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NON-ATTRIBUTING CFCs

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

GENERAL FORMULA: (1) Exemption for non-attributing CFCs	<u>**Non-attributing CFCs**</u> <u>Unless the interest holder elects that the CFC is an elective attributing CFC</u>, an interest holder has no attributed CFC income or loss if the CFC: (a) Is a non-attributing Australian CFC; or (b) Is a non-attributing active CFC 1) For how to determine if a CFC is a **non-attributing Australian CFC** refer to **Section II on page 6**. 2) For the definition of a **non-attributing active CFC** refer to **Section III on pages 7 - 29**.
GENERAL FORMULA: (2) Section EX 18A	<u>**EX 18A(2) & (3): Non-attributing CFCs**</u> A person (an <u>interest holder</u>) 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, has no attributed CFC income or attributed CFC loss for the CFC and an accounting period under section EX 18A(2) & 18A(3) if the CFC is (a) <u>A non-attributing Australian CFC</u> under s. EX 22. (b) <u>A non-attributing active CFC</u> under section EX 21B (for which the interest holder is not affected by an election under section EX 73 – see below) using the calculation rules in s. EX 21 & EX 24 to EX 27 and a test in: (i) 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 (ii) S. EX 21D (the "tax measures" or "default" test) if the interest holder does not use the test in s. EX 21E. [**S. EX 18A(1)(a), (2)**, **(3) & EX 18 & s. 40** of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 effective from 30 June 2009]
GENERAL FORMULA: (3) Elective attributing CFC	<u>**Elective attributing CFC**</u> A non-attributing active CFC is an elective attributing CFC for an interest holder and an accounting period if it is CFC for which: (a) The interest holder has made an election under s. EX 73 that the CFC is not a non-attributing active CFC; and (b) The election made is effective for the accounting period. [**New definition of elective attributing CFC** inserted by **s. 154** of the Taxation (Annual Rates, Returns Filing and Remedial Matters) Act 2012, effective from 30 June 2009]

SECTION II: NON-ATTRIBUTING AUSTRALIAN CFCs

Is the CFC a non-attributing Australian CFC under s. EX 22?

A CFC is a non-attributing Australian CFC for an accounting period if:

1. At all times in the accounting period the CFC is:
   (a) Resident in Australia; and
   (b) Under Australian law, subject to income tax on its income or treated as part of the head company of a consolidated group subject to income tax on its income; and
   (c) Treated as being resident in Australia under all agreements between Australia and other countries or territories that would be a double tax agreement if between NZ and the other country or territory; and
2. The CFC's liability for income tax has not been reduced by:
   (a) An exemption from income tax for income derived from business activities carried on outside Australia; or
   (b) A special allowance, relief, or exemption for offshore banking units.

NO → **Go to** Section III

YES ↓

<u>Does the CFC derive income from personal services that is an attributable CFC amount under s. EX 20B(3)(h)? If so, there will be attributed CFC income under s. CQ 2(2B):</u>

Income from personal services is attributable under s. EX 20B(3)(h) if performed by another person (the <u>working person</u>) and <u>all of the following requirements are met</u>:

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:
   (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>:
   (a) $75,000; and
   (b) 25% of the CFC's total income from personal services performed in the accounting period.

NO → **No attributed CFC income:** s. CQ 2(1)(i) & DN 2(1)(i) **Could be underlying FIF income:** s. CQ 5(3)

↓

Attributed CFC income = (income interest) X [(personal services income)–(personal services exp.)]

SECTION III: NON-ATTRIBUTING ACTIVE CFCs

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

Is the CFC a non-attributing active (insurer) CFC under s. 21B(3) by:

- Being an insurer that meets the requirements of a determination made by the Commissioner under s, 91AAQ of the Tax Administration Act 1994.

YES

No requirement to attribute CFC income or loss:

s. CQ 2(1)(h) & DN 2(1)(h)

NO

Is the CFC a non-attributing active CFC under s. 21B(1) & (2) by:

(a) Meeting the requirements using financial accounting measures of income and applying the test in s. EX 21E based on applicable accounting standards (refer to Flowchart 2 on page 8); **or**

(b) Meeting the requirements using tax measures of income and applying the default test in s. EX 21D (refer to Flowchart 2 on page 8).

NO

YES

Has the interest holder elected under s. EX 73 that the CFC not be a non-attributing active CFC for the interest holder for the accounting period?

(Refer to Section III Flowchart 5 on page 28)

NO

Does the CFC derive income from personal services that is an attributable CFC amount under s. EX 20B(3)(h)?

If so, there will be attributed CFC income under s. CQ 2(2B)

(Refer to the Section II Flowchart on page 6)

YES

YES

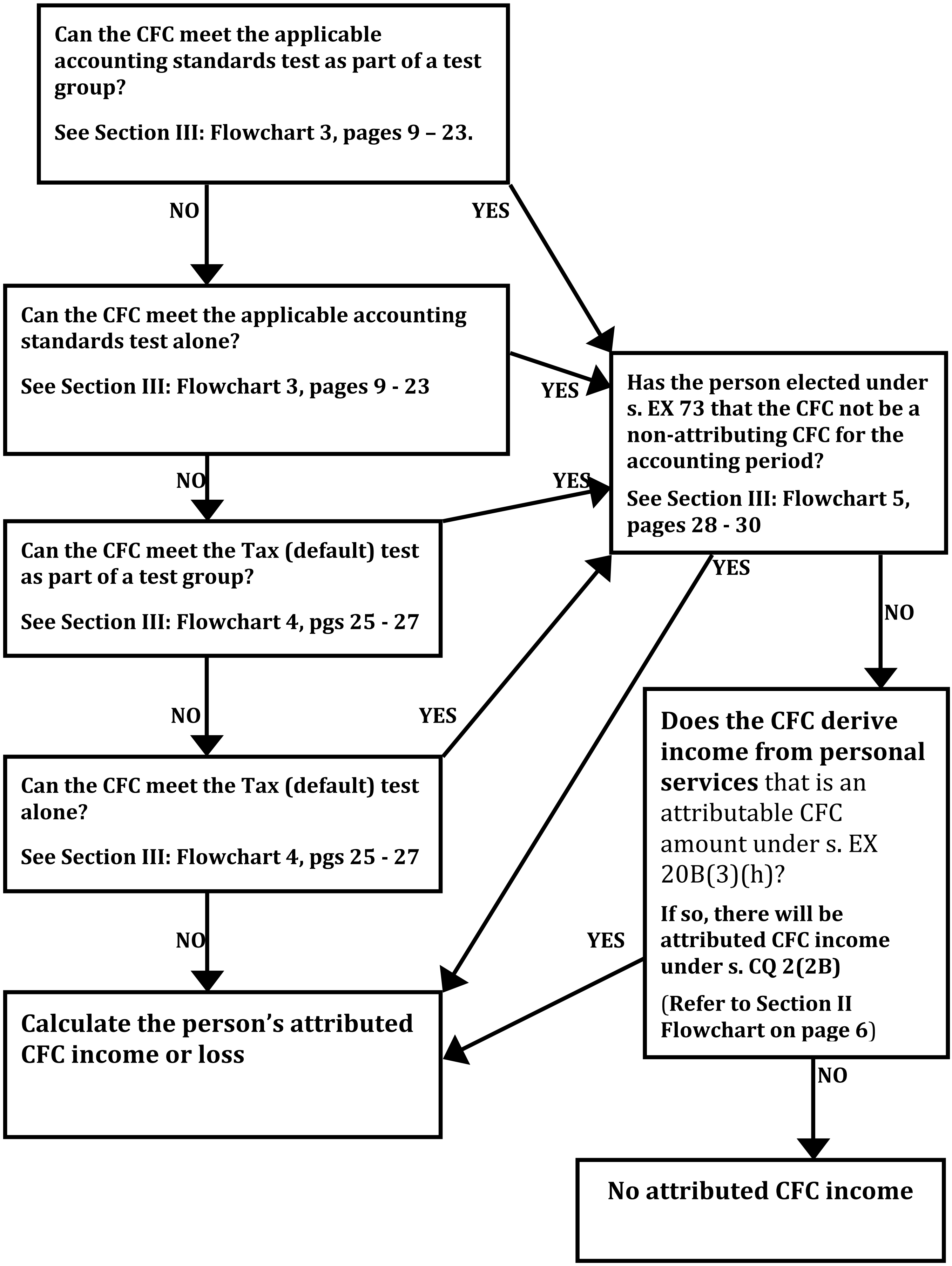
NO

Calculate the net attributed CFC income or loss from the CFC.

No requirement to attribute CFC income or loss:

s. CQ 2(1)(h) & DN 2(1)(h)

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:

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

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 ≥ 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 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. <u>The GAAP with IFRS accounting standard</u>

   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. <u>The IFRSE accounting standard</u>

   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. <u>The GAAP without IFRS accounting standard</u> (**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.
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.

<u>For the purposes of these application rules</u>, 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 **(3)(g) in the separate PDF on Attributable CFC Amount**.

(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 **(3)(k) in the separate PDF on Attributable CFC Amount** – 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 **(3)(l) in the separate PDF on Attributable CFC Amount**.

(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 **(3)(m) & (3)(n) in the separate PDF on Attributable CFC Amount**.

(e) Attributed portfolio investment entity (PIE) income that is included under section EX 20B(3)(o) - see **(3)(o) in the separate PDF on Attributable CFC Amount**.

[**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 **(3)(a) – (3)(c) in the separate PDF on Attributable CFC Amount**.

   (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 **(3)(d)(i) – (3)(d)(iv) in the separate PDF on Attributable CFC Amount**.

   (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 **(3)(e) in the separate PDF on Attributable CFC Amount**.

   (d) A gain or loss from a financial asset that is a financial arrangement or agreement referred to in section EX 20B(12) - see **(2) in the separate PDF on Attributable CFC Amount** 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 **(3)(k) in the separate PDF on Attributable CFC Amount** - 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) 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 **(9)** 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 **(9)** 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 **(9)** 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 **(3)(g) in the separate PDF on Attributable CFC Amount**.
   - (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) – see **(3)(k) in the separate PDF on Attributable CFC Amount** - 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 **(3)(h) in the separate PDF on Attributable CFC Amount**.

(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:

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

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 **the separate PDF on Attributable CFC Amount**.

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 **(3)(h) in the separate PDF on Attributable CFC Amount**; 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 **the separate PDF on Attributable CFC Amount**.

(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 **(3)(k) in the separate PDF on Attributable CFC Amount** - 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 **the separate PDF on Attributable CFC Amount**.

(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

Is the CFC:
(a) An entity carrying on a business of banking or insurance or is directly or indirectly controlled by such an entity; or
(b) A non-attributing Australian CFC.

YES →

No Election possible
[s. EX 73(2)]

NO →

Has an earlier election made by a person associated with the interest holder ceased to be effective?

YES →

No election can be made unless the requirements of s. EX 73(11)(a), (b) & (c) have been complied with (see **2. on page 29**)

NO →

A person (the **interest holder**) may elect by notice (in the form and by the means prescribed) to the Commissioner for each accounting period of the election, that—

A CFC of the interest holder, in which the interest holder has an income interest of 10% or more, not be a non-attributing active CFC for the interest holder:

[s. EX 73(1)(a) & (12)]

↓

Have the following requirements been met:

(a) Does the notice specify the election is made:
(i) Under s. EX 73(3)(a); or
(ii) For all accounting periods for the CFC ending in the interest holder's income years beginning on or after 1 July 2009; and

(b) Has the notice has been filed by the later of:
(i) The end of the interest holder's income year in which the legislation receives the Royal assent; or
(ii) A date allowed by the Commissioner.

[s. EX 73(3)(a) & (4)]

YES →

The election is for all accounting periods for the CFC ending in the interest holder's income years beginning on or after 1 July 2009, until the beginning of the earliest income year:

For which the election is revoked under s. EX 73(6); or

In which the election ceases to be effective under s. EX 73(7).

[s. EX 73(3((a) & (5)]

↓

Election revoked or ceased to be effective? Further election can be made if requirements of s. EX 73(11) are complied with (see **5. on page 30**)

NO →

The election is for all accounting periods of the CFC starting in the interest holder's income years beginning after:

The date on which the notice, or the further election notice, is given to the Commissioner; or

Another date agreed by the Commissioner.

[s. EX 73(3)(c)

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

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 C FC; 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]