



**ATTRIBUTABLE CFC AMOUNT FOR AFI FIFs**

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**ATTRIBUTABLE CFC AMOUNT FOR AFI METHOD FIFs**

The attributable CFC amount must be calculated for a FIF for which the interest holder uses the attributable FIF income (AFI) method if the FIF is:

- (a) Not a non-attributing active FIF; or
- (b) A non-attributing active FIF that is an elective attributing FIF.

**(1) Formula:  
Section EX 20B**

**The calculation of the attributable CFC amount for a FIF (before any deductions) is set out in section EX 20B.**

Attributable CFC amount for an accounting period and a FIF means an amount calculated under the rules in section EX 21 (see the separate PDF on the Attributable CFC Amount Calculation Rules) using the formula:

**Gross + arrangement**

Gross is explained in **Section III (3)(a) to (3)(p) on pages 8 - 18** below.

Arrangement is explained in **Section III (2) on pages 3 - 7** below.

**[S. EX 20B(1)]**

## ATTRIBUTABLE CFC AMOUNT FOR AFI METHOD FIFs

<b>(2) Meaning of “arrangement”</b>	<p><b><u>Arrangement</u></b></p> <p>Arrangement is the total, for the FIF and the accounting period, of amounts of income under section CC 3 (Financial arrangements) for:</p> <ol style="list-style-type: none"><li>1. An arrangement that<ol style="list-style-type: none"><li>(a) Is a financial arrangement, or a short-term agreement for sale and purchase for which the FIF has made an election under section EW 8 (Election to treat certain excepted financial arrangements as financial arrangements).</li><li>(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:<ol style="list-style-type: none"><li>(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’)</li><li>(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.</li><li>(iii) It is settled at a future date.</li></ol></li><li>(c) Is not exempt under the <u>intra-group payments exemption</u> (<b>see (2A)</b>) as:<ol style="list-style-type: none"><li>(i) An agreement by the FIF to lend money to a <u>foreign company</u>:<ol style="list-style-type: none"><li>a. <u>For which the person uses the AFI method; and</u></li><li>b. <u>That would, if it were a CFC, be a non-attributing active CFC under s. EX 21B(2) in the absence of the exclusions in s. EX 20B(5)(c)(i), (7)(c) &amp; (12)(a); and</u></li><li>c. <u>A group of persons holds voting interests &gt; 50% in the FIF and the foreign company; and</u></li><li>d. <u>The FIF and the foreign company each have a taxed FIF connection with the same country or territory. (see (2A) on page 4 below)</u></li></ol></li><li>(ii) An agreement for the sale or purchase of property or services or a hire purchase agreement:<ol style="list-style-type: none"><li>a. Entered in the ordinary course of business by the FIF.</li><li>b. For property or services produced or used by the FIF in business.</li></ol></li></ol></li></ol></li><li>2. A derivative instrument:<ol style="list-style-type: none"><li>(a) That is held in the course of a business of the FIF for the purpose of dealing with the derivative instrument.</li><li>(b) That is not entered in the ordinary course of a business of the FIF.</li><li>(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 FIF treated as part of “gross” under s. EX 20B(3) or treated as part of “arrangement” under s. EX 20B(4)(a) or with a transaction producing such income of the FIF.</li></ol></li></ol> <p>[Sections <b>EX 20B(4)</b>, <b>EX 20B(12)</b> as modified by <b>s. EX 50(4B)(d) &amp; (4C)</b> – <u>modifications underlined</u> – applying from income years beginning on or after 1 July 2011 and “Definition of a derivative” in paragraph 9 of NZIAS 39]</p>
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## ATTRIBUTABLE CFC AMOUNT FOR AFI METHOD FIFs

### (2A) Meaning of “arrangement” (continued): Intra-group payments exemption

#### Intra-group payments exemption

In the CFC rules the intra-group payments exemption applies to payments from an “associated non-attributing active CFC” (if the intra-group payments exemptions were ignored when determining if the associated CFC was a non-attributing active CFC), and both CFCs have a taxed CFC connection.

When calculating attributable FIF income, the requirements for the intra-group payments exemption are contained in section EX 50 (4C):

*Requirements for foreign company making payments to FIF*

A foreign company making payments to a FIF meets the requirements of this subsection if—

- (a) The person uses the attributable FIF income method for the foreign company; and
- (b) The foreign company, if it were a CFC, would be a non-attributing active CFC under section EX 21B(2) in the absence of section EX 20B(5)(c)(i), (7)(c), and (12)(a) – i.e. these exclusions do not apply in the AFI method; and
- (c) A group of persons holds total voting interests of more than 50% in the FIF and in the foreign company; and
- (d) The FIF and the foreign company each have a taxed FIF connection with the same country or territory.” (Refer to **pages 5 - 7** below.)

#### Explanation of the “Exemption for intra-group payments” change in Tax Information Bulletin Vol 24 No 6 July 2012, pages 31 - 32

While the CFC rules require the two CFCs to be associated companies, the attributable FIF income method requires both FIFs to be commonly controlled by a group of persons that hold more than 50% voting interests in both companies. This is achieved by section EX 50(4C) in conjunction with sections EX 50(4B)(a) to (c).

Section EX 50(4C)(a) requires the foreign company that makes the payments to be a FIF for which the person uses the attributable FIF income method. It is implicit that the FIF that receives the payments must also be using the attributable FIF income method, otherwise section EX 50(4C) would not apply.

Section EX 50(4C)(b) requires the foreign company that makes the payment to be a company that would be a non-attributing CFC or FIF. When determining whether the CFC or FIF is non-attributing, the exclusions in sections EX 20B(5)(c)(i), EX 20B(7)(c), and EX 20B(12)(a) as modified by section EX 50(4C) are ignored. This is necessary to avoid a circularity problem whereby the status of the paying company cannot be determined, because that company itself needs to apply the same exclusions.

Section EX 50(4C)(c) requires there to be a group of persons with more than 50% voting rights in both foreign companies.

Section EX 50(4C)(d) requires both foreign companies to be resident and subject to tax in the same jurisdiction (Refer to **pages 5 - 7** below.)

(Refer to Examples 1 to 5 on pages 31 - 32 of *Tax Information Bulletin* Vol 24 No 6 July 2012.)

## ATTRIBUTABLE CFC AMOUNT FOR AFI METHOD FIFs

<p><b>(2B) Meaning of “arrangement” (continued): meaning of “taxed FIF connection”</b></p>	<p><b><u>Meaning of “taxed FIF connection”</u></b></p> <p>“Taxed FIF connection”, for a FIF and a country or territory (<b>the host country</b>), means a relationship meeting the following requirements:</p> <p>(a) The FIF 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 FIF is—</p> <p style="margin-left: 20px;">(i) A resident under the domestic law of the country or territory;</p> <p style="margin-left: 20px;">(ii) Liable to income tax because of the FIF's domicile, residence, place of incorporation, or centre of management;</p> <p style="margin-left: 20px;">(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 FIF has no presence outside the host country that is—</p> <p style="margin-left: 20px;">(i) A fixed establishment;</p> <p style="margin-left: 20px;">(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 FIF is liable in the host country to tax on its income because of the FIF's domicile, residence, place of incorporation, or centre of management, or there is another foreign company (the parent company) that—</p> <p style="margin-left: 20px;">(i) Wholly owns the FIF under the laws of New Zealand and the host country; and</p> <p style="margin-left: 20px;">(ii) Has a relationship with the host country meeting the requirements of paragraphs (a) to (c); and</p> <p style="margin-left: 20px;">(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 FIF'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>[Section <b>YA 1</b> and section <b>132(34)</b> of the Taxation (International Investment and Remedial Matters) Act 2012]</p>
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## ATTRIBUTABLE CFC AMOUNT FOR AFI METHOD FIFs

<p><b>(2C) Meaning of “arrangement” (continued): meaning of “taxed FIF connection” (continued)</b></p>	<p><b><u>Explanation of the “taxed FIF connection” change adapted from <i>Tax Information Bulletin</i> Vol 24 No 6 July 2012, pages 45-47</u></b></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 FIF (for which a person uses the AFI method) receives from another FIF (for which the person uses the AFI method) that would, if it were a CFC, be a non-attributing active CFC (in the form of interest – see <b>(2) “Arrangement” on page 3</b>, royalties – see <b>(3)(d)(iii) “Royalties exception 3” on page 12</b> and rent - see <b>Section (3)(e) “Rent” on page 13</b>), in the same country may be ignored for tax purposes even if one or both FIFs are not liable to tax in that country. (emphasis added)</u></p> <p><u>(In addition, income that a FIF receives from rental property - see <b>(3)(e) “Rent” on page 13</b> and telecommunications services - see <b>(3)(n) “Telecommunications services” on page 17</b> can also be ignored even if the FIF is not liable to tax in that country.)</u></p> <p><b>[Continued in the row below]</b></p>
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## ATTRIBUTABLE CFC AMOUNT FOR AFI METHOD FIFs

<p><b>(2C) Meaning of “arrangement” (continued): meaning of “taxed CFC connection” (continued)</b></p>	<p><b><u>Explanation of the “taxed FIF connection” change adapted from <i>Tax Information Bulletin</i> Vol 24 No 6 July 2012, pages 45-47 (continued)</u></b></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 (a FIF that is) a LLC is wholly owned by another company in the same country, and that other company is liable for tax on the (FIF) 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"><li>(a) First, that the (FIF) is a resident of the country in question under section YD 3;</li><li>(b) Secondly, that the (FIF) is not treated as a dual-resident; and</li><li>(c) Thirdly, that the (FIF) does not have a fixed establishment or a permanent establishment outside the country.</li></ul> <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 (FIF) 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"><li>(a) The (FIF) 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 (company) that meets the conditions for residence in the previous section; and</li><li>(b) The other (company) is liable to tax on the income of the (FIF) in the relevant country by reason of its domicile, residence, place of incorporation or centre of management, in the same period as the (FIF) would be liable if it was an ordinary company liable to tax there.</li></ul>
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## ATTRIBUTABLE CFC AMOUNT FOR AFI METHOD FIFs

<p><b>(3) Meaning of “gross”</b></p>	<p><b><u>Gross</u></b></p> <p><u>Gross</u> is the total amount of income, derived in the accounting period by the FIF that is 1 or more of the following listed types of income.</p> <p>[Section <b>EX 20B(3)</b>]</p>
<p><b>(3)(a) “Gross”: Dividends from exempt FIFs</b></p>	<p><b><u>Dividends</u></b></p> <p>Included in a FIF’s attributable CFC amount is a dividend that is paid in relation to rights:</p> <ol style="list-style-type: none"> <li>1. That are a direct income interest in a foreign company; and</li> <li>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</li> <li>3. That are excluded from being an attributing interest by:             <ol style="list-style-type: none"> <li>(a) Section EX 31 (exemption for Australian listed companies).</li> <li>(b) Section EX 32 (exemption for Australian unit trusts meeting minimum turnover and distribution requirements).</li> <li>(c) Section EX 36 (10-year exemption for a venture capital company emigrating to a grey list country).</li> <li>(d) Section EX 37 (10-year exemption for a grey list company owning a NZ venture capital company).</li> <li>(e) Section EX 37B (exemption for shares in a grey list company acquired under an agreement with the Venture Investment Fund).</li> <li>(f) Section EX 39 (terminating exemption for grey list company with numerous NZ shareholders).</li> </ol> </li> </ol> <p>[<b>S. EX 20B(3)(a)</b> as amended by s. 19(1) of the Taxation (International Investment and Remedial Matters) Act 2012]</p> <p><b><u>Comment from TIB Vol 24 No 6 July 2012, page 30:</u></b></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><b>(3)(b) “Gross”: Unimputed dividends from NZ</b></p>	<p><b><u>Unimputed dividends from New Zealand</u></b></p> <p>Included in a FIF’s 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>[<b>S. EX 20B(3)(b)</b>]</p>



## ATTRIBUTABLE CFC AMOUNT FOR AFI METHOD FIFs

### (3)(c) "Gross": Other taxable distributions from foreign companies

#### Deductible and fixed rate foreign equity distributions

1. Included in a FIF's attributable CFC amount 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 FIF's attributable CFC amount 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"]

**ATTRIBUTABLE CFC AMOUNT FOR AFI METHOD FIFs**

<p><b>(3)(d) "Gross": Royalties</b></p>	<p><b><u>Royalties included in attributable CFC income or loss</u></b></p> <p><b>A royalty derived by a FIF is included in its attributable CFC amount unless it fits within one of the 4 exceptions (3)(d)(i) to (3)(d)(iv) described on pages 11 - 12.</b></p> <p><b>[S. EX 20B(3)(d)]</b></p>
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## ATTRIBUTABLE CFC AMOUNT FOR AFI METHOD FIFs

<p><b>(3)(d)(i) “Gross”: Royalties: Exception 1</b></p>	<p><b><u>Royalties Exception 1:</u></b></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"><li>1. The FIF is regularly engaged in creating, developing, or adding value to property that produces royalties.</li><li>2. The royalty is paid by a person who is not associated with the FIF 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).</li><li>3. The royalty is paid from property that is not linked to New Zealand. <u>Property is linked to New Zealand at a time in an accounting period if:</u> <u>Beginning from</u> 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 <u>Ending at</u> the time in the accounting period (i.e. accounting year of the CFC), <u>Any of the following conditions are met:</u><ol style="list-style-type: none"><li>(a) The property has been owned by a New Zealand resident.</li><li>(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.</li><li>(c) The property was created or developed in New Zealand.</li><li>(d) The property has had substantial value added in New Zealand.</li><li>(e) The property has been acquired by a person who had a deduction for expenditure or loss incurred in the acquisition.</li><li>(f) The property is based on knowledge acquired by a person who:<ol style="list-style-type: none"><li>(i) Acquired the knowledge with the purpose or intention of creating the property; and</li><li>(ii) Had a deduction for expenditure or loss incurred in the acquisition.</li></ol></li><li>(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.</li></ol> <u>Property has no link with New Zealand for a FIF when the property is owned by a non-resident who:</u><ol style="list-style-type: none"><li>(a) Is not a CFC and is not associated with the FIF; and</li><li>(b) Is not associated with a person who has owned the property while it had a link with New Zealand.</li></ol></li><li>4. The royalty is paid from property that the FIF has created or developed or to which the FIF has added substantial value.</li></ol> <p><b>[S. EX 20B(5)(a) &amp; EX 20B(13)-(15)]</b></p>
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## ATTRIBUTABLE CFC AMOUNT FOR AFI METHOD FIFs

<p><b>(3)(d)(ii) “Gross”: Royalties: Exception 2</b></p>	<p><b><u>Royalties Exception 2</u></b></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"> <li>1. The FIF is regularly engaged in creating, developing, or adding value to property that produces royalties.</li> <li>2. The royalty is paid by a person who is associated with the FIF 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).</li> <li>3. The royalty is paid from property that is not linked to New Zealand (see Royalties exception 1 above).</li> <li>4. The royalty is paid from property that the FIF has created or developed or to which the FIF has added substantial value.</li> <li>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 FIF and the associated person.</li> </ol> <p><b>[S. EX 20B(5)(b)]</b></p>
<p><b>(3)(d)(iii) “Gross”: Royalties: Exception 3</b></p>	<p><b><u>Royalties Exception 3</u></b></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"> <li>1. The royalty is paid by a foreign company that meets all the following requirements: <ol style="list-style-type: none"> <li>(a) The person uses the AFI method for the foreign company; and</li> <li>(b) The foreign company, if it were a CFC, would be a non-attributing active CFC under section EX 21B(2); and</li> <li>(c) A group of persons holds voting interests of more than 50% in the FIF and in the foreign company; and</li> <li>(d) The FIF and the foreign company each have a <u>taxed FIF connection</u> (as defined in section YA 1) with the same country or territory.</li> </ol> </li> <li>2. The royalty is paid from property that is not linked to New Zealand (see Royalties exception 1 above).</li> </ol> <p>Refer to the discussion on the <b>intra-group payments exemption - (2A)</b> on <b>page 4</b> above.</p> <p>[Section <b>EX 20B(5)(c)</b> as modified by <b>s. EX 50(4B)(a) &amp; (4C)</b> as inserted by <b>section 35(4)</b> of the Taxation (International Investment and Remedial Matters) Act 2012 applying from income years beginning on or after 1 July 2011]</p>
<p><b>(3)(d)(iv) “Gross”: Royalties: Exception 4</b></p>	<p><b><u>Royalties Exception 4</u></b></p> <p>This exception is omitted.</p> <p>[Section <b>EX 20B(5)(d)</b> as modified by <b>s. EX 50(4B)(b)</b> as inserted by section 35(4) of the Taxation (International Investment and Remedial Matters) Act 2012 applying from income years beginning on or after 1 July 2011]</p>

## ATTRIBUTABLE CFC AMOUNT FOR AFI METHOD FIFs

<b>(3)(e) "Gross": Rent</b>	<p><b><u>Rent included in attributable CFC income or loss</u></b></p> <p>Rent derived by a FIF is included in an attributable CFC amount under s. EX 20B(3)(e) if it is from any of the following sources:</p> <ol style="list-style-type: none"><li>1. A lease or sublease of land.</li><li>2. A lease or sublease of personal property.</li><li>3. A license to use intangible property.</li><li>4. A hire or bailment.</li></ol> <p><u>However, rent from any of the above sources is not included in an attributable CFC amount under section EX 20B(3)(e) if:</u></p> <ol style="list-style-type: none"><li>1. The rent is from land in a country or territory with which the FIF has a <u>taxed FIF connection</u>.</li><li>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.</li><li>3. The rent is paid by a foreign company that meets the requirements of section EX 50(4C) (refer also to <b>(2A) on page 4</b>), which are that:<ol style="list-style-type: none"><li>(a) The person uses the attributable FIF income method for the foreign company; and</li><li>(b) The foreign company, if it were a CFC, would be a non-attributing active CFC under section EX 21B(2) <u>in the absence</u> of section EX 20B(5)(c)(i), (7)(c), and (12)(a) – i.e. these exclusions do not apply in the AFI method; and</li><li>(c) A group of persons holds total voting interests of more than 50% in the FIF and in the foreign company; and</li><li>(d) The FIF and the foreign company each have a <u>taxed FIF connection</u> with the same country or territory." (Refer to <b>(2B) – (2C) on pages 5 - 7</b>)</li></ol></li><li>4. The rent is a payment under a hire purchase agreement.</li><li>5. The rent is a payment under a finance lease.</li><li>6. The rent is a royalty.</li><li>7. The rent is a payment under a license to use intangible property that:<ol style="list-style-type: none"><li>(a) Is not a royalty; and</li><li>(b) Would not be included in an attributable CFC amount under the Royalties Exceptions if treated as a royalty.</li></ol></li></ol> <p>[Sections <b>EX 20B(3)(e) &amp; EX 20B(6) &amp; (7)</b> as modified by s. <b>EX 50(4B)(c) &amp; (4C)</b> as inserted by <b>section 35(4)</b> of the Taxation (International Investment and Remedial Matters) Act 2012 effective from the first income year beginning on or after 1 July 2011]</p>
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**ATTRIBUTABLE CFC AMOUNT FOR AFI METHOD FIFs**

<p><b>(3)(f) “Gross”: Insurance premiums</b></p>	<p><b><u>Income from a business of insurance or being an insurer</u></b></p> <p>Included in the attributable CFC amount is income of a FIF <b>from a business of insurance or from being an insurer</b> [repealed: from a business of general insurance or life insurance that is a premium under an insurance contract or reinsurance contract].</p> <p><b>[S. EX 20B(3)(f) as amended by Clause 22C of the Taxation (Annual rates, Returns Filing, and Remedial Matters) Bill SOP applying from 1 July 2009]</b></p>
<p><b>(3)(g) “Gross”: Life insurance policies</b></p>	<p><b><u>Income from a life insurance policy</u></b></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"> <li>1. A distribution, if the life insurance policy is not intended to compensate the FIF for financial losses arising from the death or extended incapacity of a specified employee or member involved in the FIF’s business.</li> <li>2. A distribution that is not intended to compensate the FIF for financial losses arising from the death or extended incapacity of a specified employee or member involved in the FIF’s business, if the life insurance policy is intended to compensate the FIF for such losses.</li> <li>3. Income from the disposal of the life insurance policy, if the policy is revenue account property.</li> </ol> <p><b>[S. EX 20B(3)(g) &amp; EX 20B(8)]</b></p>

## ATTRIBUTABLE CFC AMOUNT FOR AFI METHOD FIFs

<p><b>(3)(h) "Gross": Personal services income</b></p>	<p><b><u>Income from the supply of personal services</u></b></p> <p>Income derived by a FIF 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"><li>1. The working person is a New Zealand resident.</li><li>2. The personal services are not essential support for a product supplied by the FIF.</li><li>3. The working person is associated with the FIF 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 FIF 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).</li><li>4. At least 80% of the FIF's total income in the accounting period from supplying personal services is derived through personal services that:<ol style="list-style-type: none"><li>(a) Are not essential support for a product supplied by the FIF; and</li><li>(b) Are performed by a working person who is a NZ resident and meets the above test of association with the FIF.</li></ol></li><li>5. To derive the income the FIF 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"><li>(a) \$75,000; and</li><li>(b) 25% of the FIF's total income from personal services performed in the accounting period.</li></ol></li></ol> <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><b>[S. EX 20B(3)(h) &amp; EX 20B(9)]</b></p>
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## ATTRIBUTABLE CFC AMOUNT FOR AFI METHOD FIFs

<p><b>(3)(i) “Gross”: Income from revenue account property</b></p>	<p><b><u>Income from the disposal of revenue account property that is a share</u></b></p> <p>Included in the attributable CFC amount of a FIF 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 FIF’s FIF income or loss from the share (i.e. underlying FIF income) in the period ending with the disposal is calculated using:</p> <ul style="list-style-type: none"> <li>(a) The comparative value method.</li> <li>(b) The deemed rate of return method.</li> <li>(c) The fair dividend rate method.</li> <li>(d) The cost method.</li> </ul> <p><b>[S. EX 20B(3)(i) to (k) &amp; EX 20B(10)]</b></p>
<p><b>(3)(j) “Gross”: Income from revenue account property</b></p>	<p><b><u>Income from the disposal of revenue account property that is an option to acquire or dispose of a share</u></b></p> <p>Included in the attributable CFC amount of a FIF is income from the disposal of revenue account property that is an option to acquire or dispose of a share.</p> <p><b>[S. EX 20B(3)(j)]</b></p>
<p><b>(3)(k) “Gross”: Income from revenue account property</b></p>	<p><b><u>Income from the disposal of other revenue account property</u></b></p> <p>Included in the attributable CFC amount of a FIF is income from the disposal of revenue account property that is:</p> <ul style="list-style-type: none"> <li>(a) Not a share, financial arrangement, or life insurance policy; and</li> <li>(b) Used by the FIF with a purpose or effect of giving rise to income of the FIF that is attributable under section EX 20B(3).</li> </ul> <p><b>[S. EX 20B(3)(k)]</b></p>
<p><b>(3)(l) “Gross”: Service income</b></p>	<p><b><u>Income from a service</u></b></p> <p>Included in a FIF’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><b>[S. EX 20B(3)(l)]</b></p>



## ATTRIBUTABLE CFC AMOUNT FOR AFI METHOD FIFs

<p><b>(3)(m) “Gross”: Income from a service relating to the use of telecommunications equipment</b></p>	<p><b><u>Service income relating to the use of telecommunications equipment</u></b></p> <p>Included in a FIF’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"> <li>(a) Physically located outside any country or territory; and</li> <li>(b) Owned by the FIF <u>or by another FIF</u> that is associated with the FIF; and</li> <li>(c) Not a mobile telephone handset or a radio receiver and transmitter for a ship or aircraft.</li> </ul> <p>[<b>S. EX 20B(3)(m)</b>, including the <u>amendment of section EX 20B(3)(m)(ii)</u> applying to income years beginning on or after 1 July 2011: <b>s. 19(2) &amp; (10)</b> of the Taxation (International Investment and Remedial Matters) Act 2012]</p>
<p><b>(3)(n) “Gross”: Income from telecommunications services physically performed in NZ</b></p>	<p><b><u>Income from telecommunications services physically performed in NZ</u></b></p> <p>Included in a FIF’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"> <li>(a) The service is the transmission, emission, or reception of information between New Zealand and a <u>country or territory with which the FIF has a taxed FIF connection</u> (see also <b>Section III (2B) – (2C) on pp. 5 - 7</b>); and</li> <li>(b) The FIF is a network operator under the Telecommunications (Interception Capability) Act 2004 (a “network operator”), or: <ul style="list-style-type: none"> <li>(i) A group of persons has, for the whole of the FIF’s accounting period, voting interests and, if a market value circumstance exists, market value interests, of more than 50% in the FIF; and</li> <li>(ii) The group of persons has, for the whole of the FIF’s accounting period, voting interests and, if a market value circumstance exists, market value interests, of more than 50% in a network operator; and</li> </ul> </li> <li>(c) <u>The service is performed by a person other than the FIF, who:</u> <ul style="list-style-type: none"> <li>(i) <u>Is resident in New Zealand and is resident in no other country under all applicable double tax agreements;</u></li> <li>(ii) <u>Has a fixed establishment in New Zealand that is a permanent establishment under all applicable double tax agreements; and</u></li> </ul> </li> <li>(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"> <li>(i) <u>Carried on through the person’s fixed establishment, if the person is not resident in New Zealand; and</u></li> <li>(ii) <u>From which the person derives assessable income of more than \$5,000,000 per annum.</u></li> </ul> </li> </ul> <p>[<b>S. EX 20B(3)(n)</b> and <b>s. EX 20B(11)</b>, including the <u>amendment of s. EX 20B(11)(a)</u> and the <u>replacement of s. EX 20B(11)(c) &amp; (d)</u> applying to (CFCs) for income years beginning on or after 1 July 2009: <b>s. 19(7) &amp; 19(11)</b> of the Taxation (International Investment and Remedial Matters) Act 2012]</p>

## ATTRIBUTABLE CFC AMOUNT FOR AFI METHOD FIFs

<p><b>(3)(o) “Gross”: Attributed PIE income</b></p>	<p><b><u>Attributed PIE income that is not excluded income</u></b></p> <p>Included in a FIF’s attributable CFC amount is attributed PIE income that, for a FIF, 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"> <li>(a) The prescribed investor rate for the investor in the relevant calculation period is more than zero; and</li> <li>(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"> <li>(i) Its income tax liability under section HM 47 in relation to the income; or</li> <li>(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.</li> </ul> </li> </ul> <p><u>Section CX 56 does not apply</u> when:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(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).</li> </ul> <p>[S. EX 20B(3)(o) as inserted by s. 36(1) of the Tax Administration Act 2011]</p>
<p><b>(3)(p) “Gross”: Taxable dividends from grey list company FIFs</b></p>	<p><b><u>Taxable dividends from grey list company FIFs for which the FDR is used</u></b></p> <p>Included in a FIF’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 another FIF:</p> <ul style="list-style-type: none"> <li>(a) Which is a grey list company;</li> <li>(b) In which the person holds a direct income interest of 10% or more at the beginning of the income year;</li> <li>(c) For which the person calculates their FIF income or loss for the period under the fair dividend rate (FDR) method.</li> </ul> <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>