

CALCULATION RULES: ATTRIBUTABLE CFC AMOUNT AND NET ATTRIBUTABLE CFC INCOME/LOSS

The calculation rules in section EX 21 must be applied when calculating an attributable CFC amount (under section EX 20B) and the net attributable CFC income/(loss) (under section EX 20C).

(1) Section EX 21: CFC calculation rules	<u>Calculation rules for CFC</u> The rules in section EX 21 apply to: <ol style="list-style-type: none">1. Calculating the attributable CFC amount for a CFC under section EX 20B.2. Calculating the net attributable CFC income or loss for a CFC under section EX 20C.3. Determining whether a CFC is a non-attributing CFC under section EX 21D.4. Determining whether a member of a group of CFCs is a non attributing CFC:<ol style="list-style-type: none">(a) The consolidated annual gross income of the group is calculated under the rules in this section (section EX 21);(b) The consolidated attributable CFC amount of the group is calculated under the rules in this section (section EX 21). [Sections EX 21(1) & (1B)]
(2) S. EX 21(2): CFC is a New Zealand resident in general	<u>CFC treated as New Zealand resident</u> The rules in the Income Tax Act 2007 are applied as if the CFC were always a New Zealand resident. However, the rules in the Act are modified for the purposes of the calculation as follows. [Sections EX 21(2) & (3)]

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(3) S. EX 21(4): Rules for conversion to NZ\$

Conversion to New Zealand dollars

1. The taxpayer can choose for all the calculations to be done in New Zealand dollars. However, calculations for financial arrangements (subject to an exception for some VPDIs – see below) must be done in New Zealand dollars if:
 - (a) At any time in the relevant accounting period, the total value exceeds \$1,000,000, calculated using the valuation rules in section EW 17(2):
 - (i) Fixed principal financial arrangements must be valued at face value;
 - (ii) Variable principal debt instruments (VPDIs) must be valued at the amount owing by or to the person on the relevant day;
 - (iii) If the financial arrangement was entered into before 20 May 1999, the value is determined under the “old financial arrangements rules” contained in sections EZ 33 to EZ 52D; or
 - (b) For the accounting period, the CFC’s net foreign exchange loss attributable to financial arrangements exceeds \$100,000.

[Some variable principle debt instruments (VPDIs) are excepted from this requirement to use New Zealand dollars. VPDIs are where one party may, on demand or call, advance further sums to the other party, or if the other party’s rights and obligations are expressed a foreign currency, require, on demand or call, the return of all amounts advanced to the other party. The exception applies if:

 - (a) The taxpayer has chosen to use the currency of the CFC’s financial accounts for all the CFC calculations or, because the CFC has no financial accounts, the currency of the CFC’s country of residence for all the CFC calculations, and all the rights and obligations of all of the parties to the financial arrangement are expressed in the chosen currency; and
 - (b) The CFC is not associated with any other party to the VPDI; and
 - (c) The arrangement is not entered into with the purpose of defeating the requirement to use New Zealand dollars.]
2. The taxpayer can choose for all the calculations to be done in the currency of the CFC’s financial accounts, and if the CFC has no financial accounts, the currency of the CFC’s country of residence. The result is then converted into New Zealand dollars at the average of the close of trading spot exchange rates for the 15th day of each complete month that falls in the period.

The taxpayer must use the chosen currency for all CFC calculations for each later consecutive accounting period, unless the Commissioner consents to a change because the Commissioner is satisfied that:

- (a) The taxpayer’s main purpose in changing is a commercial one (and reducing tax is not a commercial purpose); and
- (b) The change does not have an effect of defeating the intent and application of the tax rules concerning the attribution and calculation of CFC income or losses (subparts CQ, DN and EX).

[Sections EX 21(4) to EX 21(8)]

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**(4) S. EX 21(9):
Opening cost
base: fixed assets,
trading stock and
financial
arrangements**

Opening cost base: tangible assets and financial arrangements

Opening cost base of premises, plant, machinery, equipment and trading stock

1. If the taxpayer had no attributed CFC income or loss from the CFC for the previous accounting period, the taxpayer must choose to measure the cost base, at the start of the accounting period of premises, plant, machinery, equipment and trading stock of the CFC at:
 - (a) The starting value used by the CFC for income tax calculations in the country in which it is resident – which must be below market value – and can be:
 - (i) Historical cost less accumulated depreciation; or
 - (ii) Some other starting value used by the CFC in its country of residence; or
 - (b) The starting value that would be used under the Income Tax Act 2007 if the CFC had always been a New Zealand resident.
2. If the taxpayer had attributed CFC income or loss from the CFC for the previous period, the cost base, at the start of the accounting period of premises, plant, machinery, equipment and trading stock of the CFC is the closing value at the end of the previous period used to calculate the income or loss.

Opening cost base of financial arrangements

3. If the taxpayer had no attributed CFC income or loss from the CFC for the previous accounting period, the taxpayer must choose to calculate the consideration under the financial arrangements rules for a financial arrangement at the start of an accounting period, at:
 - (a) The market value of the financial arrangement; or
 - (b) The absolute value calculated using the formula:

$(\text{Consideration paid to CFC}) + (\text{expenditure}) - (\text{consideration paid by CFC}) - (\text{income})$

Consideration paid to and by the CFC is all consideration for all periods before the accounting period.

Expenditure and income is all expenditure that would have been incurred and all income that would have been derived under the financial arrangements rules for all periods before the accounting period if the CFC had been resident in New Zealand.

[Sections EX 21(9) to (12)]

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<p>(5) S. EX 21(13): Rules that don't apply</p>	<p><u>Provisions that do not apply</u></p> <ol style="list-style-type: none"> 1. The consolidation rules. 2. Section CB 27 and subparts DQ and EH (which relate to Income equalization schemes and environmental restoration accounts). 3. Sections CD 45 to 52 and subparts CQ and DN (which relate to attributed CFC repatriations and attributed CFC income and loss). 4. Section CW 8 (Money lent to government of New Zealand). 5. Section CW 9 (Exemption for foreign dividends). 6. Section CW 10 (Exemption for dividends within a wholly-owned group). 7. Section CW 40(1) (Local and regional promotion bodies). 8. Sections DO 1 and DO 2 (Enhancements to land, except trees, and erosion and shelter plantings). 9. Sections EW 9 and EW 11(b) (Persons to whom the financial arrangements rules do not apply and what financial arrangements rules do not apply to). 10. Subpart FE (Interest apportionment and thin capitalisation). 11. Section GB 5 (Arrangements involving trust beneficiaries). 12. Sections IA 2 to IA 9, subpart IC, and sections IP 3 to IP 7, IZ 4 and IZ 5 (General rules for tax losses, grouping tax losses and part-year requirements).
<p>(6) S. EX 21(14): Certain businesses deemed to be carried on in NZ</p>	<p><u>Provisions that apply as if the CFC's business was carried on in New Zealand</u></p> <ol style="list-style-type: none"> 1. Sections CT 1 to CT 3, CT 5 to CT 7, CX 42, CX 43, CZ 8, DT 1 to DT 15, DT 17 to DT 19, and IS 5 (which relate to petroleum mining). 2. Sections DO 4 to DO 7, DO 12, DP 1 to DP 3, DP 8 and DP 11 (which relate to farming, aquacultural and forestry expenditure). 3. Section EZ 16 (Additional depreciation for prolonged use of plant and machinery). 4. The definitions in subpart YA that apply for the purposes of the above sections.
<p>(7) S. EX 21(15): Transfer pricing rules don't apply in general</p>	<p><u>Limited application of transfer pricing rules</u></p> <p>The transfer pricing rules in sections GC 6 to GC 14 apply only to a transaction that has a purpose or effect of defeating any of the jurisdictional ring-fencing rules for CFC losses and tax credits in:</p> <ol style="list-style-type: none"> 1. Section DN 4 (Ring-fencing cap on deduction). 2. Section IQ 2 (Ring-fencing cap on attributed CFC net losses). 3. Section IQ 4 (Group companies using attributed CFC net losses). 4. Sections LK 1 to LK 7 (which relate to foreign tax credits and CFCs).
<p>(8) S. EX 21(16): Some dividends exempt</p>	<p><u>Dividends that are exempt income</u></p> <p>Dividends that are not part of the CFC's attributable CFC amount are exempt income of the CFC.</p>

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<p>(9) S. EX 21(18): In-kind consideration for borrowed money assessable</p>	<p><u>Rule in section CC 7 applies as if the borrower carries on a business in New Zealand</u></p> <p>Section CC 7 applies when a borrower who carries on business in New Zealand provides consideration other than money to a lender and the borrowing is a commercial transaction for which interest would normally be payable. The lender is deemed to derive income equal to the interest at the current commercial rate.</p> <p>Where a CFC lends for a consideration other than money, section CC 7 will apply as if the borrower carried on business in New Zealand.</p>
<p>(10) S. EX 21(19): Some exemptions for income through association or grouping</p>	<p><u>Exemptions for deemed income through association and grouping</u></p> <p>Sections CB 9 to CB 13 (which relate to income from land disposed of after 10 years and land disposed of after major development or division) do not apply to treat an amount derived by a CFC as income merely because of the activities of an associated person who is a non-resident.</p> <p>Section CV 9 does not apply to treat an amount derived by a CFC as income merely because it would be income if the wholly-owned company group the CFC belongs to were a single company.</p>
<p>(11) S. EX 21(20): Income spreading when land sold to government</p>	<p><u>Income may be spread over 4 years when land disposed of to a government</u></p> <p>Section EI 8 applies when a person derives income from disposing of any land to the Crown. The income and corresponding deductions may be spread over the current year and the following 3 years, provided written application is made to the Commissioner within 1 year after the end of the current tax year.</p> <p>The reference in section EI 8(1) to the Crown includes any relevant government outside New Zealand, so the section can apply.</p>
<p>(12) S. EX 21(21): Only deducted depreciation is recovered</p>	<p><u>Depreciation loss deducted when calculating a CFC's attributable CFC amount</u></p> <p>For the purposes of the depreciation recovery rules in sections EE 48 to EE 52 a CFC is treated as having a depreciation loss equal to the amount deducted when calculating its attributable CFC income or loss and the attributed CFC income or loss of any person.</p>
<p>(13) S. EX 21(22): Foreign GST-like taxes treated as GST</p>	<p><u>Foreign value-added and similar taxes treated as GST</u></p> <p>When the GST provisions in the Income Tax Act 2007 are applied (sections CX 1, DB 2, EE 45, EE 54 and EZ 17) references to output tax, input tax, or GST payable include a reference to the equivalent item arising under the value-added tax or other tax rules of a foreign country if the rules have a similar intent and application to the New Zealand GST rules.</p>

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<p>(14) S. EX 21(23): No deduction for expenditure relating to government grants</p>	<p><u>Denial of expenditure relating to government grants</u></p> <p>Section DF 1 denies a deduction for expenditure or depreciation loss corresponding to income received by way of a government or local authority grant (unless the person elects that the grant is excluded income under section CX 47).</p> <p>A reference to the New Zealand government in section DF 1 includes a government outside New Zealand but, to the extent to which section DF 1 still does not apply to a grant or subsidy to the CFC from a government, the grant or subsidy is income of the CFC.</p>
<p>(15) S. EX 21(24): Subvention payments generally taxable and deductible</p>	<p><u>Subvention payments taxable and deductible if requirements are met</u></p> <p>An amount paid as consideration for the transfer of tax losses is:</p> <ul style="list-style-type: none"> (a) Income if derived by a CFC; and (b) A deduction if: <ul style="list-style-type: none"> (i) Paid by a CFC to a person who is resident in the same country as the CFC and not a non-attributing active CFC; and (ii) Deductible under the tax law of that country.
<p>(16) S. EX 21(25): Policyholder income exemption for life insurance</p>	<p><u>Actuarial calculations determine a life insurer CFC's attributable CFC income</u></p> <p>The life insurance rules do not apply and the net attributable CFC income or loss of a CFC is the amount actuarially determined to be the part of the CFC's net attributable CFC income or loss to which shareholders, and not policyholders in either the CFC or a foreign parent company (the "parent company"), are entitled, if:</p> <ul style="list-style-type: none"> (a) The CFC itself carries on the business of providing life insurance: or (b) Shares in the CFC are held, directly or indirectly, by the parent company and <ul style="list-style-type: none"> (i) the parent company carries on the business of providing life insurance; and (ii) those shares have to be taken into account under sections EX 8 to EX 13 to calculate the taxpayer's income interest in the CFC. <p>This rule will not apply if the Commissioner:</p> <ul style="list-style-type: none"> (a) Considers that the amount calculated is not a reasonable reflection of the part attributable to shareholders; or (b) Has requested and not received sufficient information to enable the actuarial calculation to be reviewed. <p>[Sections EX 21(25) to ((27)]</p>
<p>(17) S. EX 21(28): Mineral mining rules apply</p>	<p><u>New Zealand rules apply to mineral mining activities outside New Zealand</u></p> <p>Specified rules relating to mineral mining (sections BC 7, CU 1 to CU 29, CX 44 to CX 46, CZ 2, CZ 4, DU 1 to DU 12, IS 1 to IS 4) apply, with any necessary modifications, if a CFC carries on activities outside New Zealand that are substantially the same as the mineral mining activities to which those sections apply.</p>

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(18) S. EX 21(29): Petroleum mining rules apply	<u>New Zealand rules apply to petroleum mining activities outside New Zealand</u> Specified rules relating to petroleum mining (sections CT 1 to CT 3, CT 5, CX 42, CX 43, CZ 8, DT 1 to DT 15, DT 17 to DT 19 and IS 5) apply, with any necessary modifications, if a CFC carries on activities outside New Zealand that are substantially the same as the petroleum mining activities to which those sections apply.
(19) S. EX 21(30): Pre-CFC leases are not finance or specified leases	<u>Pre-CFC lease is not a finance or specified lease if no other NZ connection</u> A lease entered into by a CFC before the 1 st accounting period in which the CFC is a CFC is not a finance lease, nor a specified lease. This does not apply if another party to the lease is: (a) A New Zealand resident; or (b) A CFC; or (c) A FIF for which the taxpayer uses the Attributable FIF Income (AFI) method. [Section EX 21(30) and section EX 21(31) as replaced by clause 19E of the International Investment bill: The exclusion is expanded by the reference to AFI method FIFs for income years beginning on or after 1 July 2011]
(20) S. EX 21(32): Taxable distributions from non- complying trusts	<u>Taxable distributions from non-complying trusts taxed under section EX 19</u> If a CFC gets a taxable distribution from a non-complying trust: (a) Section HC 22 does not apply: i.e. tax losses cannot be used to reduce the taxable distribution. (b) The taxable distribution is not taken into account in calculating the CFC's net attributable CFC income or loss. (c) Section EX 19 applies: The taxable distribution is separately taxed at 45% as additional CFC attributed income.

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<p>(21) S. EX 21(33): A FIF interest of a CFC is separately taxed</p>	<p><u>A FIF interest of a CFC is separately taxed as additional FIF income or loss</u></p> <p>If a CFC (including a non-attributing Australian CFC under section EX 22) has rights in a FIF:</p> <ul style="list-style-type: none">(1) The rights are not prevented from being an attributing interest of the CFC in a FIF merely because the notional New Zealand residence of the CFC under section EX 21(2) causes section EX 34 (exemption for a FIF that is a CFC in which the person has an income interest of 10% or more) to apply.(2) The CFC's FIF income or loss is not taken into account in calculating the net attributable CFC income.(3) Section EX 58 applies:<ul style="list-style-type: none">(i) Each person that has an income interest of 10% or more in the CFC is required to separately calculate the CFC's FIF income or loss by choosing a calculation method and applying the FIF calculation rules.(ii) Exemptions are available for:<ul style="list-style-type: none">(a) The portion of the FIF income or loss actuarially determined to be attributable to policyholders by applying sections EX 21(25) & (26) to a CFC, or its parent company, in the business of life insurance.(b) A FIF interest that would be exempt under section EX 35 if held by the person instead of the CFC (exemption for income interests of 10% or more in an Australian resident FIF) [section EX 58(5)(b)].(c) A FIF in which the CFC has an income interest of less than 10% if the CFC meets the requirements of a determination made by the Commissioner under section 91AAQ that the CFC has non-attributing active insurance CFC status [section EX 58(7)]. <p>[Section EX 21(33) and section EX 58: section EX 58(5)(b) inserted by clause 33(2B) of the International Investment bill and section EX 58(7) inserted by section 42 of the Tax Administration Act 2011.]</p>
<p>(22) S. EX 21(34): 1993 transitional treatment of cross-border reinsurance</p>	<p><u>Cross-border reinsurance claim is income if the event occurs after 1 July 1993</u></p> <p>Section CZ 12 applies if a CFC pays a premium outside its country of residence for a reinsurance contract for general insurance that covers a risk period that straddles 1 July 1993.</p> <p>An amount derived from a claim by the CFC is income if the event giving rise to the claim occurs on or after 1 July 1993.</p>