same country, and that other company is liable for tax on the LLC’s income, the outcome should be similar to the case in which all of the companies are liable to tax in that country. In those cases, normal tax is paid on the active income of the group in the foreign country and New Zealand should be prepared to exempt the income here.</p> <p><u>The widening of the same country exemptions to entities that are not liable to tax in the foreign country has highlighted some situations in which the existing exemption—for entities that are liable to tax in the foreign country—may be too wide.</u> Companies may be resident by reason of liability to tax in more than one country. Or they may be resident in one country but conduct significant operations in another. In that case, it may not be appropriate to assume that the country in which income is being earned is ultimately taxing the income.</p> <p>To limit the use of the same country exemptions to cases when it is more likely that active income is being taxed normally by the relevant foreign country, there are three additional conditions for residence. These are:</p> <ul style="list-style-type: none"> (a) First, that the CFC is a resident of the country in question under section YD 3; (b) Secondly, that the CFC is not treated as a dual-resident; and (c) Thirdly, that the CFC does not have a fixed establishment or a permanent establishment outside the country. <p><u>At the same time as clarifying the requirements for all companies that use the same country exemptions, the new Act widens the scope of the exemptions to include entities that are not liable to income tax because they are not considered to be taxable entities in the country where they are resident.</u></p> <p>A CFC that is not liable to tax in the relevant country may still make use of the exemption if it meets the conditions for residence (see above) and two further conditions are met:</p> <ul style="list-style-type: none"> (a) The CFC is wholly owned, under the laws of New Zealand and the foreign country, either directly or through a chain of wholly owned companies, by another CFC that meets the conditions for residence in the previous section; and (b) The other CFC is liable to tax on the income of the CFC in the relevant country by reason of its domicile, residence, place of incorporation or centre of management, in the same period as the CFC would be liable if it was an ordinary company liable to tax there.
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<p>SECTION IV: ATTRIBUTABLE CFC AMOUNT: (3) Meaning of “gross”</p>	<p><u>Gross</u></p> <p><u>Gross</u> is the total amount of income, derived in the accounting period by the CFC that is 1 or more of the following listed types of income.</p> <p>[Section EX 20B(3)]</p>
<p>SECTION IV: ATTRIBUTABLE CFC AMOUNT: (3)(a) “Gross”: Dividends from exempt FIFs</p>	<p><u>Dividends</u></p> <p>Included in a CFC’s attributable amount is a dividend that is paid in relation to rights:</p> <ol style="list-style-type: none"> 1. That are a direct income interest in a foreign company; and 2. Meet the requirements of <u>neither</u> section EX 34 (exemption for an income interest of 10% or more in a FIF that is a CFC) <u>nor</u> section EX 35 (exemption for a direct income interest of 10% or more in an Australian resident FIF); and 3. That are excluded from being an attributing interest by: <ol style="list-style-type: none"> (a) Section EX 31 (exemption for Australian listed companies). (b) Section EX 32 (exemption for Australian unit trusts meeting minimum turnover and distribution requirements). (c) Section EX 36 (10-year exemption for a venture capital company emigrating to a grey list country). (d) Section EX 37 (10-year exemption for a grey list company owning a NZ venture capital company). (e) Section EX 37B (exemption for shares in a grey list company acquired under an agreement with the Venture Investment Fund). (f) Section EX 39 (terminating exemption for grey list company with numerous NZ shareholders). <p>[S. EX 20B(3)(a) as amended by s. 19(1) of the Taxation (International Investment and Remedial Matters) Act 2012]</p> <p><u>Comment from TIB Vol 24 No 6 July 2012, page 30:</u></p> <p>Section EX 20B(3)(a) mirrors section CW 9(2) (the foreign dividend exemption) by attributing income from FIFs which use the attributable FIF income method in respect of those dividends that would be taxable if they were received directly by a New Zealand company.</p> <p>(Refer to pages 19-20 of TIB Vol 24 No 6 July 2012 for an explanation of the foreign dividend exemption.)</p>
<p>SECTION IV: ATTRIBUTABLE CFC AMOUNT: (3)(b) “Gross”: Unimputed dividends from NZ</p>	<p><u>Unimputed dividends from New Zealand</u></p> <p>Included in attributable CFC amount is a dividend that is paid by a company resident in New Zealand to the extent to which the dividend is not fully imputed.</p> <p>[S. EX 20B(3)(b)]</p>

**SECTION IV:
ATTRIBUTABLE CFC
AMOUNT:
(3)(c) "Gross":
Other taxable
distributions from
foreign companies**

Deductible and fixed rate foreign equity distributions

1. Included in a CFC's attributable income is an amount that is a deductible foreign equity distribution which means a distribution by a foreign company to a company, in relation to a share in the foreign company:
 - (a) For which a deduction is allowed in the calculation of the income tax imposed by a country or territory other than New Zealand on the income of a person.
 - (b) Sourced directly or indirectly out of an amount paid to the foreign company in relation to a financial arrangement or share by another company if:
 - (i) The foreign company is not liable for income tax imposed by a country or territory other than New Zealand on the amount paid to the foreign company; and
 - (ii) The other company is allowed a deduction, in the calculation of the income tax imposed by a country or territory other than New Zealand on the income of the other company, for the amount paid to the foreign company.
2. Also included in a CFC's attributable income is an amount that is a distribution for fixed rate foreign equity which means an interest (the equity) in the capital of a foreign company held by a company (the holder) in relation to which the foreign company makes distributions:
 - (a) At a rate that is a specific fixed percentage of the amount subscribed for the issue of the equity: or
 - (b) At a rate that:
 - (i) Is a percentage of the amount subscribed for the issue of the equity: and
 - (ii) Has a fixed relationship to economic, commodity, industrial, or financial indices, to banking rates of interest, or to general commercial rates of interest; or
 - (c) At a rate that would be given by paragraph (a) or (b) but for the variation due to:
 - (i) A fixed relationship to a rate of income tax;
 - (ii) Compensation to the holder for default by the foreign company;
 - (iii) Compensation to the holder for expenditure or loss related to the holding of the equity and suffered by the holder or by a person associated with the holder; or
 - (d) Equivalent to the payment of interest for money lent, having regard to:
 - (i) Whether or not the equity is redeemable;
 - (ii) Any security provided to the holder, including put or call options over the equity or an amount payable determined by reference to the amount of distribution payable;
 - (iii) The variability or lack of variability of the distribution payable.

[S. EX 20B(3)(c) and s. YA 1 definitions of "deductible foreign equity distribution" (as amended by s. 132 (16) of the Taxation (International Investment and Remedial Matters) Act 2012) and "fixed-rate foreign equity"]

<p>SECTION IV: ATTRIBUTABLE CFC AMOUNT: (3)(d) "Gross": Royalties</p>	<p><u>Royalties included in attributable CFC income or loss</u></p> <p>A royalty derived by a CFC is included in an attributable CFC amount unless it fits within one of the 4 exceptions (3)(d)(i) to (3)(d)(iv) described on pages 39 - 42.</p> <p>[S. EX 20B(3)(d)]</p>
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**SECTION IV:
ATTRIBUTABLE CFC
AMOUNT:
(3)(d)(i) "Gross":
Royalties:
Exception 1**

Royalties Exception 1:

Royalties are not included in an attributable CFC amount if all the following requirements are met:

1. The CFC is regularly engaged in creating, developing, or adding value to property that produces royalties.
2. The royalty is paid by a person who is not associated with the CFC under section YB 2 (which specifies when 2 companies are associated: generally if there are voting or market value interests in common of at least 50%, aggregating the shareholdings of associated shareholders, subject to the international tax rules exception: 2 companies are not associated if one, but not both is a non-resident).
3. The royalty is paid from property that is not linked to New Zealand.

Property is linked to New Zealand at a time in an accounting period if:

Beginning from the later of: the time it was created, or the most recent occasion on which it had no link with New Zealand for the CFC (as defined below), and

Ending at the time in the accounting period (i.e. accounting year of the CFC),
Any of the following conditions are met:

- (a) The property has been owned by a New Zealand resident.
- (b) The property has been owned by a non-resident for the purposes of a business carried on in New Zealand through a fixed establishment in New Zealand.
- (c) The property was created or developed in New Zealand.
- (d) The property has had substantial value added in New Zealand.
- (e) The property has been acquired by a person who had a deduction for expenditure or loss incurred in the acquisition.
- (f) The property is based on knowledge acquired by a person who:
 - (i) Acquired the knowledge with the purpose or intention of creating the property; and
 - (ii) Had a deduction for expenditure or loss incurred in the acquisition.
- (g) The property is created or developed from activities, or from the extension, continuation, development, or completion of activities, if the activities produced knowledge acquired by a person who had a deduction for expenditure or loss incurred in the acquisition.

Property has no link with New Zealand for a CFC when the property is owned by a non-resident who:

- (a) Is not a CFC and is not associated with the CFC; and
- (b) Is not associated with a person who has owned the property while it had a link with New Zealand.

4. The royalty is paid from property that the CFC has created or developed or to which the CFC has added substantial value.

[S. EX 20B(5)(a) & EX 20B(13)-(15)]

<p>SECTION IV: ATTRIBUTABLE CFC AMOUNT: (3)(d)(ii) "Gross": Royalties: Exception 2</p>	<p><u>Royalties Exception 2</u></p> <p>Royalties are not included in an attributable CFC amount if all the following requirements are met:</p> <ol style="list-style-type: none"> 1. The CFC is regularly engaged in creating, developing, or adding value to property that produces royalties. 2. The royalty is paid by a person who is associated with the CFC under section YB 2 (which specifies when 2 companies are associated: generally if there are voting or market value interests in common of at least 50%, aggregating the shareholdings of associated shareholders, subject to the international tax rules exception: 2 companies are not associated if one, but not both is a non-resident). 3. The royalty is paid from property that is not linked to New Zealand (see Royalties exception 1 above). 4. The royalty is paid from property that the CFC has created or developed or to which the CFC has added substantial value. 5. The royalty is an arm's length amount determined under section GC 13 (Calculation of arm's length amounts) for the arrangement between the CFC and the associated person. <p>[S. EX 20B(5)(b)]</p>
<p>SECTION IV: ATTRIBUTABLE CFC AMOUNT: (3)(d)(iii) "Gross": Royalties: Exception 3</p>	<p><u>Royalties Exception 3</u></p> <p>Royalties are not included in an attributable CFC amount if all the following requirements are met:</p> <ol style="list-style-type: none"> 1. The royalty is paid by a person who would be an <u>associated non-attributing active CFC</u> (refer to Section IV (2A) on page 33) in the absence of this exclusion and the exclusions in sections EX 20B(7)(c) (exclusion for rent paid by an associated non-attributing active CFC) and EX 20B(12)(a) (exemption from being a financial arrangement for money lent to an associated non-attributing active CFC); and 2. The royalty is paid from property that is not linked to New Zealand (see Royalties exception 1 above). <p>[S. EX 20B(5)(c)]</p>

<p>SECTION IV: ATTRIBUTABLE CFC AMOUNT: (3)(d)(iv) "Gross": Royalties: Exception 4</p>	<p><u>Royalties Exception 4</u></p> <p>Royalties are not included in an attributable CFC amount if all the following requirements are met:</p> <ul style="list-style-type: none"> (a) The royalty is paid to the CFC: <ul style="list-style-type: none"> (i) By a person not associated with the CFC under section YB 2; or (ii) By a CFC associated with the CFC under section YB 2 that has received a royalty payment from such a person not associated with the CFC under section YB 2; or (iii) By a CFC associated with the CFC under section YB 2 that has received a royalty payment arising from such a royalty payment from a person not associated with the CFC under section YB 2; and (b) The royalty is paid from property owned by a New Zealand resident who is resident in no other country under all applicable double tax agreements; and (c) The royalty is paid from property: <ul style="list-style-type: none"> (i) Licensed to the CFC by the New Zealand resident for an arm's length amount determined under section GC 13 for the arrangement between the CFC and the New Zealand resident; or (ii) Licensed to a CFC associated with the CFC under section YB 2, (the licensee) by the New Zealand resident for an arm's length amount determined under section GC 13 for the arrangement between the licensee and the New Zealand resident. <p>[S. EX 20B(5)(d) as replaced by s. 19(4) of the Taxation (International Investment and Remedial Matters) Act 2012]</p>
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**SECTION IV:
ATTRIBUTABLE CFC
AMOUNT:
(3)(d)(iv) "Gross":
Royalties:
Exception 4
(continued)**

Excerpt from page 50 of Tax Information Bulletin Vol 24 No 6 July 2012

Section EX 50B(5)(d)

In general, royalty payments are attributable income when they are received by a CFC. However there are several exceptions to this. One of these exceptions did not operate as intended and has been corrected.

The exception in section EX 20B(5)(d) provides an exemption for royalty payments in cases where a:

- New Zealand company owns intellectual property and
- Licenses this to a CFC which in turn sub-licenses it to a person who is not associated with the CFC.

The Act modifies the exemption so that it also applies to royalty payments that pass through a chain of two or more associated CFCs, so long as the royalty:

- Is paid in relation to intellectual property that is owned by a New Zealand resident;
- Is licensed to one of the CFCs in the chain; and
- Is ultimately derived from another royalty that is paid by person who is not associated with the chain of CFCs.

The reference to "ultimately derived" means that the royalty should be for an amount that is similar to the amount of the original third-party royalty.

Note that the transfer pricing rules could apply if the related party royalties are significantly different from the third party royalty. (emphasis added)

Example

Consider the following chain of associated CFCs.

NZ Co (owns IP)



Licenses IP for a royalty ("Royalty 3")



To wholly owned US CFC



Sub-licenses IP for a royalty ("Royalty 2")



To wholly owned Canada CFC



Sub-licenses IP for a royalty ("Royalty 1")



To a 3rd Party.

Royalty 1 is exempt income of Canada CFC because it is paid by a person who is not associated with Canada CFC.

Royalty 2 is exempt income of US CFC because it is paid by Canada CFC which is associated with US CFC and it arises from Royalty 1 which was paid by a person who is not associated with these CFCs.

Royalty 3 is taxable income of NZ company. *It is expected that royalty 3 should be for an amount that is the same or similar to the amount of the original royalty from the third party. (emphasis added)*

**SECTION IV:
ATTRIBUTABLE CFC
AMOUNT:
(3)(e) "Gross": Rent**

Rent included in attributable CFC income or loss

Rent derived by a CFC is included in an attributable CFC amount under s. EX 20B(3)(e) if it is from any of the following sources:

1. A lease or sublease of land.
2. A lease or sublease of personal property.
3. A license to use intangible property.
4. A hire or bailment.

However, rent from any of the above sources is not included in an attributable CFC amount under section EX 20B(3)(e) if:

1. The rent is from land in a country or territory with which the CFC has a taxed CFC connection (summarised below – refer also to **Section IV (2B) – (2C) on pages 33-35**):
 - (a) The rent is from the country (the host country) in which the CFC or its 100% parent company is liable to tax on the CFC's income; and
 - (b) There is no other country in which the CFC is resident (or if the CFC's parent company is liable for the CFC's tax the parent company also fulfills this requirement for exclusive residence in the host country); and
 - (c) The CFC has no presence outside the host country that is a fixed establishment or a permanent establishment (or if the CFC's parent company is liable for the CFC's tax the parent company also fulfills this requirement).
2. The rent is from property other than land, to the extent to which the rent relates to the use of the property in a country or territory referred to in paragraph (a) above.
3. The rent is paid by a foreign company that would, if it were a CFC, be a non-attributing active CFC in the absence of this exclusion and the exclusions in sections EX 20B (5)(c) (exclusion for royalty paid by an associated non-attributing active CFC) and section EX 20B(7)(c) (exclusion for rent paid by an associated non-attributing active CFC) and a group of persons holds voting interests > 50% in the FIF and the foreign company and the FIF and the foreign company have a taxed FIF connection with the same country or territory.
4. The rent is a payment under a hire purchase agreement.
5. The rent is a payment under a finance lease.
6. The rent is a royalty.
7. The rent is a payment under a license to use intangible property that:
 - (a) Is not a royalty; and
 - (b) Would not be included in an attributable CFC amount under the Royalties Exceptions if treated as a royalty.

[S. EX 20B(3)(e) & EX 20B(6) & (7) and EX 50(4B)(c) & EX 50(4C) as inserted by s. 35(4) and reference to taxed CFC connection inserted by s. 19(5) of the Taxation (International Investment and Remedial Matters) Act 2012 effective from the first income year beginning on or after 1 July 2011]

<p>SECTION IV: ATTRIBUTABLE CFC AMOUNT: (3)(f) "Gross": Insurance premiums</p>	<p><u>Income from a business of insurance or being an insurer</u></p> <p>Included in the attributable CFC amount is income of a CFC from a business of insurance or from being an insurer [repealed: from a business of general insurance or life insurance that is a premium under an insurance contract or reinsurance contract].</p> <p>[S. 41 of the Taxation (Annual rates, Returns Filing, and Remedial Matters) Act 2012 applying from 1 July 2009]</p>
<p>SECTION IV: ATTRIBUTABLE CFC AMOUNT: (3)(g) "Gross": Life insurance policies</p>	<p><u>Income from a life insurance policy</u></p> <p>Income from a life insurance policy is included in an attributable CFC amount under section EX 20B(3)(g) if the income is not included in a calculation of FIF income or loss and is:</p> <ol style="list-style-type: none"> 1. A distribution, if the life insurance policy is not intended to compensate the CFC for financial losses arising from the death or extended incapacity of a specified employee or member involved in the CFC's business. 2. A distribution that is not intended to compensate the CFC for financial losses arising from the death or extended incapacity of a specified employee or member involved in the CFC's business, if the life insurance policy is intended to compensate the CFC for such losses. 3. Income from the disposal of the life insurance policy, if the policy is revenue account property. <p>[S. EX 20B(3)(g) & EX 20B(8)]</p>

<p>SECTION IV: ATTRIBUTABLE CFC AMOUNT: (3)(h) "Gross": Personal services income</p>	<p><u>Income from the supply of personal services</u></p> <p>Income derived by a CFC from the supply of personal services is included in an attributable CFC amount under section EX 20B(3)(h) if the personal services are performed by another person (the <u>working person</u>) and <u>all of the following requirements are met</u>:</p> <ol style="list-style-type: none"> 1. The working person is a New Zealand resident. 2. The personal services are not essential support for a product supplied by the CFC. 3. The working person is associated with the CFC under section YB 3 at the time the services are performed, or is a relative at the beginning of the accounting period, of a person associated with the CFC under section YB 3 (which specifies when a company and a person other than a company are associated: generally if the person has a voting or market value interest in the company of at least 25%, aggregating the shareholdings of associated persons; and a person other than a company includes a company acting in its capacity as a trustee of a trust). 4. At least 80% of the CFC's total income in the accounting period from supplying personal services is derived through personal services that: <ol style="list-style-type: none"> (a) Are not essential support for a product supplied by the CFC; and (b) Are performed by a working person who is a NZ resident and meets the above test of association with the CFC. 5. To derive the income the CFC uses a business structure that requires depreciable property having, at the end of the accounting period, a total cost under section GB 28(7) less than or equal to <u>the greater of</u>: <ol style="list-style-type: none"> (a) \$75,000; and (b) 25% of the CFC's total income from personal services performed in the accounting period. <p>(<u>Note</u>: section GB 28(7) includes certain expenditure in the cost of depreciable property that is subject to a finance lease, hire purchase agreement or specified lease.)</p> <p>[S. EX 20B(3)(h) & EX 20B(9)]</p>
<p>SECTION IV: ATTRIBUTABLE CFC AMOUNT: (3)(i) "Gross": Income from revenue account property</p>	<p><u>Income from the disposal of revenue account property that is a share</u></p> <p>Included in the attributable CFC amount of a CFC is income from the disposal of revenue account property that is a share, but <u>excluding</u> the income from the disposal of a share for which the CFC's FIF income or loss from the share in the period ending with the disposal is calculated using:</p> <ol style="list-style-type: none"> (a) The comparative value method. (b) The deemed rate of return method. (c) The fair dividend rate method. (d) The cost method. <p>[S. EX 20B(3)(i) to (k) & EX 20B(10)]</p>

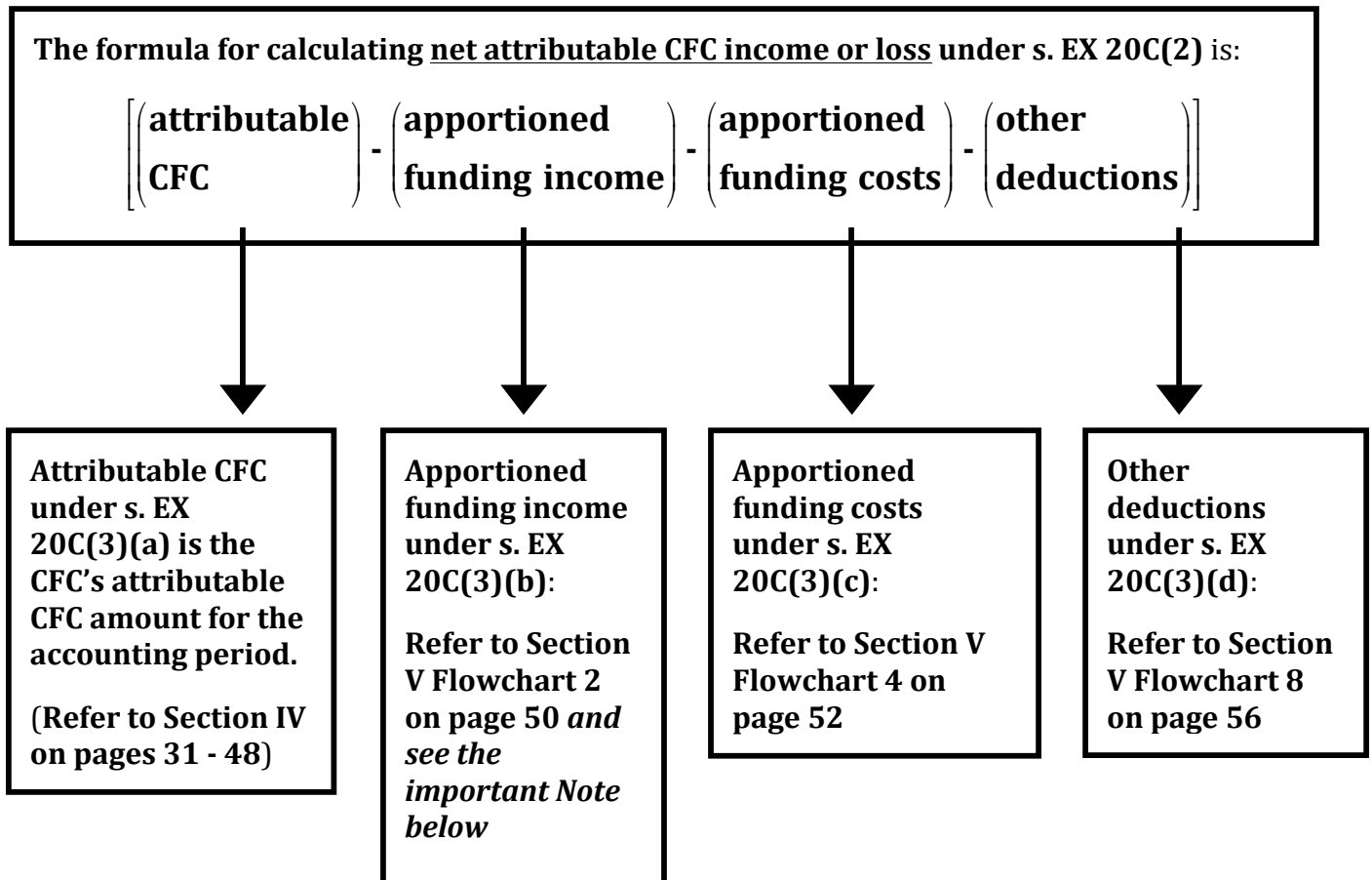
<p>SECTION IV: ATTRIBUTABLE CFC AMOUNT: (3)(j) "Gross": Income from revenue account property</p>	<p><u>Income from the disposal of revenue account property that is an option to acquire or dispose of a share</u></p> <p>Included in the attributable CFC amount of a CFC is income from the disposal of revenue account property that is an option to acquire or dispose of a share.</p> <p>[S. EX 20B(3)(j)]</p>
<p>SECTION IV: ATTRIBUTABLE CFC AMOUNT: (3)(k) "Gross": Income from revenue account property</p>	<p><u>Income from the disposal of other revenue account property</u></p> <p>Included in the attributable CFC amount of a CFC is income from the disposal of revenue account property that is:</p> <ul style="list-style-type: none"> (a) Not a share, financial arrangement, or life insurance policy; and (b) Used by the CFC with a purpose or effect of giving rise to income of the CFC that is attributable under section EX 20B(3). <p>[S. EX 20B(3)(k)]</p>
<p>SECTION IV: ATTRIBUTABLE CFC AMOUNT: (3)(l) "Gross": Service income</p>	<p><u>Income from a service</u></p> <p>Included in a CFC's attributable CFC amount is income from a service, other than a telecommunications service, to the extent to which the service is physically performed in New Zealand.</p> <p>[S. EX 20B(3)(l)]</p>
<p>SECTION IV: ATTRIBUTABLE CFC AMOUNT: (3)(m) "Gross": Income from a service relating to the use of telecommunications equipment</p>	<p><u>Service income relating to the use of telecommunications equipment</u></p> <p>Included in a CFC's attributable CFC amount is income from a service relating to the use of equipment to provide a telecommunications service, to the extent to which the equipment is at the time:</p> <ul style="list-style-type: none"> (a) Physically located outside any country or territory; and (b) Owned by the CFC <u>or by a FIF</u> that is associated with the CFC; and (c) Not a mobile telephone handset or a radio receiver and transmitter for a ship or aircraft. <p>[S. EX 20B(3)(m), including the amendment of section EX 20B(3)(m)(ii) applying to income years beginning on or after 1 July 2011: s. 19(2) & (10) of the Taxation (International Investment and Remedial Matters) Act 2012]</p>

<p>SECTION IV: ATTRIBUTABLE CFC AMOUNT: (3)(n) "Gross": Income from telecommunications services physically performed in NZ</p>	<p><u>Income from telecommunications services physically performed in NZ</u></p> <p>Included in a CFC's attributable CFC amount is income from a telecommunications service to the extent to which the service is physically performed in New Zealand but excluding a telecommunications service that meets the following requirements:</p> <ul style="list-style-type: none"> (a) The service is the transmission, emission, or reception of information between New Zealand and a <u>country or territory with which the CFC has a taxed CFC connection</u> (see also Section IV (2B) – (2C) on p. 33 - 35); and (b) The CFC is a network operator under the Telecommunications (Interception Capability) Act 2004 (a "network operator"), or: <ul style="list-style-type: none"> (i) A group of persons has, for the whole of the CFC's accounting period, voting interests and, if a market value circumstance exists, market value interests, of more than 50% in the CFC; and (ii) The group of persons has, for the whole of the CFC's accounting period, voting interests and, if a market value circumstance exists, market value interests, of more than 50% in a network operator; and (c) <u>The service is performed by a person other than the CFC, who:</u> <ul style="list-style-type: none"> (i) <u>Is resident in New Zealand and is resident in no other country under all applicable double tax agreements:</u> (ii) <u>Has a fixed establishment in New Zealand that is a permanent establishment under all applicable double tax agreements; and</u> (d) <u>The service is performed by the person as part of a business in New Zealand of providing telecommunications services in New Zealand:</u> <ul style="list-style-type: none"> (i) <u>Carried on through the person's fixed establishment, if the person is not resident in New Zealand; and</u> (ii) <u>From which the person derives assessable income of more than \$5,000,000 per annum.</u> <p>[S. EX 20B(3)(n) and s. EX 20B(11), including the <u>amendment of s. EX 20B(11)(a)</u> and the <u>replacement of s. EX 20B(11)(c) & (d)</u> applying to income years beginning on or after 1 July 2009: s. 19(7) & 19(11) of the Taxation (International Investment and Remedial Matters) Act 2012]</p>
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<p>SECTION IV: ATTRIBUTABLE CFC AMOUNT: (3)(o) "Gross": Attributed PIE income</p>	<p><u>Attributed PIE income that is not excluded income</u></p> <p>Included in a CFC's attributable CFC amount is attributed PIE income that, for a CFC, is not excluded income under section CX 56 – i.e. when CX 56 does not apply.</p> <p><u>Section CX 56 applies</u> to treat income that is attributed in an income year, under section CP 1, to an investor in a multi-rate PIE, as excluded income of the investor, if:</p> <ul style="list-style-type: none"> (a) The prescribed investor rate for the investor in the relevant calculation period is more than zero; and (b) That rate is not more than the notified investor rate in relation to the investor when the PIE calculates: <ul style="list-style-type: none"> (i) Its income tax liability under section HM 47 in relation to the income; or (ii) A voluntary payment under section HM 45 that is intended to be a final payment of its income tax liability in relation to the income. <p><u>Section CX 56 does not apply</u> when:</p> <ul style="list-style-type: none"> (a) The PIE calculates its income tax liability using the quarterly calculation option under section HM 43 and the amount is attributed to an investor who is treated under section HM 61 as zero-rated (section HM 61 treats certain exiting investors as zero-rated); or (b) An amount of attributed PIE income is derived by a trustee who has chosen a prescribed investor rate referred to in Schedule 6, table 1, row 5 or 7 (17.5% and 10.5% respectively at the time of writing). <p>[S. EX 20B(3)(o) as inserted by s. 36(1) of the Tax Administration Act 2011]</p>
<p>SECTION IV: ATTRIBUTABLE CFC AMOUNT: (3)(p) "Gross": Taxable dividends from grey list company FIFs</p>	<p><u>Taxable dividends from grey list company FIFs for which the FDR is used</u></p> <p>Included in a CFC's attributable amount is a dividend that is excluded by section CD 36(2) from the effect of section CD 36(1): which is a dividend from a FIF:</p> <ul style="list-style-type: none"> (a) Which is a grey list company; (b) In which the person holds a direct income interest of 10% or more at the beginning of the income year; (c) For which the person calculates their FIF income or loss for the period under the fair dividend rate (FDR) method. <p>[S. EX 20B(3)(p) inserted by s. 19(3) of the Taxation (International Investment and Remedial Matters) Act 2012 applying to income years beginning on or after 1 July 2011: s. 19(10)]</p>

SECTION V: CALCULATION OF NET ATTRIBUTED CFC INCOME OR LOSS

FLOWCHART 1: FORMULA



Important Note: Under s. EZ 32D Apportioned Funding Income is calculated in 2 parts when:

- (a) A CFC is excessively debt funded (see Flowchart 5 on page 52); and
- (b) The CFC entered into a financial arrangement before 21 June 2012 (an **old funding arrangement**) that provides funds for the CFC.

Part 1 - Old funding arrangements: The calculation rules in Flowchart 2 on page 50 are adjusted, so that:

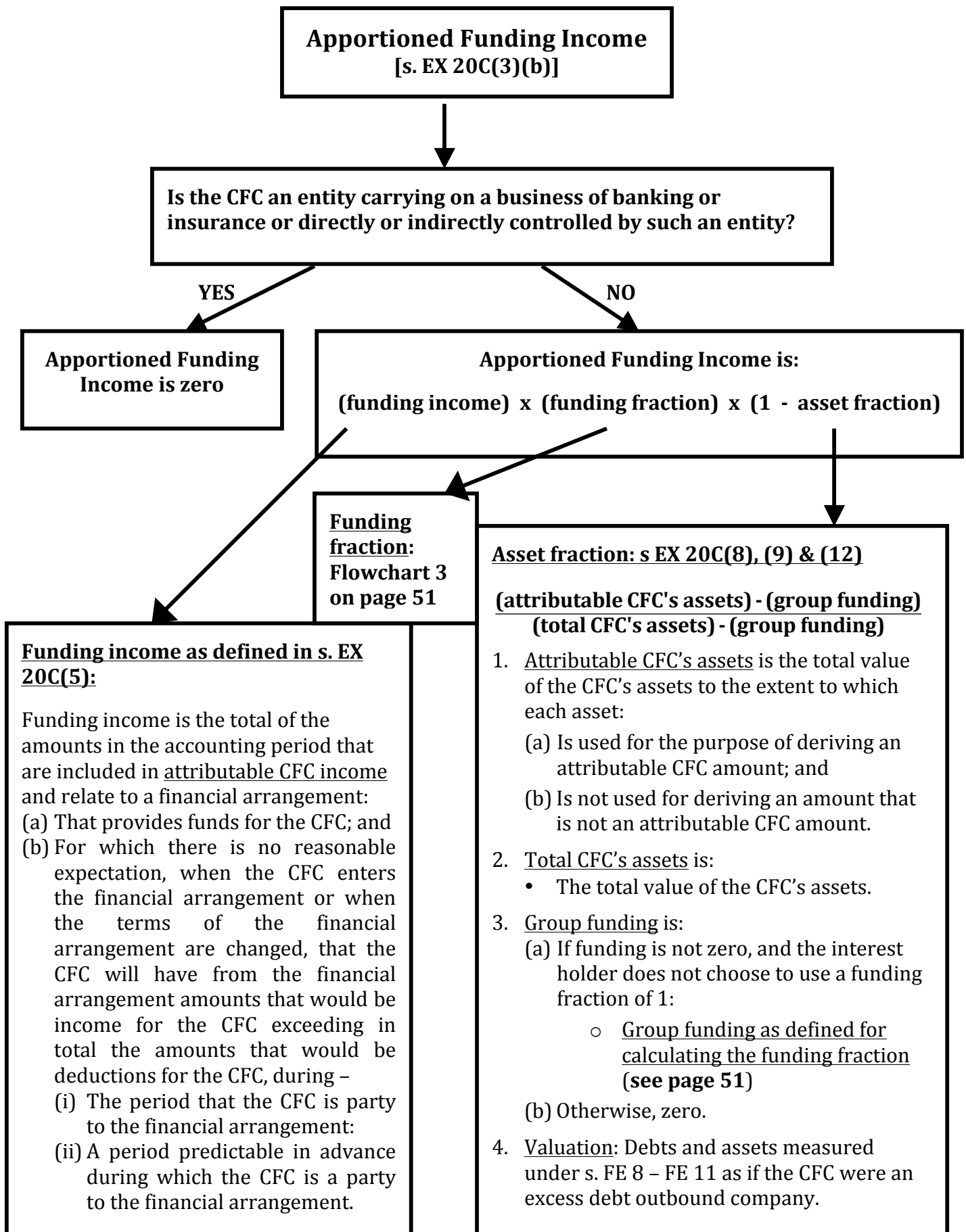
- (a) The value of **funding income** relates only to old funding arrangements (entered into before 21 June 2012); and
- (b) The value of **asset fraction** is the **cost fraction** calculated under s. EX 20D(10) – as set out in Flowchart 5 on page 53:

Cost fraction = (attributed foreign company assets)/(total foreign company assets).

Part 2 - Funding arrangements entered into on or after 21 June 2012: The calculation rules are exactly as set out in Flowchart 2 on page 50 with the value of funding income relating only to financial arrangements (entered into on or after 21 June 2012) that are not old funding arrangements.

[s. EZ 32D]

SECTION V: NET ATTRIBUTED CFC INCOME OR LOSS
FLOWCHART 2: APPORTIONED FUNDING INCOME



SECTION V: NET ATTRIBUTED CFC INCOME OR LOSS:
FLOWCHART 3: FUNDING FRACTION

Funding Fraction
[s. EX 20C(6)]



Funding

Funding as defined in section EX 20C(7)(a) (under s. 42 of the Annual Rates Tax Act) is the sum of:

- (a) Financial arrangements to which the CFC is a party and which provide funds for the CFC; and
- (b) Shares issued by the CFC that:
 - (i) Are held by a NZ resident, or a CFC, or a FIF for which the interest holder uses the AFI method (for income years starting on or after 1/7/11); and
 - (ii) Are fixed rate foreign equity or shares giving rights to deductible foreign equity distributions (see Section IV (3)(c) on page 37)



YES

Is Funding zero?

NO

Funding Fraction = 1
[Section EX 20C(6)(a)]

Calculating apportioned funding costs?

YES

Does the interest holder choose to rely on section EX 20C(6)(b)?

YES

NO

NO

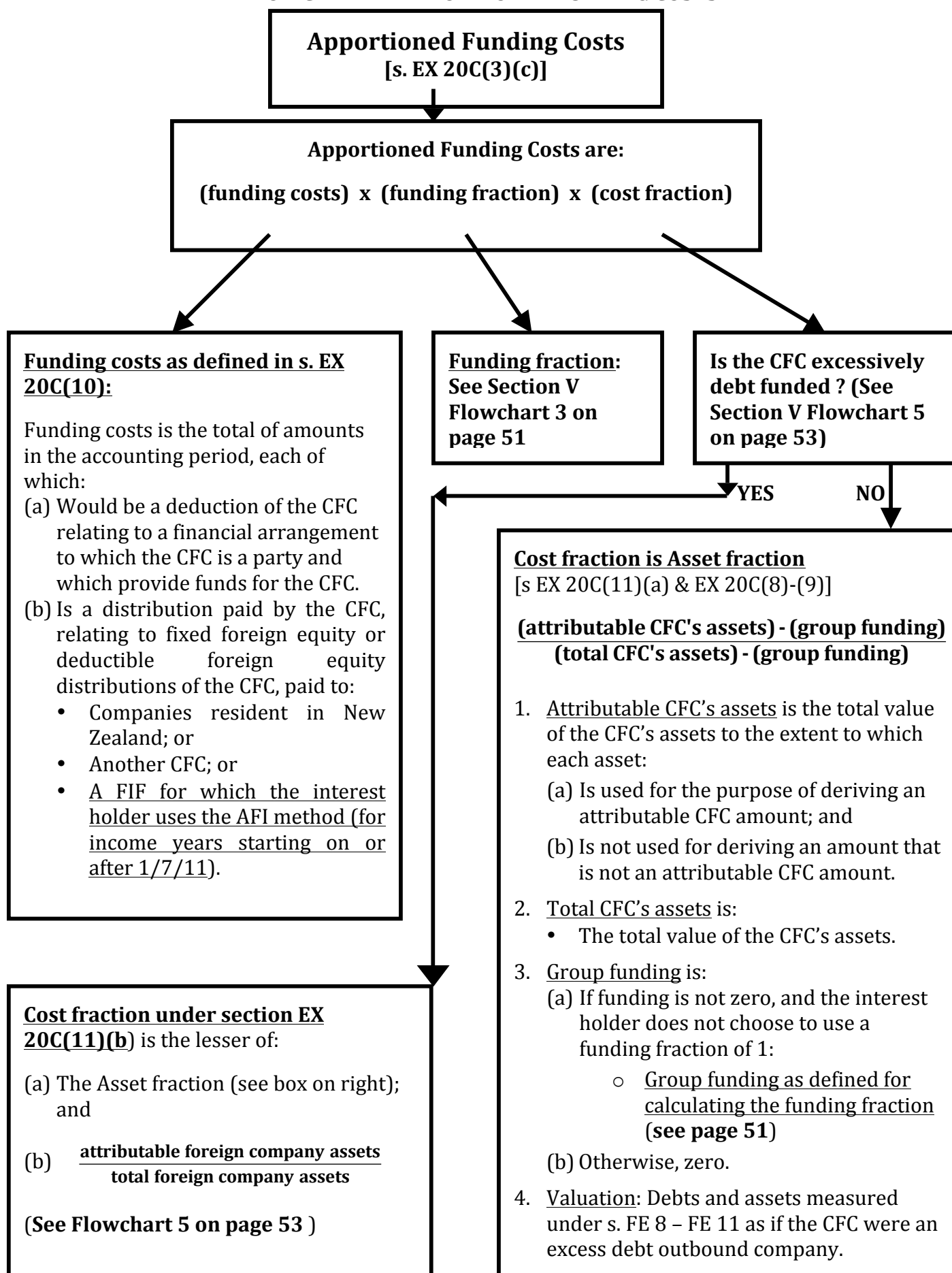
$$\text{Funding Fraction} = \frac{\text{funding} - \text{group funding}}{\text{funding}}$$

Funding = as defined in s. EX 20C(7)(a) – **see above**

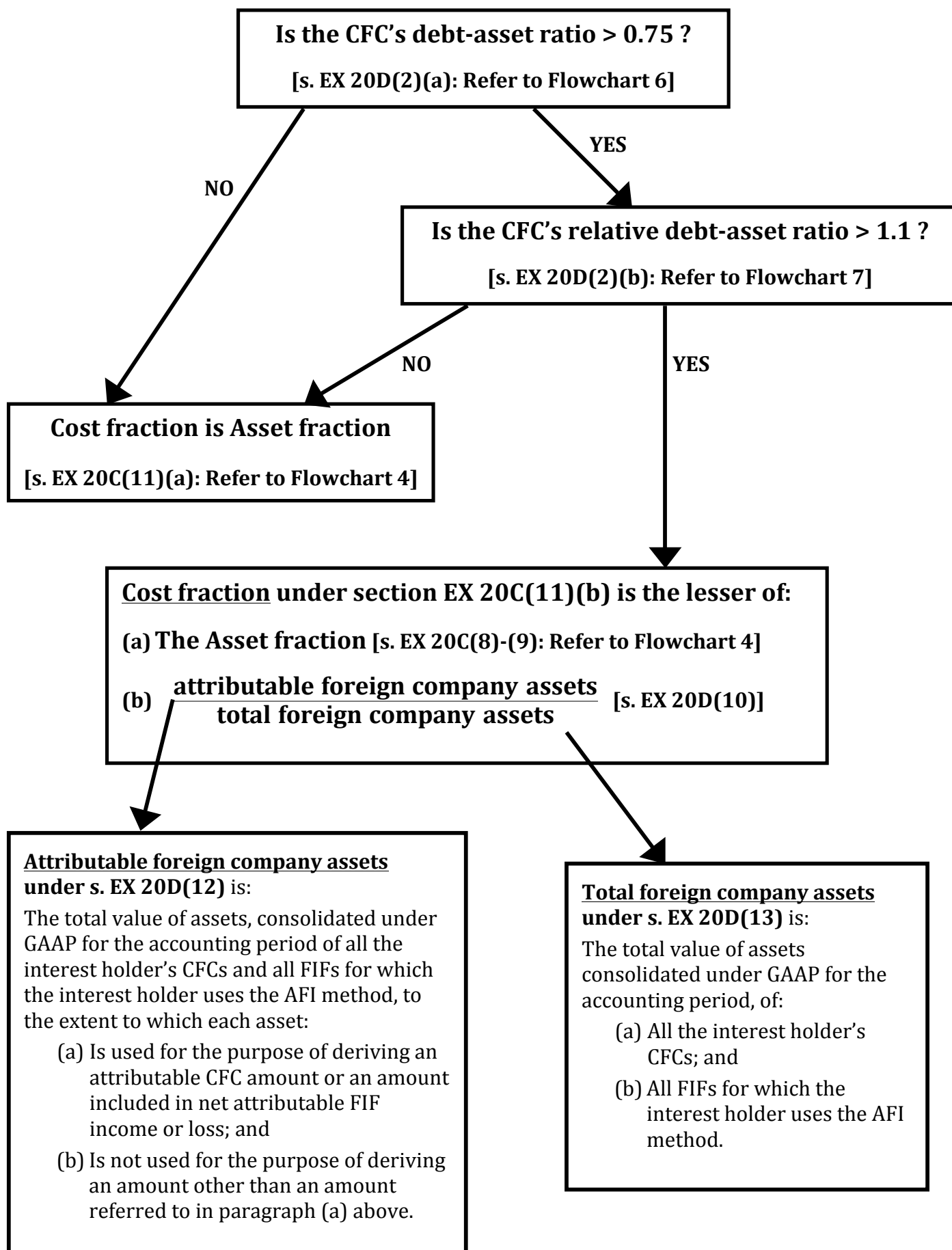
Group funding in s. EX 20C(7)(b) is **lesser of**:

- (a) Funding - as defined in s. EX 20C(7)(a) – **see above**; and
- (b) The total of amounts, each of which is the outstanding balance for a financial arrangement:
 - (i) Under which the CFC provides funds: to a CFC associated with the CFC under s. YB 2 (when 2 companies are associated) or to a FIF for which the interest holder uses the AFI method and that is associated with the CFC under s. YB 2 (coming into force on 1/7/11); and
 - (ii) That produces for the CFC an amount included in “arrangement” under section EX 20B(4).

SECTION V: NET ATTRIBUTED CFC INCOME OR LOSS
FLOWCHART 4: APPORTIONED FUNDING COSTS

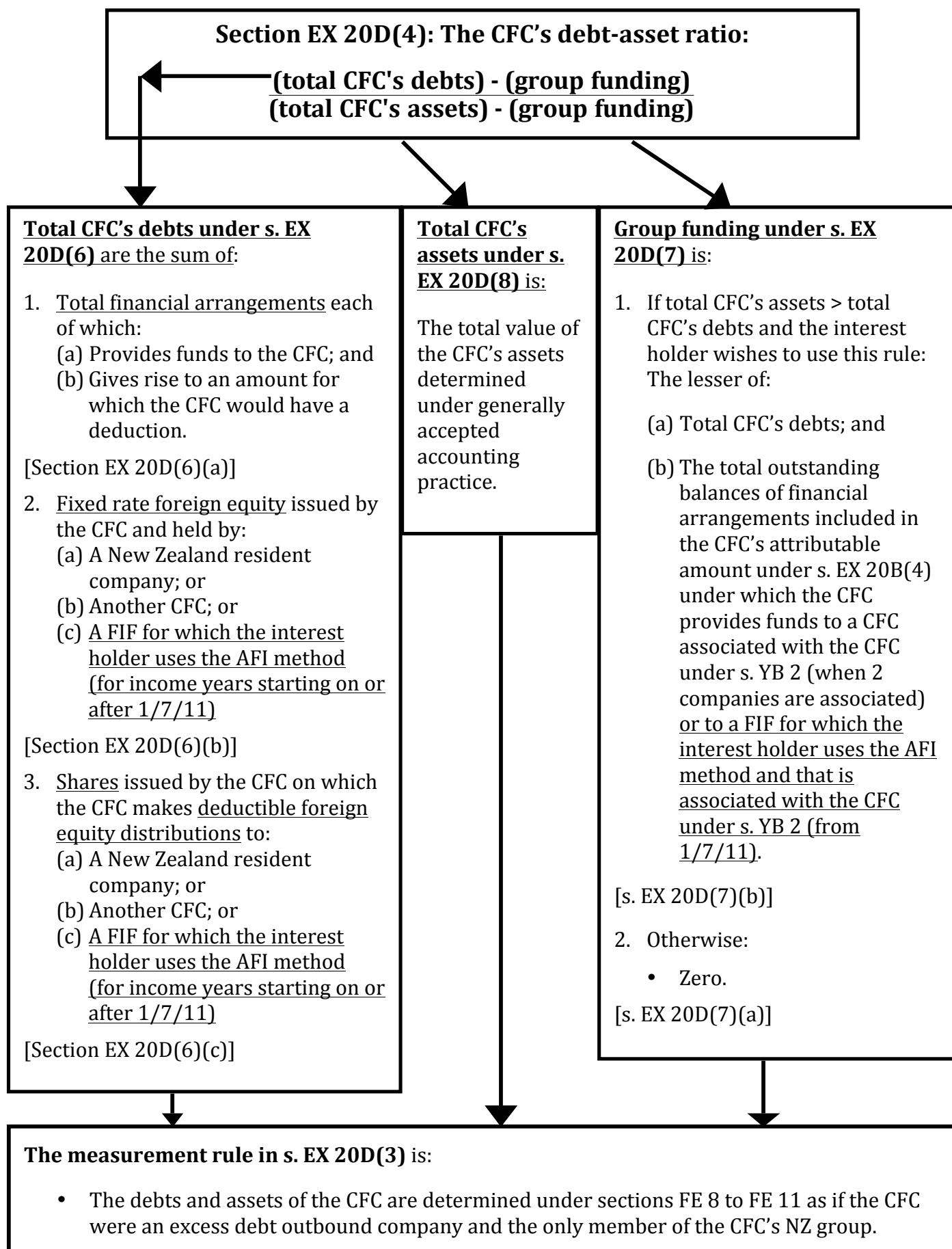


SECTION V: NET ATTRIBUTABLE CFC INCOME OR LOSS
FLOWCHART 5: DETERMINING IF THE CFC IS EXCESSIVELY DEBT FUNDED



SECTION V: NET ATTRIBUTABLE CFC INCOME OR LOSS

FLOWCHART 6: CFC's DEBT-ASSET RATIO



SECTION V: NET ATTRIBUTED CFC INCOME OR LOSS
 FLOWCHART 7: CFC's RELATIVE DEBT-ASSET RATIO

Section EX 20E(7): The CFC's relative debt-asset ratio:

$$\frac{\text{CFC's debt-asset ratio}}{\text{Group debt-asset ratio}}$$

CFC's debt-asset ratio under s. EX 20D(4) is:
 See Section V Flowchart 6 on page 54

CFC's group debt-asset ratio under s. EX 20E(3) is:

$$\frac{\text{total group debt}}{\text{total group assets}}$$

Total group assets under s. 20E(6) is:

The total value, consolidated under generally accepted accounting practice for the accounting period, of the assets of the CFC's group.

The members of the CFC's group under s. EX 20E(2) are:

- (a) The CFC; and
- (b) If the interest holder is a company, the members of the worldwide group that the interest holder would have under s. FE 31B, 31C & 32 if the interest holder were an excess debt outbound company; and
- (c) If the interest holder is a trustee, the members of the trustee's worldwide group under section FE 3(1)(b); and
- (d) If the interest holder is a natural person, the person's worldwide group referred to in section FE 5(1C)(a) to (c).

The measurement rules are: the debts and assets of the CFC's group are determined under sections FE 8 to FE 11 and FE 18 as if the interest holder, if a company, were an excess debt outbound company.

Total group debt under s. EX 20E(5) is:

- (a) Total financial arrangements entered into by the group members each of which:
 - (i) Provides funds to a group member; and
 - (ii) Gives rise to an amount for which a group member would have a deduction.

[Section EX 20E(5)(a)]

- (b) Fixed rate foreign equity issued by a member of the group and held by:

- (i) A New Zealand resident company; or
- (ii) Another CFC; or
- (iii) A FIF for which the interest holder uses the AFI method (from 1/7/11).

[s. EX 20E(5)(b)]

- (c) Equity interests issued by a member of the group on which the member makes deductible foreign equity distributions to:

- (i) A New Zealand resident company; or
- (ii) Another CFC; or
- (iii) A FIF for which the interest holder uses the AFI method (from 1/7/11).

[s. EX 20E(5)(c)]

SECTION V: NET ATTRIBUTABLE CFC INCOME OR LOSS
FLOWCHART 8: OTHER DEDUCTIONS

