



COMPLETE AFI METHOD

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SECTION I: GENERAL FORMULA FOR CALCULATING ATTRIBUTABLE FIF INCOME (AFI)

<p>SECTION I: GENERAL FORMULA: (1) The Attributable FIF Income (AFI) method (For income years beginning on or after 1 July 2011) [S. 35(2) & 35(9) of the Taxation (International Investment and Remedial Matters) Act 2012]</p>	<p><u>Formula for calculating FIF income</u></p> <p>If a person is using the AFI method to calculate FIF income or loss from an attributing interest in a FIF:</p> <p>The total FIF income or loss from all their attributing interests in <u>the FIF</u> for the relevant accounting period is calculated using the formula:</p> <p style="text-align: center;">(Net attributable FIF income or loss) x (income interest)</p> <p>[S. EX 50(1) as amended by s. 35(2) of Taxation (International Investment and Remedial Matters) Act 2012]</p>
<p>SECTION I: GENERAL FORMULA: (2) Meaning of terms: Net attributable FIF income or loss</p>	<p><u>Meaning of terms: Net attributable FIF income or loss</u></p> <p>Net attributable FIF income or loss is the amount for the FIF and the accounting period found by applying –</p> <ul style="list-style-type: none"> (a) Sections EX 18A to EX 21E, EX 24 and EX 25, as modified by section EX 50(4B) as if the FIF were a CFC and the person’s attributing interests in the FIF were income interests in the CFC; and (b) Sections EX 50(5) & EX 50(6). <p>[S. EX 50(3) as replaced by s. 35(3) of Taxation (International Investment and Remedial Matters) Act 2012]</p>
<p>SECTION I: GENERAL FORMULA: (3) Meaning of terms: Income interest</p>	<p><u>Income interest</u></p> <p>Income interest is the person’s income interest in the FIF for the accounting period.</p> <p>The income interest is calculated under all the following CFC rules applying as the FIF were a CFC:</p> <ul style="list-style-type: none"> (a) Sections EX 8 to EX 11 and EX 13: (b) Sections EX 16 and EX 17: (c) Section EX 26. <p>[S. EX 50(4)]</p>

<p>SECTION I: GENERAL FORMULA: (4) Exemption for non-attributing active FIFs</p>	<p><u>Exemption for non-attributing active FIFs</u></p> <p>Unless the interest holder elects that the FIF is an elective attributing FIF, an interest holder has no attributed FIF income or loss under the AFI method if the FIF, treated as if it were a CFC, is a non-attributing active FIF. (See Section II)</p> <ol style="list-style-type: none"> 1) For an elective attributing FIF refer to Section III pages 31 - 33. 2) An interest of 10% or more in an Australian FIF is exempt under s. EX 35. <p>Important Note: A person is still regarded as having used the AFI method if the FIF is a non-attributing active FIF.</p> <p>[s. CQ 5(1)(c)(xv) and s. DN 6(1)(c)(xv)]</p>
<p>SECTION I: GENERAL FORMULA: (5) General formula in section EX 18 for calculating a person's attributed FIF income or loss</p>	<p><u>General formula in section EX 18 for calculating a person's attributed FIF income or loss</u></p> <p>For the FIF's accounting period, the interest holder's attributed FIF income or loss is:</p> $\left[\begin{array}{l} \text{Interest holder's attributed} \\ \text{FIF income or loss} \end{array} \right] = \left[\begin{array}{l} \text{interest holder's} \\ \text{income interest} \end{array} \right] \times \left[\begin{array}{l} \text{FIF's net attributable} \\ \text{FIF income or loss} \end{array} \right]$ <p><u>Interest holder's income interest</u></p> <p>For how to determine an interest holder's income interest see the separate PDF attachment on Calculation of Control Interests and Income interests.</p> <p><u>FIF's net attributable FIF income or loss treating the FIF as if it were a CFC</u></p> $\left[\begin{array}{l} \text{FIF's net attributable} \\ \text{FIF income or loss} \end{array} \right] = \left[\begin{array}{l} \text{Attributable} \\ \text{CFC amount} \end{array} \right] - \left[\begin{array}{l} \text{Deductions specified in} \\ \text{the formula in s. EX20C(2)} \end{array} \right]$ <ol style="list-style-type: none"> 1) For the general overview of the calculation as set out in section EX 18A refer to Section I (5) on page 5. 2) For the calculation of attributable CFC amount refer to Section III on pages 34 - 50. 3) For the calculation of net attributable FIF income or loss refer to Section IV on pages 51 - 58. 4) For the calculation rules refer to the separate PDF on the CFC (and FIFs for which the AFI method is used) Calculation Rules.
<p>SECTION I: GENERAL FORMULA: (6) Additional FIF income or reduction in FIF loss</p>	<p><u>Additional FIF income or reduction in FIF loss</u></p> <ol style="list-style-type: none"> (a) If the FIF derives a taxable distribution from a non-complying trust in the accounting period, the person (the interest holder) has additional attributed CFC income under s. EX 50(5) (see Section I (8) below). (b) If the FIF itself has an income interest in a foreign company for the accounting period, the person may have additional FIF income or loss under s. EX 50(6) & (7), subject to s. EX 50(7B) (see Section I (9) & (10) on pages 7 - 10 below). (c) A person will have a reduced FIF loss under s. EX 50(10) to (12) if the economic loss suffered is less than the FIF loss (see Section I (11) below).

**SECTION I: GENERAL
FORMULA:
(7) Overview:
S. EX 18A
(modified for FIFs)**

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

Under s. EX 50(3)(a) s. EX 18A, as modified by s. EX 50(4B), must be applied as if the FIF were a CFC. However, there are modifications necessary that are not specified - i.e. not included in the list of modifications in s. EX 50(4B):

- (a) The exemption for a non-attributing Australian CFC does not apply: an income interest of at least 10% in an Australian FIF is exempt under s. EX 35.
- (b) When a FIF derives a taxable distribution from a non-complying trust, s. EX 19 (which applies when a CFC derives a taxable distribution from a non-complying trust) does not apply: s. EX 50(5) applies instead.
- (c) The reduction in attributed CFC loss rule in s. EX 20 does not apply: s. EX 50(10) to (12) apply instead.

Therefore the general scheme in s. EX 18A applies to the calculation of attributed FIF income for a FIF, as if it were a CFC, as follows:

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

1 The formula in section EX 18:

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

$$(\text{interest holder's income interest}) \times (\text{CFC's net attributable CFC income or loss})$$

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

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

- (a) The interest holder has no attributed CFC income or attributed CFC loss, if the CFC is a non-attributing active CFC under section EX 21B (*for which the interest holder is not affected by an election under section EX 73*) using the calculation rules in s. EX 21 & EX 24 to EX 27 and a test in:
 - (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.
- (b) The interest holder has attributed CFC income or loss under the above formula in s. EX 18 equal to the fraction of the CFC's net attributable CFC income or loss under s. EX 20C to EX 20E and the rules in s. EX 24 to EX 27, unless there is no attributed CFC income or loss, as set out above.

[S. EX 18A(1)(a), (2) & (3), s. EX 18 & s. 40 of the *Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012* effective from 30 June 2009]

<p>SECTION I: GENERAL FORMULA: (8) FIF deriving a taxable distribution from a non-complying trust</p>	<p><u>FIF deriving a taxable distribution from a non-complying trust</u></p> <p>If a FIF derives a taxable distribution from a non-complying trust in the accounting period:</p> <p>(a) The taxable distribution is excluded when calculating the FIF's net attributable FIF income or loss, due to the combined effect of s. EX 50(1) and s. EX 21(32); and</p> <p>(b) The person has additional attributed CFC income calculated as follows:</p> <p style="text-align: center;">(Person's income interest in the FIF) x (taxable distribution)</p> <p>(c) The person is liable for tax on the additional attributed CFC income at the rate in schedule 1 that applies to amounts under s. HC 22 - i.e. the distribution rate of 45%.</p> <p>[S. EX 50(5)]</p>
<p>SECTION I: GENERAL FORMULA: (9) Additional FIF income or loss when a FIF itself has an interest in a foreign company</p>	<p><u>Additional FIF income or loss when a FIF itself has an interest in a foreign company</u></p> <p>If the FIF itself has an income interest calculated under s. EX 50(4) in a foreign company for the accounting period, <u>unless s. EX 50(7B) applies (see Section I (10) below)</u> the person has additional FIF income or loss calculated using the following formula:</p> <p style="text-align: center;">[(Person's income interest) x (FIF's FIF income or loss)]</p> <p><u>Person's income interest</u>: is the person's income interest in the FIF for the period</p> <p><u>FIF's FIF income or loss</u>: is the FIF's income or loss under s. EX 58(4) & (5) as if:</p> <p>(a) The FIF were the CFC referred to in s. EX 58(4) & (5); and</p> <p>(b) The FIF's interest in the foreign company were an attributing interest, despite any application of s. EX 34 (FIF exemption for CFCs).</p> <p><u>Under s. EX 58(4)</u>, The person must:</p> <p>(a) Choose, under s. EX 44 to EX 48 the calculation method for calculating the CFC's FIF income or loss; and</p> <p>(b) Otherwise apply the calculation rules in s. EX 44 to EX 61 as if the person directly held the attributing interest; and</p> <p>(c) Apply the FIF loss ring-fencing rules in s. DN 8 as if the person directly held the attributing interest.</p> <p><u>Under s. EX 58(5)</u>, the CFC's FIF income or loss does not include:</p> <p>(a) Any amount actuarially determined to be attributable to policyholders in the CFC or another company as a result of applying s. EX 21(25) & (26) (which apply if the CFC or its parent company is a life insurer) to the CFC.</p> <p>[S. EX 50(6) & (7) and s. EX 58(4) & (5) as amended by s. 39(2) & (3) of the <i>Taxation (International Investment and Remedial Matters) Act 2012</i> and s. 49 of the <i>Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012</i>, applying to income years beginning on or after 1 July 2011]</p>

**SECTION I: GENERAL
FORMULA:
(10) Exclusion for
certain additional
FIF income or loss**

When a person does not have additional FIF income/loss under s. EX 50 (6)

A person does not have additional FIF income or loss under s. EX 50(6) from a FIF with an interest in a foreign company if:

- (a) The foreign company meets the test for a non-attributing active CFC under s. EX 21B(2) and the person:
- (i) [Repealed by clause 24B(1) of the Annual Rates Tax Bill]
 - (ii) Is able to include the foreign company in the same test group as the FIF for the accounting standard test under s. EX 21E (see **Section II pages 13 to 27**) or the tax measures (default) test under s. EX 21D (see **Section II pages 28 to 30**); or
- (b) The FIF would meet the accounting standard test for a non-attributing active FIF under s. EX 21B(2)(b) if the items “added passive” (see **Section II page 22**) and “reported revenue” (see **section II page 25**) under s. EX 21E(5), (8) & (10) for the FIF included the amounts given in (c) below:
- (i) Relating to the FIF’s interests in each member of a grouping of one or more foreign companies including the foreign company; and
 - (ii) Reported in the accounts of the FIF, or in the consolidated accounts of the FIF’s test group under s. EX 21E.
- (c) In determining whether a FIF would meet the requirements of (b) above for an accounting period, the amounts required to be included in “added passive” or “reported revenue” are:
- (i) Amounts recognised in profit and loss under the equity method under whichever is appropriate of NZIAS 28, NZIAS 31, an equivalent IFRSE, and an equivalent standard or principle in the generally accepted accounting principles in the United States of America;
 - (ii) Amounts recognised in profit or loss under proportionate consolidation under whichever is appropriate of NZIAS 31, an equivalent IFRSE, and an equivalent standard or principle in the generally accepted accounting principles in the United States of America;
 - (iii) Dividends and net fair value changes recognised in profit or loss in relation to investments accounted for under whichever is appropriate of NZIAS 39, an equivalent IFRSE, and an equivalent standard or principle in the generally accepted accounting principles in the United States of America or
- (d) In determining whether a FIF would meet the requirements of (b) above for an accounting period, an interest holder must not use the result of the test applied to the FIF and the foreign company as a member of a grouping of foreign companies if the interest holder uses for the period a result of the test applied to the FIF and a different grouping of foreign companies.

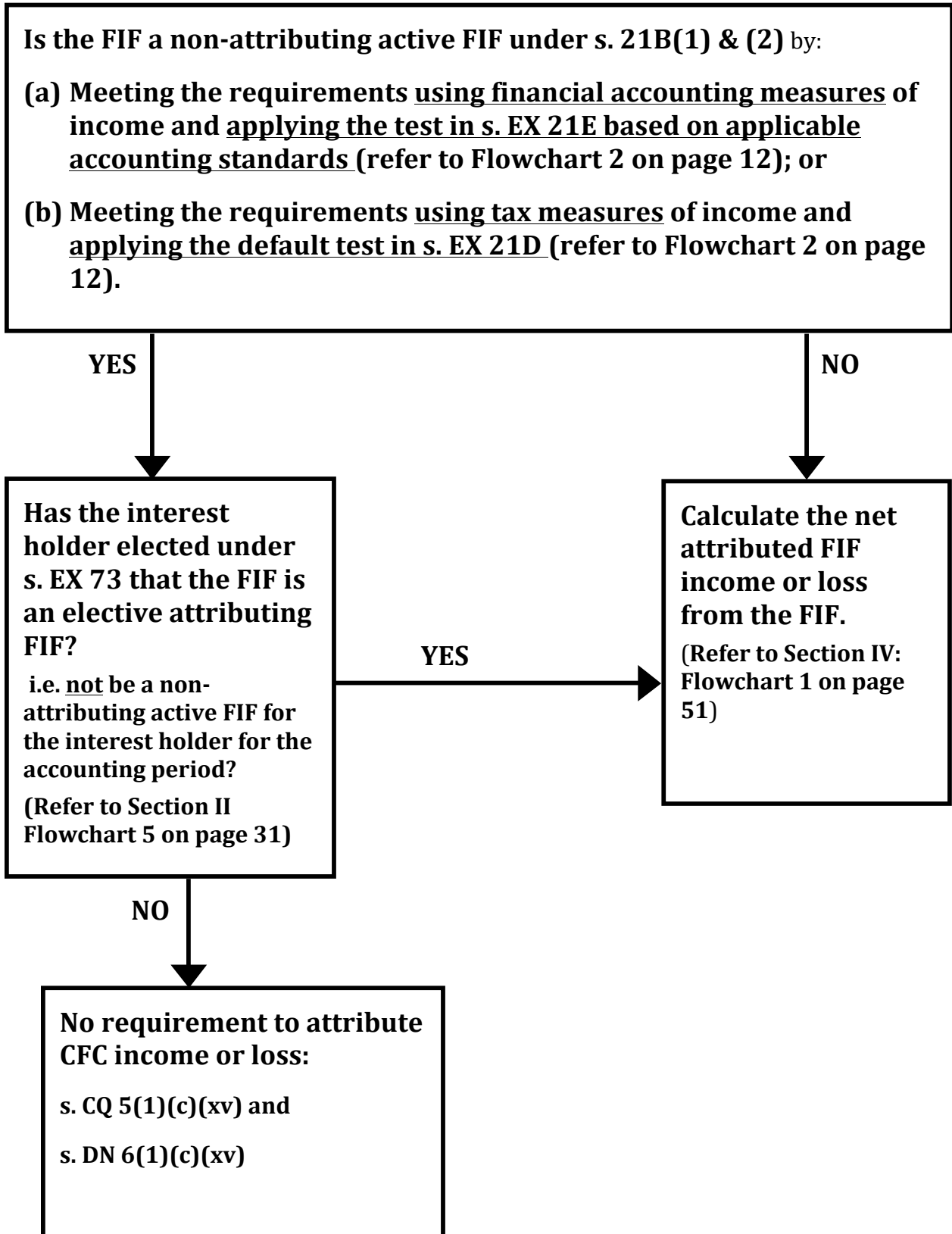
[S. EX 50(7B) & (7C) inserted by s. 35(6) of the *Taxation (International Investment and Remedial Matters) Act 2012* and s. 48 of the *Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012*, applying to income years beginning on or after 1 July 2011]

<p>SECTION I: GENERAL FORMULA: (10) Exclusion for certain additional FIF income or loss (continued): IRD TIB explanation</p>	<p>Summary of IRD explanation of s. EX 50(7B) in TIB Vol 24 No 6 July 2012</p> <p>If the AFI method is used for a foreign company, the default position is to “look-through” this foreign company and apply the FIF rules to any shares that the company holds in other foreign companies. However, several important exceptions to the “look-through” rule in s. EX 50(6) are listed in s. EX 50(7B).</p> <p>[The first exception in s. EX 50(7b)(a)(i) is when the person can demonstrate that the second foreign company is able to pass the requirements for applying both the AFI method and pass the active business test: <u>Repealed by cl. 24B(1) of the Annual Rates Tax Bill</u>]</p> <p>Under s. EX 50(7B)(a)(ii), a person will not need to apply a FIF attribution method to a second-tier company if that company has been included in the same test group as another FIF that has applied and passed the active business test on a test group basis. In order to be part of the same test group the FIF would have to have a more than 50% voting interest in the second foreign company as well as meet several other requirements (see pages 26-27 of the TIB).</p> <p>S. EX 50(7B)(b) applies where a FIF has less than a 50% voting interest and the second foreign company cannot be included in the FIF’s test group. Certain additional amounts, <u>relating to the FIF’s shareholding in the second foreign company, and reported in the accounts of the FIF or in the consolidated accounts of the FIF’s test group under s. EX 21E, are included in a modified version of the active business test for the FIF. But the FIF must pass the active business test twice: first, excluding the additional amounts from the lower-tier company (the ordinary active business test) and second, including the additional amounts from the lower-tier company (the modified test). Then the second foreign company can be ignored. <u>The modified version test can only be applied to a FIF and a single other group of foreign companies. (Amendments in cl. 24B of the Bill.)</u></u></p> <p>After the FIF passes the “ordinary active business test”, it performs the accounting-based active test in s. EX 21E a second time, this time including the additional amounts that are reported in the FIF’s accounts and that relate to the FIF’s non-controlling interests in other foreign companies. For the second test, the following amounts are included in “added passive” and “reported revenue”:</p> <p>(a) Amounts recognised in the FIF’s P&L under the equity method in accordance with NZIAS 28 or an equivalent IFRSE, or an equivalent US GAAP standard or principle. These amounts should show up as the share of the associate’s profit.</p> <p>(b) Amounts recognised in the FIF’s P&L under proportionate consolidation in accordance with NZIAS 31 or an equivalent IFRSE, or an equivalent US GAAP standard or principle. These standards may apply when the FIF has income from a joint venture investment.</p> <p>(c) Any dividends and net fair value changes are recorded under NZIAS 39 or an equivalent IFRSE, or equivalent US GAAP standard or principle. Because the definition of NZIAS 39 includes an equivalent standard issued in its place, this reference will include NZIFRS 9 when it replaces NZIAS 39. When a taxpayer includes a dividend as part of the “added passive” item, this dividend cannot also be included in the “removed passive” item. (Normally, most dividends can be included in the removed passive item and therefore ignored for the purpose of the active business test.) This is achieved by section EX 50(4B)(l).</p>
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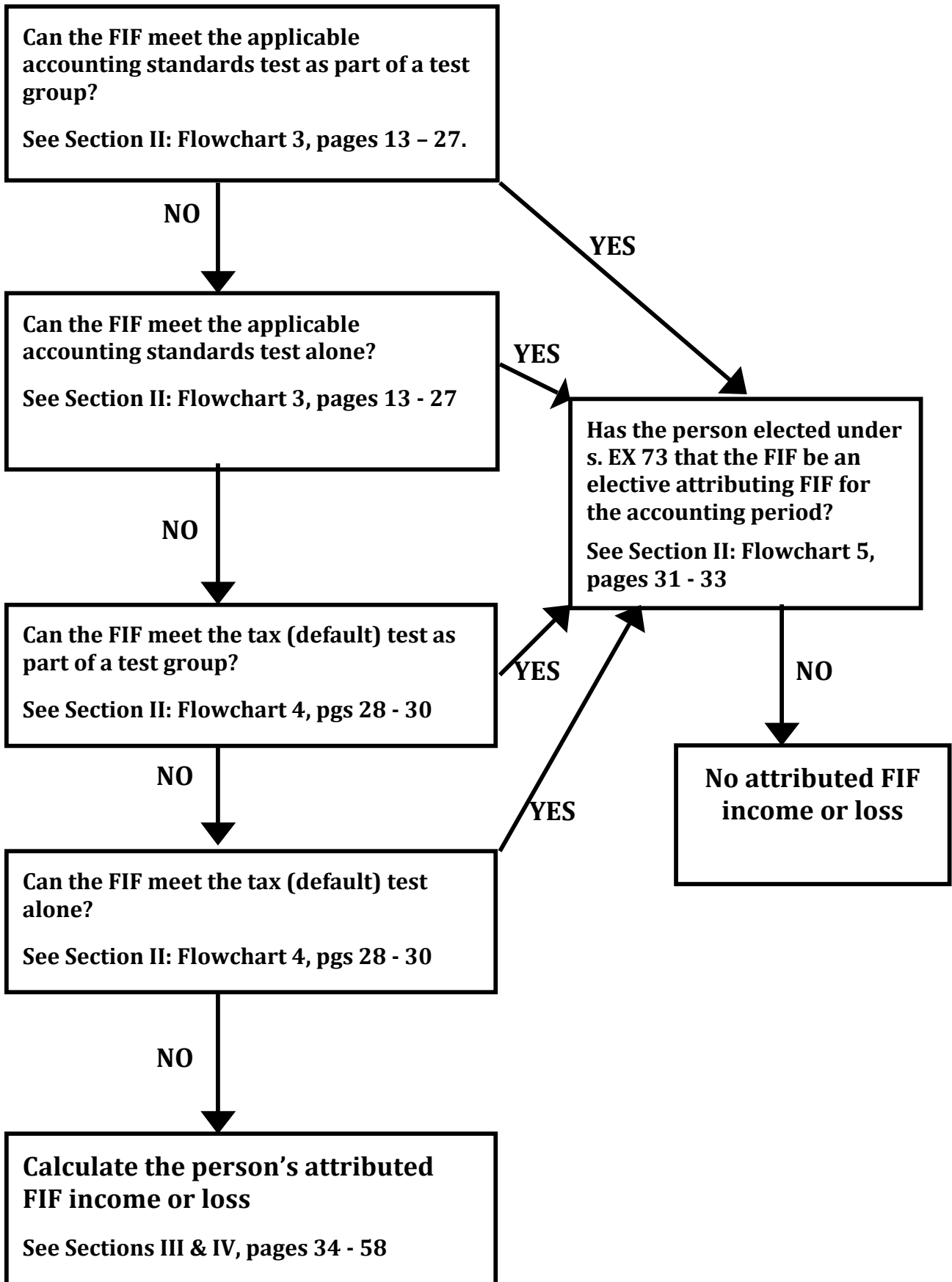
<p>SECTION I: GENERAL FORMULA: (10) Exclusion for certain additional FIF income or loss (continued): IRD TIB explanation (continued)</p>	<p>Summary of IRD explanation of s. EX 50(7B) in TIB Vol 24 No 6 (continued)</p> <p>The above amounts will be net amounts (so they could be negative). The active business test usually only considers gross amounts.</p> <p>Example</p> <p>For example, say NZ Co owns 50% of <u>Ireland FIF</u>.</p> <p>Ireland FIF has \$1,000 of (active) sales income and \$20 of passive interest income.</p> <ul style="list-style-type: none"> • Ireland FIF owns 50% of <u>UK FIF</u>, whose profit/(loss) is \$70. Ireland FIF's share of associate's profit under the equity method is \$35. • Ireland FIF owns 20% of <u>US FIF</u>, whose profit/(loss) is (\$100). Ireland FIF's share of associate's loss under the equity method is (\$20). • Ireland FIF owns 10% of <u>German FIF</u>, whose profit/(loss) is \$100. Ireland FIF's share is \$10: it receives a dividend of \$2 and records a change in net fair value of investments of \$8. <p>Ireland FIF's "reported passive" is \$20 (its interest income).</p> <p>Ireland FIF's "added passive" is \$25 = (\$35 - \$20 + \$2 + \$8)</p> <p>Ireland FIF's "total revenue" is \$1,045 = \$1,000 + \$20 + \$25</p> <p>This results in a passive income to revenue ratio of 4.31%, so the underlying FIFs can be ignored.</p>
<p>SECTION I: GENERAL FORMULA: (11) Reduction in FIF loss to economic loss</p>	<p>Reduction in FIF loss to economic loss</p> <p>The amount of any FIF loss calculated under the AFI method is reduced to be equal to the person's corresponding economic loss, if any, if:</p> <p>(a) A person has an amount of attributed FIF loss and the person suffers no, or substantially no, corresponding economic loss, whether because of a call option, a put option, or any other reason; or</p> <p>(b) The amount of the FIF loss is more than any corresponding economic loss suffered by the person, whether because of the application of the rules for calculating the person's income interest or any other reason.</p> <p>[S. EX 50 (10 to (12))]</p>

SECTION II: NON-ATTRIBUTING ACTIVE FIFs

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



SECTION II: NON-ATTRIBUTING ACTIVE FIFs
FLOWCHART 2: TESTS TO BE A NON-ATTRIBUTING ACTIVE FIF



SECTION II: NON-ATTRIBUTING ACTIVE FIFs

FLOWCHART 3: THE APPLICABLE ACCOUNTING STANDARDS TEST

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

A FIF, 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 FIF 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 II Flowchart 3 (3) to (6)** below.)

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

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

Three requirements to be a non-attributing active FIF:

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

(The items in the formula are explained in **Section II 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?

Treating the FIF as if it were a CFC, the following anti-avoidance rules in section GB 15C must not apply:

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

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

SECTION II: NON-ATTRIBUTING ACTIVE FIFs

FLOWCHART 3: THE APPLICABLE ACCOUNTING STANDARDS TEST (CONTINUED)

3. What are the applicable accounting standards?

There are four legislated applicable accounting standards, which may be used for a FIF alone, or for a FIF test group:

1. The GAAP with IFRS accounting standard

The interest holder may use generally accepted accounting practice in New Zealand including IFRSs (*New Zealand Equivalents to International Financial Reporting Standards* approved by the Accounting Standards Review Board) and the *Framework for Differential Reporting for Entities Applying the New Zealand Equivalents to International Financial Reporting Standards Reporting Regime (GAAP with IFRS)* for a FIF if the requirements set out in **(4) on page 16** below are met, or for a FIF test group if the additional requirements in **(7) on page 19** below are met.

2. The IFRSE accounting standard

An interest holder may use IFRSEs (International Financial Reporting Standards approved by the International Accounting Standards Board) for a FIF if the requirements set out in **(5) on page 17** below are met, or for a FIF test group if the additional requirements in **(7) on page 19** below are met.

3. United States generally accepted accounting principles (US GAAP)

Section EX 21C is modified by s. EX 50(4B) to allow US GAAP accounts to be used for a FIF or for a FIF test group. US GAAP accounts can be used only when the AFI method applies. (US GAAP accounts cannot be used for interests of 10% or more in CFCs.)

US GAAP can only be used if the interest holder or other person has accounts prepared under the GAAP with IFRS or the IFRSE accounting standards. The requirements are set out in **(4) & (5) on page 16-17** below, and for a FIF test group the additional requirements in **(7) on page 19** below must be met.

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

The interest holder may use GAAP in NZ for persons not required to use IFRSs but required to comply with standards, other than IFRSs, approved by the Accounting Standards Review Board under the Financial Reporting Act 1993 (**GAAP without IFRS**) for a FIF if the requirements set out in **(6) on page 18** below are met, or for a FIF test group if the additional requirements in **(7) on page 19** are met.

Note: *Tax Information Bulletin* Vol 24 No 6 July 2012 does not list, at page 25, the “GAAP without IFRS accounting standard” as being an accounting standard that can be used for FIFs.

However, s. EX 50 (4B) does not contain a direction that this accounting standard cannot be used.

[Sections EX 21C & EX 21E(1) as modified by s. EX 50(4B)]

SECTION II: NON-ATTRIBUTING ACTIVE FIFs

FLOWCHART 3: THE APPLICABLE ACCOUNTING STANDARDS TEST (CONTINUED)

3A. What are the applicable accounting standards (continued): IRD explanation on pages 25 – 26 of TIB Vol 24 No 6 July 2012

Taxpayers should use the accounting standard that is most appropriate. For example, if the FIF prepares IFRSE accounts, it should use IFRSE accounting concepts as opposed to US GAAP concepts.

Certain conditions must be satisfied before any particular set of accounting standards can be used. This means the person may be unable to use any of the sets of accounting standards because the relevant conditions are not satisfied. A person may also choose not to use any of the sets of accounting standards, even if they are available.

The main requirement is that the FIF's income appears in IFRS or IFRSE accounts. This ensures that, whatever accounting standard might be used by the FIF itself, the resulting income—at least in aggregate—will be subject to an audit that checks for compliance with IFRS or IFRSE.

There are two ways that this requirement can be met.

The FIF's income could appear in IFRS / IFRSE accounts firstly because the FIF's accounts are fully or partially consolidated into the IFRS or IFRSE accounts.

Alternatively, it could appear if the FIF's income is included in the IFRS or IFRSE accounts using the equity method in IAS 28 or IAS 31, or by inclusion of dividends and fair value changes under IAS 39. If the FIF's income is included under one of those standards, the FIF itself must also produce accounts under an acceptable standard, including US GAAP.

Once it has been determined that there is an acceptable set of accounts, information used to prepare those accounts, including underlying information, may be used as long as it is consistent with the relevant standard (see existing section EX 21E(4)(b))

For instance, if a FIF's income was recognised in the IFRS accounts of the New Zealand investor under IAS 28, and the FIF itself used US GAAP, it would be possible to take the detailed US GAAP information and use this in the active business test calculation in most cases. However, there would be an exception if the associate's profit appearing in the IFRS accounts was not the same as the US GAAP profit because of an adjustment made to ensure compliance with IFRS. In such a case, it would be necessary to adjust the detailed US GAAP information to ensure consistency.

For example:

NZ Co has a 30% shareholding in a US FIF that prepares US GAAP accounts. The US GAAP accounts report a \$20m profit. NZ Co has IFRS accounts that include a line item for income from associates. This item displays \$6m from the US FIF.

The 30% share of the US FIF's income - \$6m - is consistently reported in the IFRS accounts. So NZ Co can use the information underlying the FIF's US GAAP accounts for the purpose of applying the active business test in s. EX 21E to the US GAAP.

There are 2 audit requirements:

First, the accounts must be audited by a chartered accountant (Or foreign equivalent) who is independent of the FIF and the person.

Second, the auditor must give an "unqualified audit opinion" (or foreign equivalent).

SECTION II: NON-ATTRIBUTING ACTIVE FIFs

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 FIF, or for a FIF test group if the requirements in **(7) on page 19** below are met, if the interest holder or another person has accounts that:

1. Include:

- (a) The accounts of the FIF, or the accounts of the members of the test group, as appropriate including by proportionate consolidation under NZIAS 31; or
- (b) Dividends and net fair value changes in relation to the FIF under NZIAS 39; or Amounts recognised under the equity method in NZIAS 28 or NZIAS 31;

And

The FIF has accounts prepared under US GAAP that meet the audit requirements in (3) below for accounts prepared under US GAAP principles in the US.

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 FIF, a company in the FIF 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 FIF 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)** as modified by **s. EX 50(4B)(e) & (f)** - modifications underlined (as inserted by **s. 35(4)** of the Taxation (International Investment and Remedial Matters) Act 2012 and **s. 25** of the same Act replacing CFC with company in the reference to fraudulent activity in **section EX 21C(9)(c)(i)**), from the first income year beginning on or after 1 July 2011]

SECTION II: NON-ATTRIBUTING ACTIVE FIFs

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 FIF, or for a FIF test group if the requirements in (7) below are met, if the interest holder or another person has accounts that:

1. Include:

(a) The accounts of the FIF, or the accounts of the members of the test group, as appropriate including by proportionate consolidation under the IFRSE corresponding to NZIAS 31; or

(b) Dividends and net fair value changes in relation to the FIF under the IFRSE corresponding to NZIAS 39; or
Amounts recognised under the equity method in the IFRSE corresponding to NZIAS 28 or NZIAS 31;

And

The FIF has accounts prepared under US GAAP that meet the audit requirements in (3) below for accounts prepared under US GAAP principles in the US.

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 FIF, a company in the FIF 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 FIF 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)** as modified by **s. EX 50(4B)(g) & (h)** - modifications underlined - (as inserted by **s. 35(4)** of the Taxation (International Investment and Remedial Matters) Act 2012 and **s. 25** of the same Act replacing CFC with company in the reference to fraudulent activity in **section EX 21C(9)(c)(i)**), from the first income year beginning on or after 1 July 2011]

SECTION II: NON-ATTRIBUTING ACTIVE FIFs

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: TIB Vol 24 No 6 does not list this as an acceptable standard. An Officials' Issues Paper released on 8 August 2012 questioned the continuing Use of old GAAP in the CFC rules following changes to the financial reporting framework 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 FIF, or for a FIF 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 FIF, 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 FIF, a company in the FIF 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 II: NON-ATTRIBUTING ACTIVE FIFs

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. None of the other companies in the test group is a CFC (i.e. an actual CFC and not a FIF treated as a CFC); however the other foreign companies can be in different jurisdictions; and
3. The FIF (for which the AFI method is used) holds an income interest of > 50% in each other company in the test group (i.e. the top tier FIF must hold a more than 50% interest in each of the underlying FIFs); and
4. The companies in the test group do not have to have 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 II Flowchart 3 (4) to (6)**.

[**S. EX 21E(2) & (13)(a)** as modified – modifications underlined - by **s. EX 50(4B)(l), (m) & (n)** inserted by **s. 35(4)** of the Taxation (International Investment and Remedial Matters) Act 2012, applying to income years beginning on or after 1 July 2011]

Only a single test can be used for each FIF

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

- (a) The interest holder uses, for the period, the result of the same or a different test for the FIF alone; or
- (b) The interest holder uses, for the period, the result of the same or different test for the FIF 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 II: NON-ATTRIBUTING ACTIVE FIFs

FLOWCHART 3: THE APPLICABLE ACCOUNTING STANDARDS TEST (CONTINUED)

8. If a test group cannot be used, apply the formula to each FIF 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 FIF test group under the applicable accounting standard, if the formula is applied to the test group; or
 - (ii) From amounts for the FIF if the formula is applied to the FIF alone; and
- (c) Omitted – no requirement to remove minority interests – so amounts belonging to other investors are included in the calculations: this is a practical concession.
- (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 FIF test group, although not a member of the FIF test group, if the formula is applied to the test group; or
 - (ii) Associated with the FIF if the formula is applied to the FIF 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 FIF test group, although not a member of the FIF test group, if the formula is applied to the test group; or
 - (ii) In the same group of companies as the FIF if the formula is applied to the FIF alone; and
- (f) Amounts determined for a FIF other than as part of a test group are:
- (i) Determined in the functional currency of the FIF; 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 FIF in a foreign operation; and
- (g) Amounts determined for a test group are:
- (i) Converted from the functional currency of the FIF to the presentation currency of the consolidated accounts for the test group using the average conversion rate for the accounting period; and
 - (ii) Otherwise converted between currencies under the applicable accounting standard.

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

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

[S. EX 21E(4) as modified by s. EX 50(4B)(o) – modification underlined - & s EX (13)(b)]

SECTION II: NON-ATTRIBUTING ACTIVE FIFs

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 share that is not revenue account property, or a derivative as defined in whichever is appropriate of NZIAS 39 (**see below**), an equivalent IFRSE, and an equivalent standard or principle included in US GAAP, being income or loss 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 (or the IFRSE or US GAAP equivalent) – 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 (for example, 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 whichever is appropriate of NZIAS 39 (**see below**), an equivalent IFRSE, and an equivalent standard or principle included in US GAAP, and included in the FIF’s statement of income:
 - (i) If the instrument is held in the course of a business of the FIF for the purpose of dealing with the derivative instrument.
 - (ii) If the instrument is not entered in the ordinary course of business of the FIF.
 - (iii) To the extent to which the income or loss is from a hedging relationship, of a type referred to in NZIAS 39 (or the IFRSE or US GAAP equivalent), 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) modified by s. EX 50(4B)(p) (modifications underlined) & NZIAS 39 ‘Derivative’]

SECTION II: NON-ATTRIBUTING ACTIVE FIFs

FLOWCHART 3: THE APPLICABLE ACCOUNTING STANDARDS TEST (CONTINUED)

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

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

- (a) Income from a life insurance policy that is included in the attributable CFC amount for the accounting period under section EX 20B(3)(g) – see **Section III (3)(g) on page 46** below.
- (b) Income from the disposal of revenue account property that is included in the attributable CFC amount for the accounting period under section EX 20B(3)(k) - see **Section III (3)(k) on page 48** below – if the property is:
 - (i) Not a share, financial arrangement, or life insurance policy; and
 - (ii) Used by the FIF in a way that gives rise to income or gains that increase the numerator of the formula in section EX 20E(5).
- (c) Income from a supply of services performed in New Zealand that is included in the attributable CFC amount for the accounting period under section EX 20B(3)(l) – see **Section III (3)(l) on page 48** below.
- (d) Income from a supply of telecommunications services that is included in the attributable CFC amount for the accounting period under section EX 20B(3)(m) or (n) - see **Section III (3)(m) & (3)(n) on page 49** below.
- (e) Attributed portfolio investment entity (PIE) income that is included under section EX 20B(3)(o) - see **Section III (3)(o) on page 50** below.

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

SECTION II: NON-ATTRIBUTING ACTIVE FIFs

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
 - (i) Not included in the attributable CFC amount for the accounting period under section EX 20B(3)(a) to (c) - see **Section III (3)(a) – (3)(c) on pages 40-41** below; and
 - (ii) Paid by a company other than 1 from which the person does not have additional FIF income or loss under s. EX 50(6) because of the application of s. EX 50(7B)(b) (i.e. paid by a company other than an underlying FIF for which there is no “look-through” because the top tier FIF would pass the accounting standards test to be a non-attributing active FIF if certain amounts from the underlying FIF were included in “added passive” and “reported revenue” of the top tier FIF – see **Section I (10) on page 8**).
 - (b) A royalty that would be included in the attributable CFC amount for the accounting period but for section EX 20B(5)(a) to (d) - see **Section III (3)(d)(i) – (3)(d)(iv) on pages 42-44** below.
 - (c) Rent that would be included in the attributable CFC amount for the accounting period but for section EX 20B(7)(a) to (c) - see **Section III (3)(e) on page 45** below.
 - (d) A gain or loss from a financial asset that is a financial arrangement or agreement referred to in section EX 20B(12) - see **Section III (2) on pages 35** below and the IRD explanation in *Tax Information Bulletin* Vol 24 No 6 July 2012 set out in **Section II Flowchart 3 (12A) on page 24** below.
 - (e) The cost of revenue account property producing an amount (‘the included amount’) included in the attributable CFC amount under section EX 20B(3)(k) - see **Section III (3)(k) on page 48** below - to the extent, not exceeding ‘the included amount’, to which:
 - (i) The cost would be a deduction of the FIF in the accounting period if the FIF 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, as modified by **s. EX 50(4B)(q)** – modification underlined – inserted by **s. 35(4)** of that Act effective from income years beginning on or after 1 July 2011]

SECTION II: NON-ATTRIBUTING ACTIVE FIFs

FLOWCHART 3: THE APPLICABLE ACCOUNTING STANDARDS TEST (CONTINUED)

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

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

Paragraph EX 21E(9)(cb)

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

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

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

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

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

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

However, in the context of section EX 21E, it would be inappropriate not to exclude expenditure if income was being excluded; section EX 21E refers to gains *or losses* from financial assets. Therefore, paragraph EX 21E(9)(cb) (**paragraph (d) on page 23**) 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 II: NON-ATTRIBUTING ACTIVE FIFs

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 share not on revenue account, or a derivative as defined in whichever is appropriate of NZIAS 39 (see **(10)** above), an equivalent IFRSE, and an equivalent standard or principle included in US GAAP, being a gain or loss 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 (or an IFRSE or US GAAP equivalent), of the asset (see **(10)** above);
 - (iii) A foreign exchange gain or loss on the asset.
- (e) A gain or loss from a derivative instrument, as defined in NZIAS 39 (or an IFRSE or US GAAP equivalent) (see **(10)** above), and included in the FIF’s statement of income:
 - (i) If the derivative instrument is held in the course of a business of the FIF 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 FIF;
 - (iii) To the extent to which the gain or loss is from a hedging relationship, of a type referred to in NZIAS 39 (or an IFRSE or US GAAP equivalent), 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 as modified by **s. EX 50(4B)(r)** – modifications underlined – of that Act effective from income years beginning on or after 1 July 2011]

Excerpt from page 48 of *Tax Information Bulletin* Vol 24 No 6 July 2012Paragraph 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. This Act amends the definition of reported revenue so that rent may be included.

SECTION II: NON-ATTRIBUTING ACTIVE FIFs

FLOWCHART 3: THE APPLICABLE ACCOUNTING STANDARDS TEST (CONTINUED)

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

Added revenue is:

1. Zero if the interest holder does not choose to include an amount for this item; or
2. The total of amounts that are not included in the item ‘reported revenue’ for the accounting period and are either or both of the following:
 - (f) Income from a life insurance policy that is included in the attributable CFC amount for the accounting period under section EX 20B(3)(g) - see **Section III (3)(g) on page 46** below.
 - (g) Income from the disposal of revenue account property that is included in the attributable CFC amount for the accounting period under section EX 20B(3)(k) - **Section III (3)(k) on page 48** below - if the property is:
 - (i) Not a share, financial arrangement, or life insurance policy; and
 - (ii) Used by the FIF 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 II: NON-ATTRIBUTING ACTIVE FIFs

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) on page 23** 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) on page 23** above.
- (c) Income from a supply of personal services that is included in the item reported ‘reported revenue’, and in the attributable CFC amount for the accounting period under section EX 20B(3)(h) - see **Section III (3)(h) on page 47** below.
- (d) Income or loss from a share that is not revenue account property under the Income Tax Act 2007 in the form of:
 - (i) A change in the reported fair value of the share.
 - (ii) Income or loss on the derecognition, as defined in whichever is appropriate of NZIAS 39, an equivalent IFRSE, and an equivalent standard or principle included in US GAAP, – see **(10) on page 21** above – of the share.
 - (iii) A foreign exchange gain or loss on the share.
- (e) Income derived from another CFC (**FIF?**) that:
 - (i) Is subject to the laws of the country or territory under which the FIF is liable to income tax on the FIF’s income because of the FIF’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 FIF 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 whichever is appropriate of NZIAS 32, an equivalent IFRSE, and an equivalent standard or principle included in US GAAP, 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) as modified by s. EX 50(4B)(s) & (t) – modifications underlined – effective 1/7/11]

SECTION II: NON-ATTRIBUTING ACTIVE FIFs
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 FIF, 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 FIF, for an accounting period and a person, by:

Applying the following formula, using the application rules set out in **(4) on page 30** below, and meeting the two requirements below:

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

Two requirements to be a non-attributing active FIF:

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

Attributable CFC amount is the amount determined under section EX 20B - refer to **Section III on pages 34 – 50** below.

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

- (a) If the interest holder so chooses, income derived from the supply of personal services:
 - (i) Included in an attributable CFC amount under section EX 20B(3)(h) – refer to **Section III (3)(h) on page 47** below; and
 - (ii) Not included in an attributable CFC amount under another paragraph of section EX 20B(3) and (4) – i.e. not otherwise included as part of “gross” or “arrangement - refer to **Section III on pages 34 - 50**.
- (b) If the interest holder so chooses, the cost of revenue account property producing an amount (‘the included amount’) included in the attributable CFC amount under section EX 20B(3)(k) - refer to **Section III (3)(k) on page 48** below - to the extent, not exceeding ‘the included amount’, to which:
 - (i) The cost is a deduction of the FIF in the accounting period; and
 - (ii) The deduction exceeds the amount of any income arising under subpart CH (Adjustments) relating to the deduction.

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

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

- (a) The amount of the item ‘Attributable adjustments’ in the formula.
- (b) Expenditure or loss that is included in the calculation of the attributable CFC amount under section EX 20B – refer to **Section III on pages 34 - 50**.
- (c) Income derived from a company that would meet the requirements to be a member of the FIF 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 FIF for the purpose of increasing the amount of the denominator in the formula).

[S. EX 21D & GB 15B]

SECTION II: NON-ATTRIBUTING ACTIVE FIFs
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 FIF may choose to apply the default test for the FIF as a member of a test group if the group consists of companies:

1. None of which is a CFC (but they can be in different jurisdictions); and
2. In each of which the FIF holds a voting interest of more than 50% (i.e. the top tier FIF must hold a more than 50% in each of the underlying FIFs); 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)** as modified by **s. EX 50(4B)(i) & (j)** – modifications underlined – inserted by **s. 35(4)** of the Taxation (International Investment and Remedial Matters) Act 2012 applying from income years beginning on or after 1 July 2011]

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 FIF if:

- (c) The interest holder uses, for the period, the result of the same or a different test for the FIF alone; or
- (d) The interest holder uses, for the period, the result of the same or different test for the FIF 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 II: NON-ATTRIBUTING ACTIVE FIFs

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

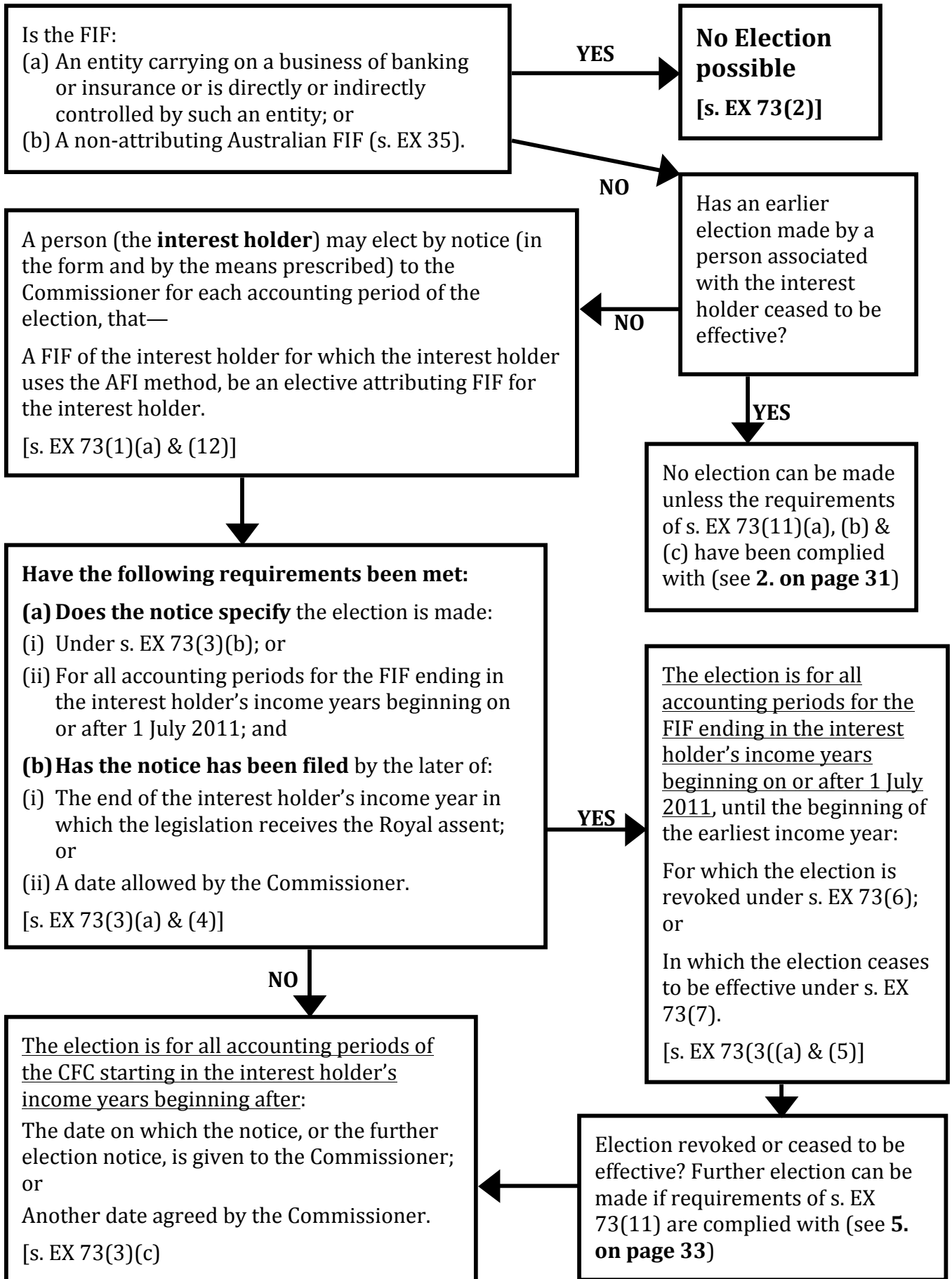
3. If a test group cannot be used, apply the formula to each FIF individually

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

- (a) Each item in the formula is determined:
 - (i) For the FIF's consolidated test group, if the interest holder chooses to apply the formula to the test group; or
 - (ii) For the FIF if the formula is applied to the FIF alone; and
- (b) No adjustment is made 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 FIF test group, although not a member of the FIF test group, if the formula is applied to the test group; or
 - (ii) Associated with the FIF if the formula is applied to the FIF 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 FIF test group, although not a member of the FIF test group, if the formula is applied to the test group; or
 - (ii) In the same group of companies as the FIF if the formula is applied to the FIF 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)** as modified by **s. EX 50(4B)(k)** – modifications underlined – inserted by **s. 35(4)** of the Taxation (International Investment and Remedial Matters) Act 2012 applying from income years beginning on or after 1 July 2011.]

SECTION II: NON-ATTRIBUTING ACTIVE FIFs
FLOWCHART 5: ELECTIVE ATTRIBUTING FIFs



SECTION II: NON-ATTRIBUTING ACTIVE FIFs

FLOWCHART 5: ELECTIVE ATTRIBUTING FIFs (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 FIF loss from an elective attributing FIF to an income year for which the election for the FIF 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 FIF that in the income year ceases to be a FIF for which the interest holder uses the AFI method (except if the FIF becomes a CFC for which the interest holder uses the AFI method); or
- (b) A FIF 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.

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

[s. EX 73(7)(b) & (c) and (9)(b) & (c)]

SECTION II: NON-ATTRIBUTING ACTIVE FIFs
FLOWCHART 5: ELECTIVE ATTRIBUTING FIFs (CONT.)
REQUIREMENTS FOR A FURTHER ELECTION AND DEFINITIONS

5. Further election by interest holder

If the Commissioner agrees, the interest holder may make a further election (i.e. after an earlier election has ceased to be effective) for all accounting periods of a FIF 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 FIF; 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 FIF**, for an interest holder and an accounting period, means a FIF for which:

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

The **election commencement year**, for an interest holder and an elective attributing FIF, 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(8)** of the *Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012*]

SECTION III: CALCULATION OF ATTRIBUTABLE CFC AMOUNT FOR 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.

<p>SECTION III: ATTRIBUTABLE CFC AMOUNT: (1) Formula: Section EX 20B</p>	<p><u>The calculation of the attributable CFC amount for a FIF (before any deductions) is set out in section EX 20B.</u></p> <p><u>Attributable CFC amount</u> for an accounting period and a FIF means an amount calculated under the rules in section EX 21 (see the separate PDF on the <i>Attributable CFC Amount Calculation Rules</i>) using the formula:</p> <p style="text-align: center;">Gross + arrangement</p> <p><u>Gross</u> is explained in Section III (3)(a) to (3)(p) on pages 40 - 50 below.</p> <p><u>Arrangement</u> is explained in Section III (2) on pages 35 - 39 below.</p> <p>[S. EX 20B(1)]</p>
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**SECTION III:
ATTRIBUTABLE CFC
AMOUNT:
(2) Meaning of
“arrangement”**

Arrangement

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

1. An arrangement that
 - (a) Is a financial arrangement, or a short-term agreement for sale and purchase for which the FIF has made an election under section EW 8 (Election to treat certain excepted financial arrangements as financial arrangements).
 - (b) Is not a derivative instrument as defined in NZIAS 39 – which is a financial instrument or other contract within the scope of NZIAS 39 (see paragraphs 2-7 of NZIAS 39) with all three of the following characteristics:
 - (i) Its value changes in response to the change in a specified interest rate, financial instrument price, commodity price, foreign exchange rate, index of prices or rates, credit rating or credit index, or other variable, provided in the case of a non-financial variable that the variable is not specific to a party to the contract (sometimes called the ‘underlying’)
 - (ii) It requires no initial net investment or an initial investment that is smaller than required for other types of contracts that would be expected to have a similar response to changes in market factors.
 - (iii) It is settled at a future date.
 - (c) Is not exempt under the intra-group payments exemption (see (2A)) as:
 - (i) An agreement by the FIF to lend money to a foreign company:
 - a. For which the person uses the AFI method or would be able to in the absence of s. EX 35 (amendment in the Livestock Tax Bill); and
 - b. 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) & (12)(a); and
 - c. A group of persons holds voting interests > 50% in the FIF and the foreign company; and
 - d. The FIF and the foreign company each have a taxed FIF connection with the same country or territory. (see (2A) on page 36 below)
 - (ii) An agreement for the sale or purchase of property or services or a hire purchase agreement:
 - a. Entered in the ordinary course of business by the FIF.
 - b. For property or services produced or used by the FIF in business.
2. A derivative instrument:
 - (a) That is held in the course of a business of the FIF for the purpose of dealing with the derivative instrument.
 - (b) That is not entered in the ordinary course of a business of the FIF.
 - (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.

[Sections **EX 20B(4)**, **EX 20B(12)** as modified by **s. EX 50(4B)(d) & (4C)** – modifications underlined – applying from income years beginning on or after 1 July 2011 and “Definition of a derivative” in paragraph 9 of NZIAS 39]

**SECTION III:
ATTRIBUTABLE CFC
AMOUNT:
(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 *or would be able to in the absence of s. EX 35* (amendment in *Livestock Tax Bill*); 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 37 - 39** 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 37 - 39** below.)

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

<p>SECTION III: ATTRIBUTABLE CFC AMOUNT: (2B) Meaning of “arrangement” (continued): meaning of “taxed FIF connection”</p>	<p><u>Meaning of “taxed FIF connection”</u></p> <p>“Taxed FIF connection”, for a FIF and a country or territory (the host country), 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>(i) A resident under the domestic law of the country or territory;</p> <p>(ii) Liable to income tax because of the FIF's domicile, residence, place of incorporation, or centre of management;</p> <p>(iii) Treated as a resident under an agreement with the host country that would be a double tax agreement if it were an agreement between New Zealand and the host country; and</p> <p>(c) The FIF has no presence outside the host country that is—</p> <p>(i) A fixed establishment;</p> <p>(ii) A permanent establishment under an agreement, between another country or territory and the host country, that would be a double tax agreement if it were between New Zealand and the host country; and</p> <p>(d) The 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>(i) Wholly owns the FIF under the laws of New Zealand and the host country; and</p> <p>(ii) Has a relationship with the host country meeting the requirements of paragraphs (a) to (c); and</p> <p>(iii) Because of the parent company's domicile, residence, place of incorporation, or centre of management, is liable in the host country to tax on the 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 YA 1 and section 132(34) of the Taxation (International Investment and Remedial Matters) Act 2012]</p>
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<p>SECTION III: ATTRIBUTABLE CFC AMOUNT: (2C) Meaning of “arrangement” (continued): meaning of “taxed FIF connection” (continued)</p>	<p><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></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 or would be able to in the absence of the exemption in s. EX 35 – amendment inserted by cl. 34B of the <i>Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill</i>) 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 Section III (2) “Arrangement” on page 35, royalties – see Section III (3)(d)(iii) “Royalties exception 3” on page 44 and rent - see Section III (3)(e) “Rent” on page 45), 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 Section III (3)(e) “Rent” on page 45 and telecommunications services - see Section III (3)(n) “Telecommunications services” on page 49 can also be ignored even if the FIF is not liable to tax in that country.)</u></p> <p>[Continued in the row below]</p>
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<p>SECTION III: ATTRIBUTABLE CFC AMOUNT: (2C) Meaning of “arrangement” (continued): meaning of “taxed CFC connection” (continued)</p>	<p><u>Explanation of the “taxed FIF connection” change adapted from <i>Tax Information Bulletin Vol 24 No 6 July 2012, pages 45-47 (continued)</i></u></p> <p>Some entities that New Zealand considers to be foreign companies are not treated as taxable entities in the country in which they are registered or organised. For example, a United States Limited Liability Company (LLC) such as a so-called “Delaware company” is often considered by the United States to be analogous to a partnership for tax purposes. In that case, it is not liable to tax in that country (though its shareholders may be) and the foreign company is not able to take advantage of the same country exemptions.</p> <p>... there are cases when excluding entities such as LLCs from the same country exemptions is unnecessary and even counterproductive. In particular, if (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"> (a) First, that the (FIF) is a resident of the country in question under section YD 3; (b) Secondly, that the (FIF) is not treated as a dual-resident; and (c) Thirdly, that the (FIF) does not have a fixed establishment or a permanent establishment outside the country. <p><u>At the same time as clarifying the requirements for all companies that use the same country exemptions, the new Act widens the scope of the exemptions to include entities that are not liable to income tax because they are not considered to be taxable entities in the country where they are resident.</u></p> <p>A (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"> (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 (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.
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<p>SECTION III: ATTRIBUTABLE CFC AMOUNT: (3) Meaning of “gross”</p>	<p><u>Gross</u></p> <p><u>Gross</u> is the total amount of income, derived in the accounting period by the FIF that is 1 or more of the following listed types of income.</p> <p>[Section EX 20B(3)]</p>
<p>SECTION III: ATTRIBUTABLE CFC AMOUNT: (3)(a) “Gross”: Dividends from exempt FIFs</p>	<p><u>Dividends</u></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"> 1. That are a direct income interest in a foreign company; and 2. Meet the requirements of <u>neither</u> section EX 34 (exemption for an income interest of 10% or more in a FIF that is a CFC) <u>nor</u> section EX 35 (exemption for a direct income interest of 10% or more in an Australian resident FIF); and 3. That are excluded from being an attributing interest by: <ol style="list-style-type: none"> (a) Section EX 31 (exemption for Australian listed companies). (b) Section EX 32 (exemption for Australian unit trusts meeting minimum turnover and distribution requirements). (c) Section EX 36 (10-year exemption for a venture capital company emigrating to a grey list country). (d) Section EX 37 (10-year exemption for a grey list company owning a NZ venture capital company). (e) Section EX 37B (exemption for shares in a grey list company acquired under an agreement with the Venture Investment Fund). (f) Section EX 39 (terminating exemption for grey list company with numerous NZ shareholders). <p>[S. EX 20B(3)(a) as amended by s. 19(1) of the Taxation (International Investment and Remedial Matters) Act 2012]</p> <p><u>Comment from TIB Vol 24 No 6 July 2012, page 30:</u></p> <p>Section EX 20B(3)(a) mirrors section CW 9(2) (the foreign dividend exemption) by attributing income from FIFs which use the attributable FIF income method in respect of those dividends that would be taxable if they were received directly by a New Zealand company.</p> <p>(Refer to pages 19-20 of TIB Vol 24 No 6 July 2012 for an explanation of the foreign dividend exemption.)</p>
<p>SECTION III: ATTRIBUTABLE CFC AMOUNT: (3)(b) “Gross”: Unimputed dividends from NZ</p>	<p><u>Unimputed dividends from New Zealand</u></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>[S. EX 20B(3)(b)]</p>

**SECTION III:
ATTRIBUTABLE CFC
AMOUNT:
(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"]

<p>SECTION III: ATTRIBUTABLE CFC AMOUNT: (3)(d) "Gross": Royalties</p>	<p><u>Royalties included in attributable CFC income or loss</u></p> <p>A royalty derived by a 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 43 - 44.</p> <p>[S. EX 20B(3)(d)]</p>
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<p>SECTION III: ATTRIBUTABLE CFC AMOUNT: (3)(d)(i) "Gross": Royalties: Exception 1</p>	<p><u>Royalties Exception 1:</u></p> <p>Royalties are not included in an attributable CFC amount if all the following requirements are met:</p> <ol style="list-style-type: none"> 1. The FIF is regularly engaged in creating, developing, or adding value to property that produces royalties. 2. The royalty is paid by a person who is not associated with the 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). 3. The royalty is paid from property that is not linked to New Zealand. <ul style="list-style-type: none"> <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"> (a) The property has been owned by a New Zealand resident. (b) The property has been owned by a non-resident for the purposes of a business carried on in New Zealand through a fixed establishment in New Zealand. (c) The property was created or developed in New Zealand. (d) The property has had substantial value added in New Zealand. (e) The property has been acquired by a person who had a deduction for expenditure or loss incurred in the acquisition. (f) The property is based on knowledge acquired by a person who: <ol style="list-style-type: none"> (i) Acquired the knowledge with the purpose or intention of creating the property; and (ii) Had a deduction for expenditure or loss incurred in the acquisition. (g) The property is created or developed from activities, or from the extension, continuation, development, or completion of activities, if the activities produced knowledge acquired by a person who had a deduction for expenditure or loss incurred in the acquisition. <u>Property has no link with New Zealand for a FIF</u> when the property is owned by a non-resident who: <ol style="list-style-type: none"> (a) Is not a CFC and is not associated with the FIF; and (b) Is not associated with a person who has owned the property while it had a link with New Zealand. 4. The royalty is paid from property that the FIF has created or developed or to which the FIF has added substantial value. <p>[S. EX 20B(5)(a) & EX 20B(13)-(15)]</p>
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<p>SECTION III: ATTRIBUTABLE CFC AMOUNT: (3)(d)(ii) "Gross": Royalties: Exception 2</p>	<p><u>Royalties Exception 2</u> Royalties are not included in an attributable CFC amount if all the following requirements are met:</p> <ol style="list-style-type: none"> 1. The FIF is regularly engaged in creating, developing, or adding value to property that produces royalties. 2. The royalty is paid by a person who is associated with the 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). 3. The royalty is paid from property that is not linked to New Zealand (see Royalties exception 1 above). 4. The royalty is paid from property that the FIF has created or developed or to which the FIF has added substantial value. 5. The royalty is an arm's length amount determined under section GC 13 (Calculation of arm's length amounts) for the arrangement between the FIF and the associated person. <p>[S. EX 20B(5)(b)]</p>
<p>SECTION III: ATTRIBUTABLE CFC AMOUNT: (3)(d)(iii) "Gross": Royalties: Exception 3</p>	<p><u>Royalties Exception 3</u> Royalties are not included in an attributable CFC amount if all the following requirements are met:</p> <ol style="list-style-type: none"> 1. The royalty is paid by a foreign company that meets all the following requirements: <ol style="list-style-type: none"> (a) The person uses the AFI 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); and (c) A group of persons holds 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 <u>taxed FIF connection</u> (as defined in section YA 1) with the same country or territory. 2. The royalty is paid from property that is not linked to New Zealand (see Royalties exception 1 above). <p>Refer to the discussion on the intra-group payments exemption - Section III (2A) on page 36 above.</p> <p>[Section EX 20B(5)(c) as modified by s. EX 50(4B)(a) & (4C) 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>
<p>SECTION III: ATTRIBUTABLE CFC INCOME: (3)(d)(iv) "Gross": Royalties: Exception 4</p>	<p><u>Royalties Exception 4</u> This exception is omitted. [Section EX 20B(5)(d) as modified by s. EX 50(4B)(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>

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

Rent included in attributable CFC income or loss

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:

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

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

1. The rent is from land in a country or territory with which the FIF has a taxed FIF connection.
2. The rent is from property other than land, to the extent to which the rent relates to the use of the property in a country or territory referred to in paragraph (a) above.
3. The rent is paid by a foreign company that meets the requirements of section EX 50(4C) (refer also to **Section III (2A) on page 36**), which are that:
 - (a) The person uses the attributable FIF income method for the foreign company *or would be able to in the absence of the exemption in s. EX 35 – amendment inserted by cl. 34B of the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill*); 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 **Section III (2B) – (2C) on pages 37 - 39**)
4. The rent is a payment under a hire purchase agreement.
5. The rent is a payment under a finance lease.
6. The rent is a royalty.
7. The rent is a payment under a license to use intangible property that:
 - (a) Is not a royalty; and
 - (b) Would not be included in an attributable CFC amount under the Royalties Exceptions if treated as a royalty.

[Sections **EX 20B(3)(e) & EX 20B(6) & (7)** as modified by **s. EX 50(4B)(c) & (4C)** as inserted by **section 35(4)** of the Taxation (International Investment and Remedial Matters) Act 2012 effective from the first income year beginning on or after 1 July 2011]

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

<p>SECTION III: ATTRIBUTABLE CFC AMOUNT: (3)(h) "Gross": Personal services income</p>	<p><u>Income from the supply of personal services</u></p> <p>Income derived by a 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"> 1. The working person is a New Zealand resident. 2. The personal services are not essential support for a product supplied by the FIF. 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). 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"> (a) Are not essential support for a product supplied by the FIF; and (b) Are performed by a working person who is a NZ resident and meets the above test of association with the FIF. 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"> (a) \$75,000; and (b) 25% of the FIF's total income from personal services performed in the accounting period. <p>(<u>Note</u>: section GB 28(7) includes certain expenditure in the cost of depreciable property that is subject to a finance lease, hire purchase agreement or specified lease.)</p> <p>[S. EX 20B(3)(h) & EX 20B(9)]</p>
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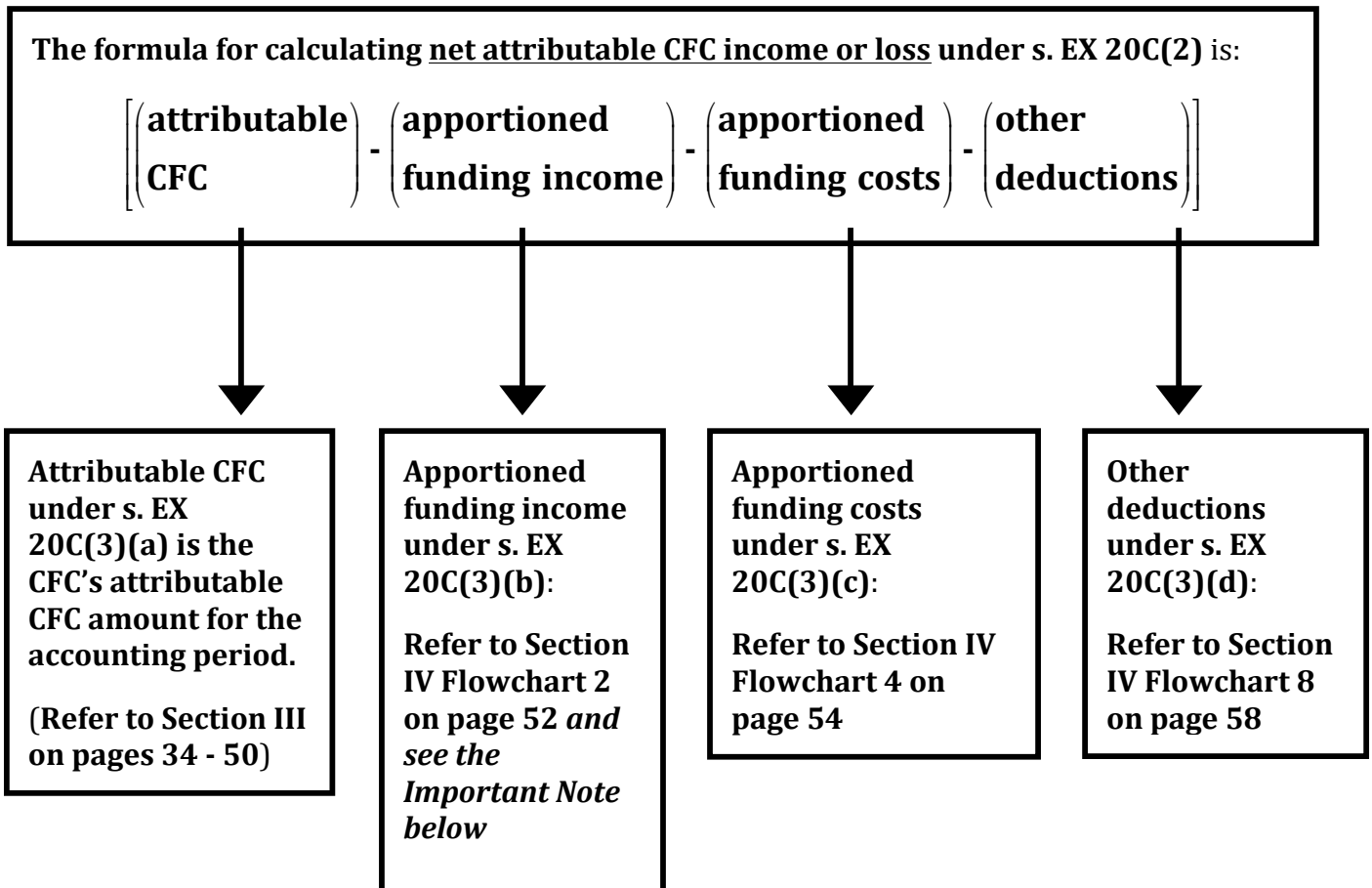
<p>SECTION III: ATTRIBUTABLE CFC AMOUNT: (3)(i) "Gross": Income from revenue account property</p>	<p><u>Income from the disposal of revenue account property that is a share</u></p> <p>Included in the attributable CFC amount of a FIF is income from the disposal of revenue account property that is a share, 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"> (a) The comparative value method. (b) The deemed rate of return method. (c) The fair dividend rate method. (d) The cost method. <p>[S. EX 20B(3)(i) to (k) & EX 20B(10)]</p>
<p>SECTION III: ATTRIBUTABLE CFC AMOUNT: (3)(j) "Gross": Income from revenue account property</p>	<p><u>Income from the disposal of revenue account property that is an option to acquire or dispose of a share</u></p> <p>Included in the attributable CFC amount of a FIF is income from the disposal of revenue account property that is an option to acquire or dispose of a share.</p> <p>[S. EX 20B(3)(j)]</p>
<p>SECTION III: ATTRIBUTABLE CFC AMOUNT: (3)(k) "Gross": Income from revenue account property</p>	<p><u>Income from the disposal of other revenue account property</u></p> <p>Included in the attributable CFC amount of a FIF is income from the disposal of revenue account property that is:</p> <ul style="list-style-type: none"> (a) Not a share, financial arrangement, or life insurance policy; and (b) Used by the FIF with a purpose or effect of giving rise to income of the FIF that is attributable under section EX 20B(3). <p>[S. EX 20B(3)(k)]</p>
<p>SECTION III: ATTRIBUTABLE CFC AMOUNT: (3)(l) "Gross": Service income</p>	<p><u>Income from a service</u></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>[S. EX 20B(3)(l)]</p>

<p>SECTION III: ATTRIBUTABLE CFC AMOUNT: (3)(m) “Gross”: Income from a service relating to the use of telecommunications equipment</p>	<p><u>Service income relating to the use of telecommunications equipment</u></p> <p>Included in a 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"> (a) Physically located outside any country or territory; and (b) Owned by the FIF <u>or by another FIF</u> that is associated with the FIF; and (c) Not a mobile telephone handset or a radio receiver and transmitter for a ship or aircraft. <p>[S. EX 20B(3)(m), including the <u>amendment of section EX 20B(3)(m)(ii)</u> applying to income years beginning on or after 1 July 2011: s. 19(2) & (10) of the Taxation (International Investment and Remedial Matters) Act 2012]</p>
<p>SECTION III: ATTRIBUTABLE CFC AMOUNT: (3)(n) “Gross”: Income from telecommunications services physically performed in NZ</p>	<p><u>Income from telecommunications services physically performed in NZ</u></p> <p>Included in a 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"> (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 Section III (2B) – (2C) on p. 37 - 39); and (b) The FIF is a network operator under the Telecommunications (Interception Capability) Act 2004 (a “network operator”), or: <ul style="list-style-type: none"> (i) A group of persons has, for the whole of the FIF’s accounting period, voting interests and, if a market value circumstance exists, market value interests, of more than 50% in the FIF; and (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 (c) <u>The service is performed by a person other than the FIF, who:</u> <ul style="list-style-type: none"> (i) <u>Is resident in New Zealand and is resident in no other country under all applicable double tax agreements:</u> (ii) <u>Has a fixed establishment in New Zealand that is a permanent establishment under all applicable double tax agreements; and</u> (d) <u>The service is performed by the person as part of a business in New Zealand of providing telecommunications services in New Zealand:</u> <ul style="list-style-type: none"> (i) <u>Carried on through the person’s fixed establishment, if the person is not resident in New Zealand; and</u> (ii) <u>From which the person derives assessable income of more than \$5,000,000 per annum.</u> <p>[S. EX 20B(3)(n) and s. EX 20B(11), including the <u>amendment of s. EX 20B(11)(a)</u> and the <u>replacement of s. EX 20B(11)(c) & (d)</u> applying to (CFCs) for income years beginning on or after 1 July 2009: s. 19(7) & 19(11) of the Taxation (International Investment and Remedial Matters) Act 2012]</p>

<p>SECTION III: ATTRIBUTABLE CFC AMOUNT: (3)(o) "Gross": Attributed PIE income</p>	<p><u>Attributed PIE income that is not excluded income</u></p> <p>Included in a 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"> (a) The prescribed investor rate for the investor in the relevant calculation period is more than zero; and (b) That rate is not more than the notified investor rate in relation to the investor when the PIE calculates: <ul style="list-style-type: none"> (i) Its income tax liability under section HM 47 in relation to the income; or (ii) A voluntary payment under section HM 45 that is intended to be a final payment of its income tax liability in relation to the income. <p><u>Section CX 56 does not apply</u> when:</p> <ul style="list-style-type: none"> (a) The PIE calculates its income tax liability using the quarterly calculation option under section HM 43 and the amount is attributed to an investor who is treated under section HM 61 as zero-rated (section HM 61 treats certain exiting investors as zero-rated); or (b) An amount of attributed PIE income is derived by a trustee who has chosen a prescribed investor rate referred to in Schedule 6, table 1, row 5 or 7 (17.5% and 10.5% respectively at the time of writing). <p>[S. EX 20B(3)(o) as inserted by s. 36(1) of the Tax Administration Act 2011]</p>
<p>SECTION III: ATTRIBUTABLE CFC AMOUNT: (3)(p) "Gross": Taxable dividends from grey list company FIFs</p>	<p><u>Taxable dividends from grey list company FIFs for which the FDR is used</u></p> <p>Included in a 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"> (a) Which is a grey list company; (b) In which the person holds a direct income interest of 10% or more at the beginning of the income year; (c) For which the person calculates their FIF income or loss for the period under the fair dividend rate (FDR) method. <p>[S. EX 20B(3)(p) inserted by s. 19(3) of the Taxation (International Investment and Remedial Matters) Act 2012 applying to income years beginning on or after 1 July 2011: s. 19(10)]</p>

SECTION IV: CALCULATION OF NET ATTRIBUTED CFC INCOME OR LOSS FOR FIFs

FLOWCHART 1: FORMULA



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

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

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

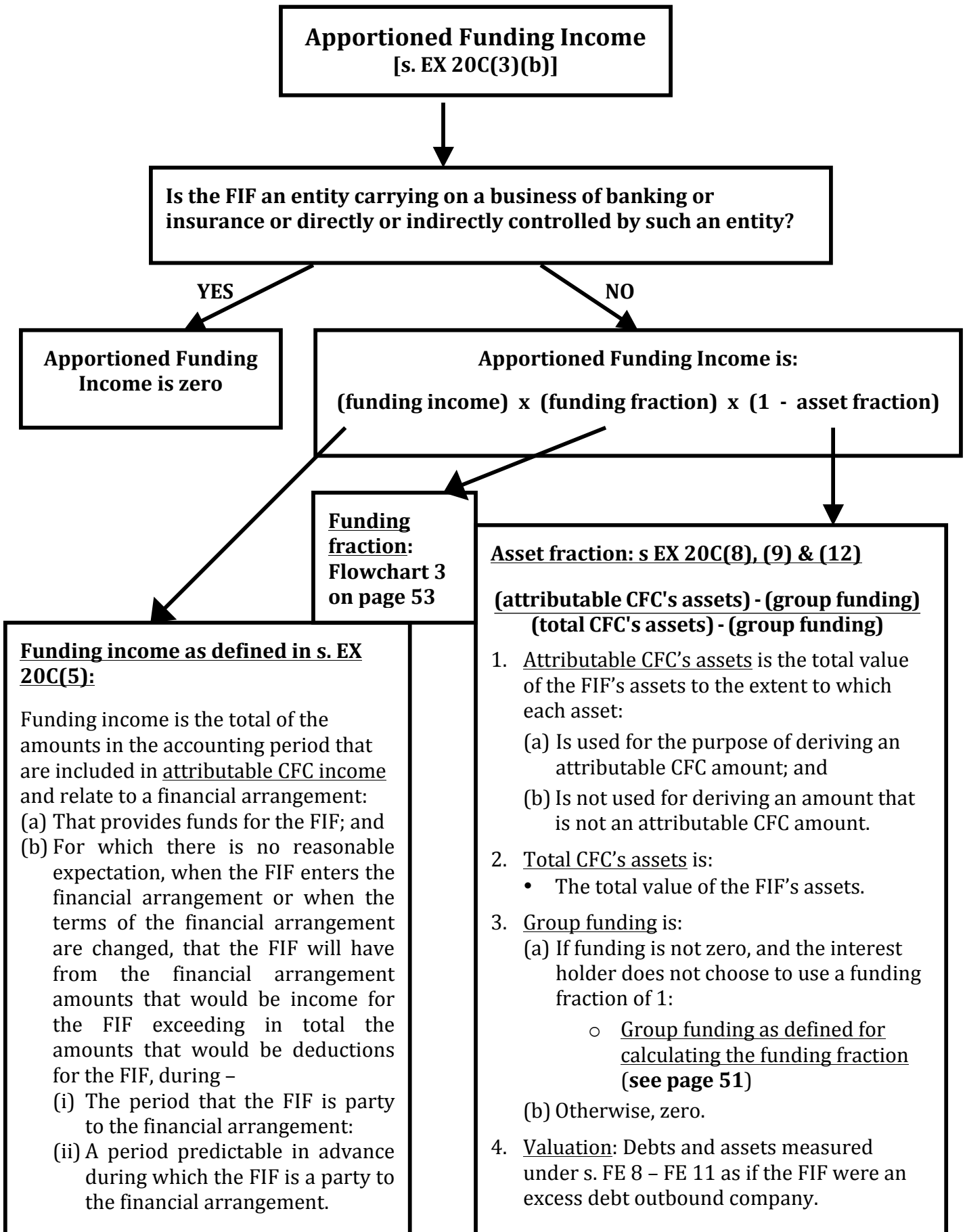
- (a) The value of **funding income** relates only to old funding arrangements (entered into before 21 June 2012); and
- (b) The value of **asset fraction** is the **cost fraction** calculated under s. EX 20D(10) – as set out in Flowchart 5 on page 53:

$$\text{Cost fraction} = (\text{attributed foreign company assets}) / (\text{total foreign company assets}).$$

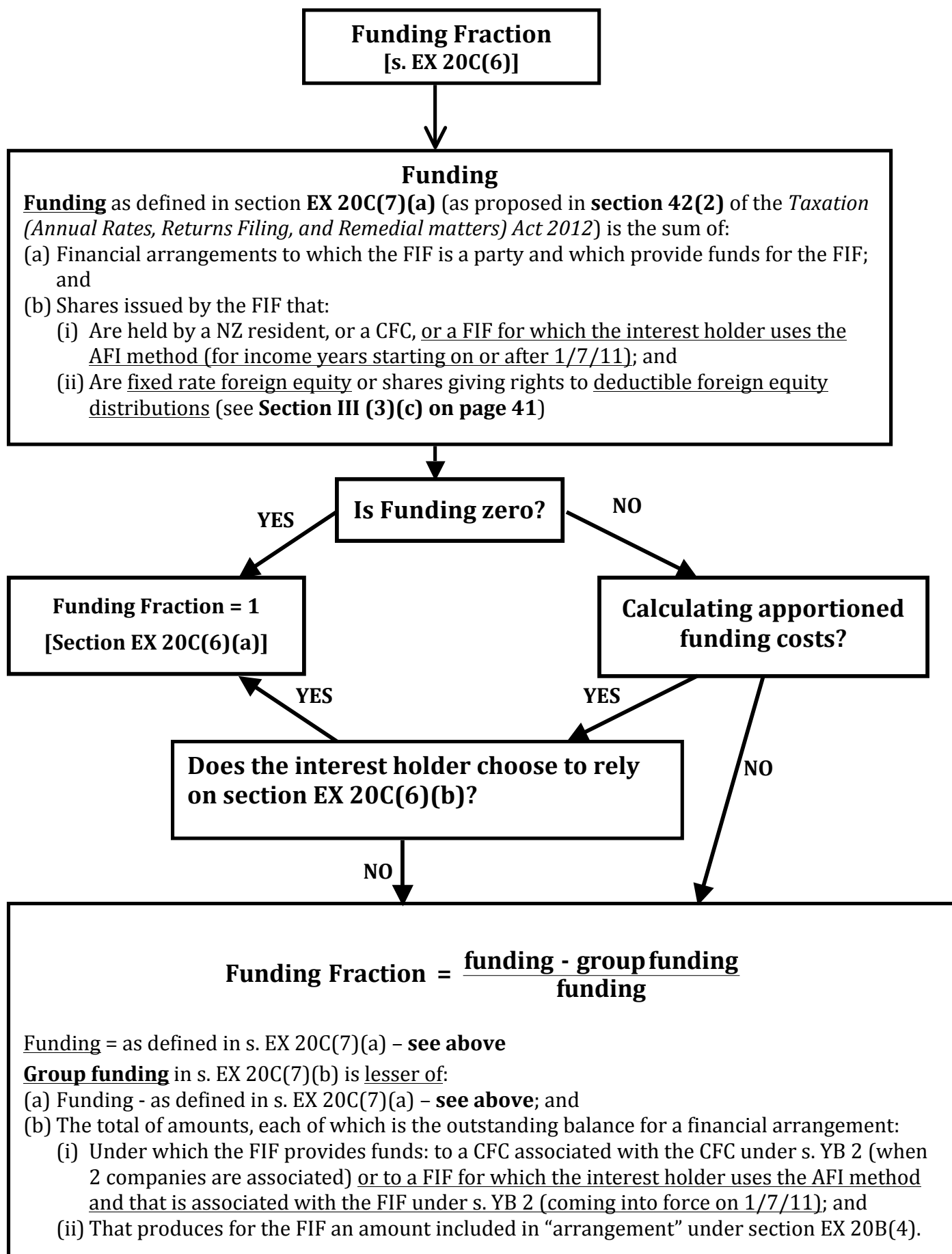
Part 2 - Funding arrangements entered into on or after 21 June 2012: The calculation rules are exactly as set out in Flowchart 2 on page 50 with the value of funding income relating only to financial arrangements (entered into on or after 21 June 2012) that are not old funding arrangements.

[s. EZ 32D]

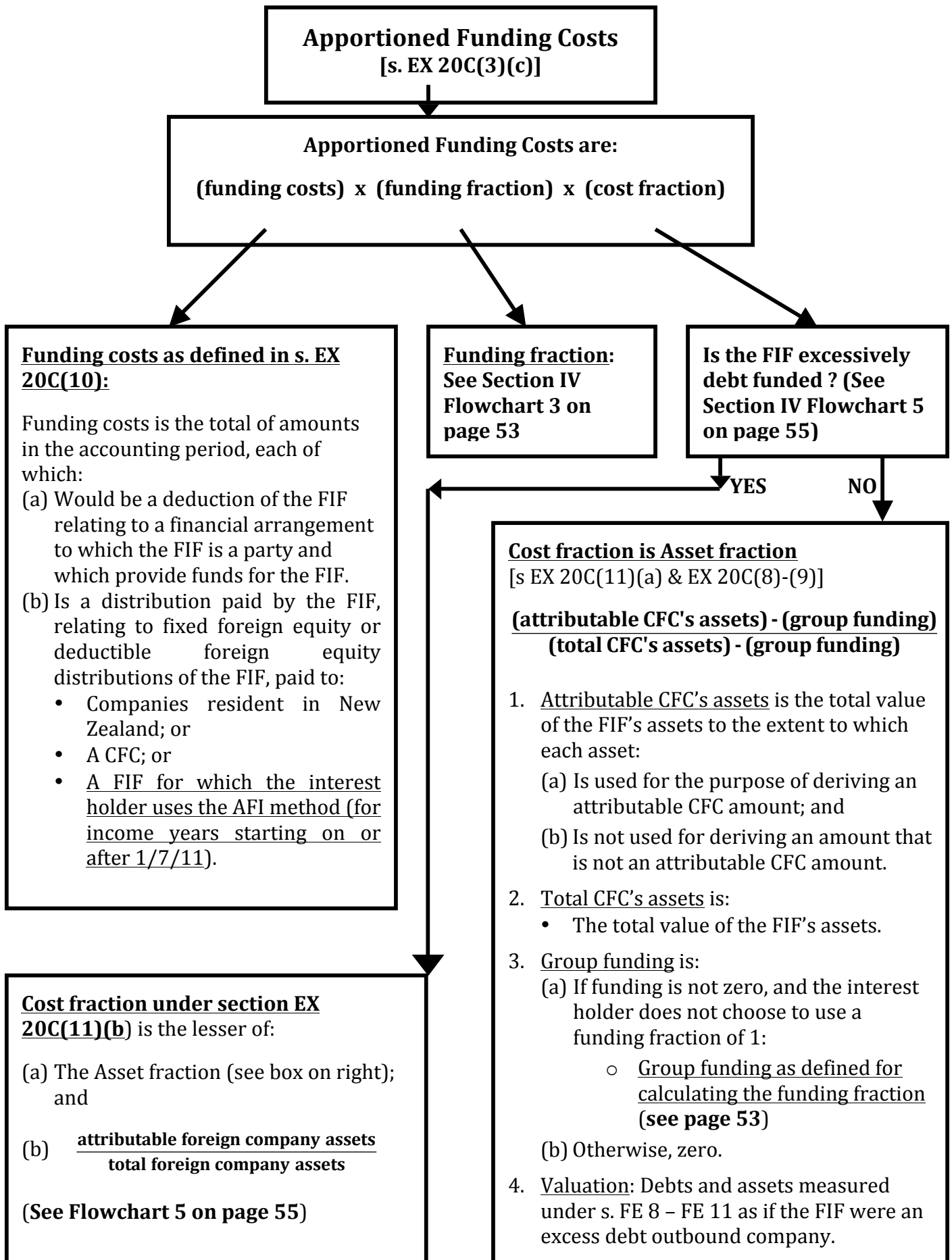
SECTION IV: NET ATTRIBUTED CFC INCOME OR LOSS FOR FIFs
FLOWCHART 2: APPORTIONED FUNDING INCOME



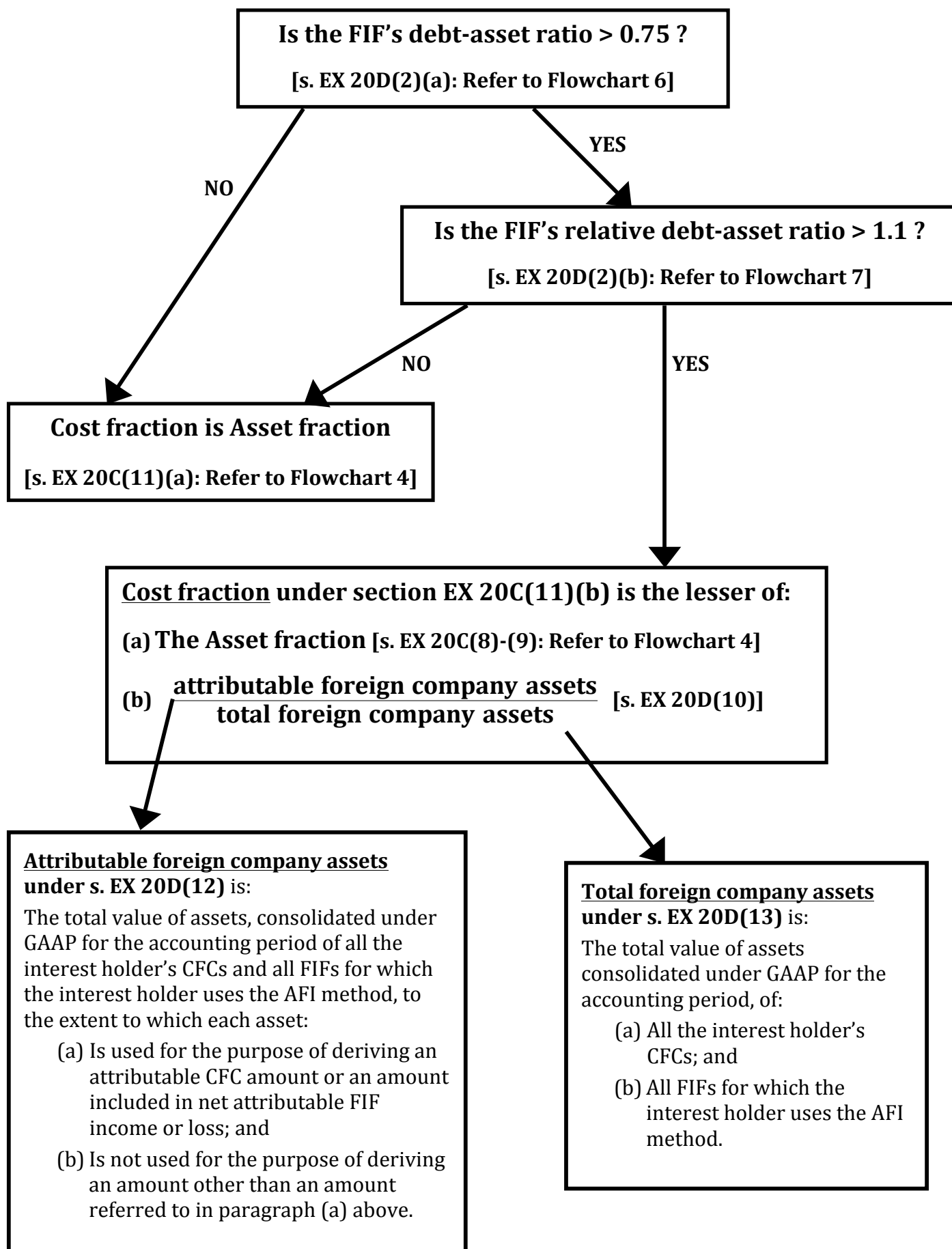
SECTION IV: NET ATTRIBUTED CFC INCOME OR LOSS FOR FIFs
FLOWCHART 3: FUNDING FRACTION



SECTION IV: NET ATTRIBUTED CFC INCOME OR LOSS FOR FIFs
 FLOWCHART 4: APPORTIONED FUNDING COSTS

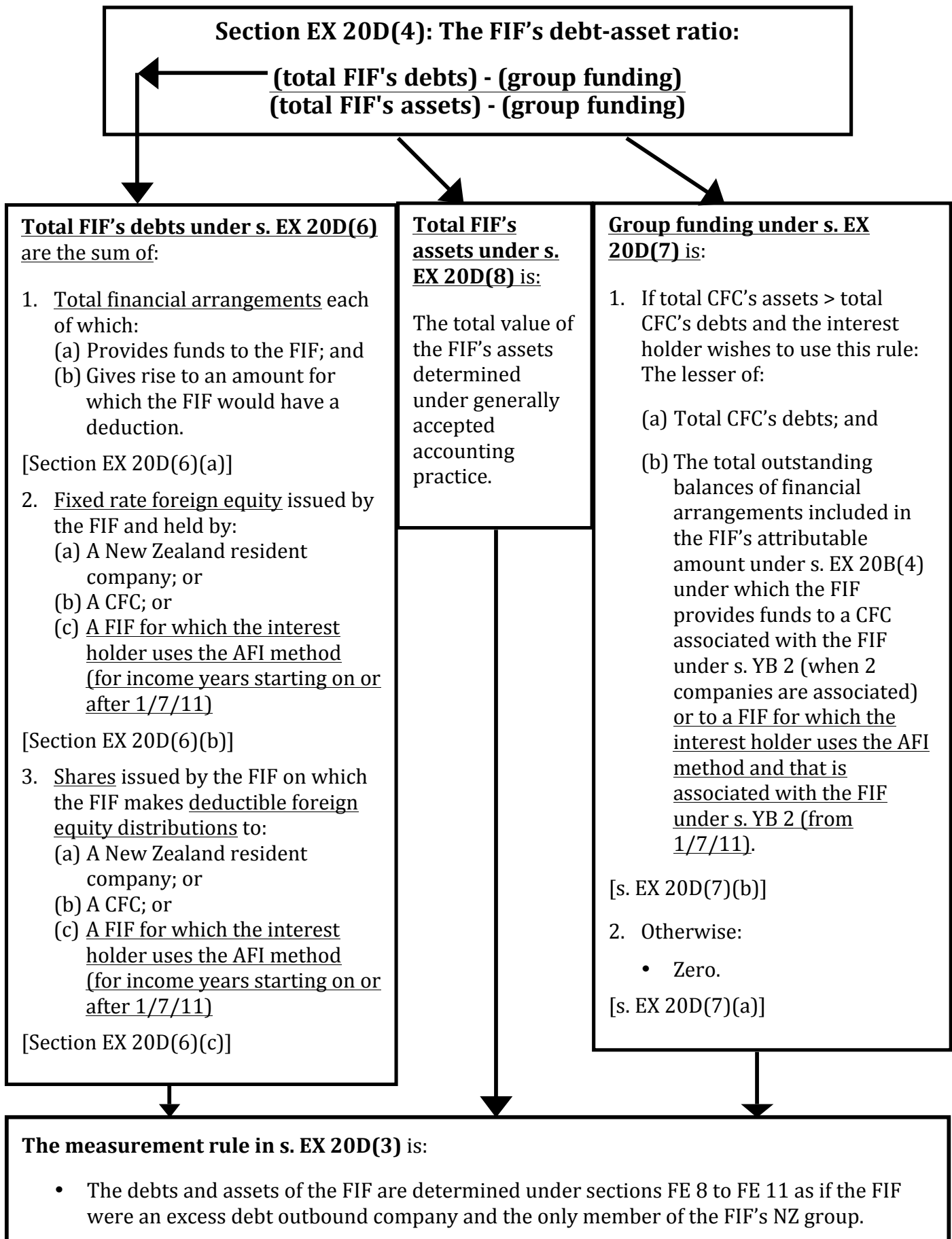


SECTION IV: NET ATTRIBUTABLE CFC INCOME OR LOSS FOR FIFs
FLOWCHART 5: DETERMINING IF THE FIF IS EXCESSIVELY DEBT FUNDED

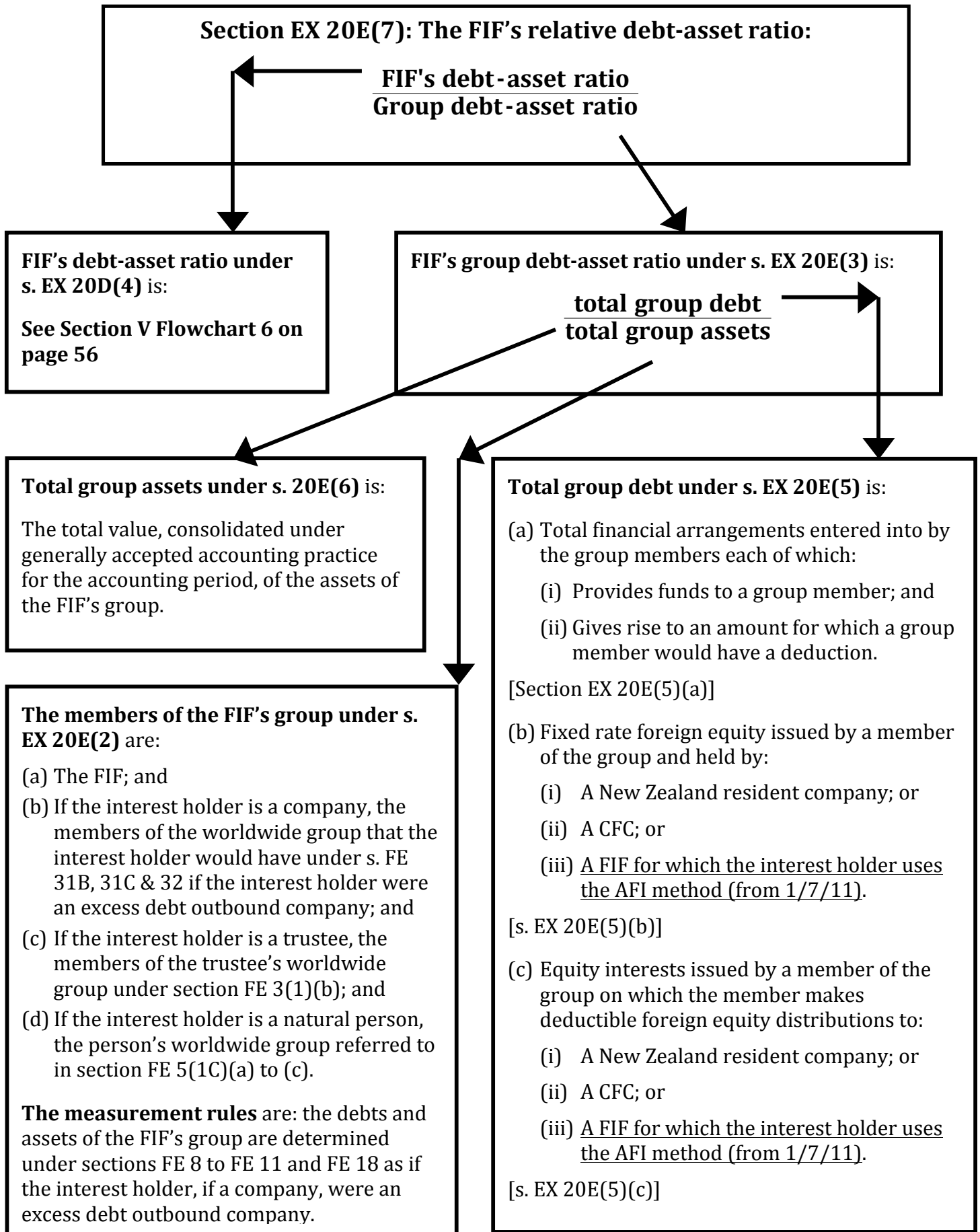


SECTION IV: NET ATTRIBUTABLE CFC INCOME OR LOSS FOR FIFs

FLOWCHART 6: FIF's DEBT-ASSET RATIO



SECTION IV: NET ATTRIBUTED CFC INCOME OR LOSS FOR FIFs
 FLOWCHART 7: FIF's RELATIVE DEBT-ASSET RATIO



SECTION IV: NET ATTRIBUTABLE CFC INCOME OR LOSS FOR FIFs
FLOWCHART 8: OTHER DEDUCTIONS

