Interest Relief for Qualifying Financing Companies (QFCs) – Section 76E

Part 04-05-07

This document should be read in conjunction with sections 76E of the Taxes Consolidation Act 1997.

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The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

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1 Introduction

Interest income is, in general, taxable under Case III on a gross receipts basis i.e.

- it is taxed when it is received, and
- no amounts incurred in earning that income are deductible.

Section 76E, introduced in Finance (No. 2) Act 2023, now permits certain intermediary financing companies, known as Qualifying Financing Companies (or QFCs), to obtain a deduction for interest paid in certain limited circumstances.

This manual provides guidance on the deductibility of interest by QFCs under section 76E.

2 Meaning of Qualifying Financing Company (QFC) and Key Terms

2.1 Meaning of Qualifying Financing Company (QFC)

A qualifying financing company (QFC) refers to any company that:

- directly holds at least 75% of the ordinary share capital of:
  - a qualifying subsidiary, and/or
  - an intermediate holding company,
- borrows money for the purpose of on-lending that money by making relevant loans to its:
  - qualifying subsidiary (or subsidiaries), and/or
  - indirect qualifying subsidiary (or subsidiaries),

  and
- apart from activities ancillary to those listed above, carries on no other activities.

The role of a QFC is to act as an intermediary financing company within its own group. As an intermediary financing company, it organises external financing on behalf of the group and redistributes same within the group.

A QFC is not a group holding company. As such, a QFC should not provide other administrative services on behalf of the group.

The activities ancillary to the business of a QFC should be those ancillary activities undertaken by financing companies only.

It should also be noted that section 76E does not alter the tax treatment of any income/expenses arising from such ancillary activities, that is to say, they will not be deemed to be interest received /paid.

For example, a QFC may enter into a foreign exchange hedge on one of its loans. While this activity is likely to be ancillary to it carrying out the role of an intermediary financing company:

- external interest paid cannot be deducted from any income or gains arising from the ancillary foreign exchange hedging activity, and
- any costs arising from the ancillary foreign exchange hedging activity cannot be treated as external interest paid for section 76E purposes.

However, relief may be available under other provisions[1], where the qualifying criteria for those provisions are met.

2.2 Subsidiaries of a Qualifying Financing Company

2.2.1 Qualifying Subsidiary

The qualifying subsidiary of a QFC is any company—

- that exists wholly or mainly for the purpose of carrying on any trade or trades, or exists for the purposes of carrying out the leasing activities referred to in subsection (3A) of section 77,
- that is tax resident in a Member State, EEA State or a DTA jurisdiction, and
- in which the QFC directly holds at least 75% of the ordinary share capital of the company.

2.2.2 Intermediate Holding Company

The intermediate holding company in respect of a QFC is a company—

- in which the QFC holds a direct ownership of at least 75% of the ordinary share capital of the company, and
- whose business consists wholly of the holding of ordinary shares of indirect qualifying subsidiaries of the QFC.

2.2.3 Indirect Qualifying Subsidiary

The indirect qualifying subsidiary of a QFC is any company that would be a qualifying subsidiary for the purposes of this section, but for the fact that 75 per cent or more of its ordinary share capital is held directly by an intermediate holding company.

2.2.4 QFC Group Illustration

A QFC must actually hold 75% of its qualifying subsidiaries whether this is:

- directly, in the case of qualifying subsidiaries, or
- indirectly, in the case of an indirect qualifying subsidiary.

[1] Refer, for example, to TDM Part 04-05-01 for details of the taxation of certain hedging transactions which may be relevant to the activities of a QFC.

The below diagram illustrates how a QFC group may potentially be structured - all relevant ownership interests of the QFC, whether direct or indirect, must be at least 75%.

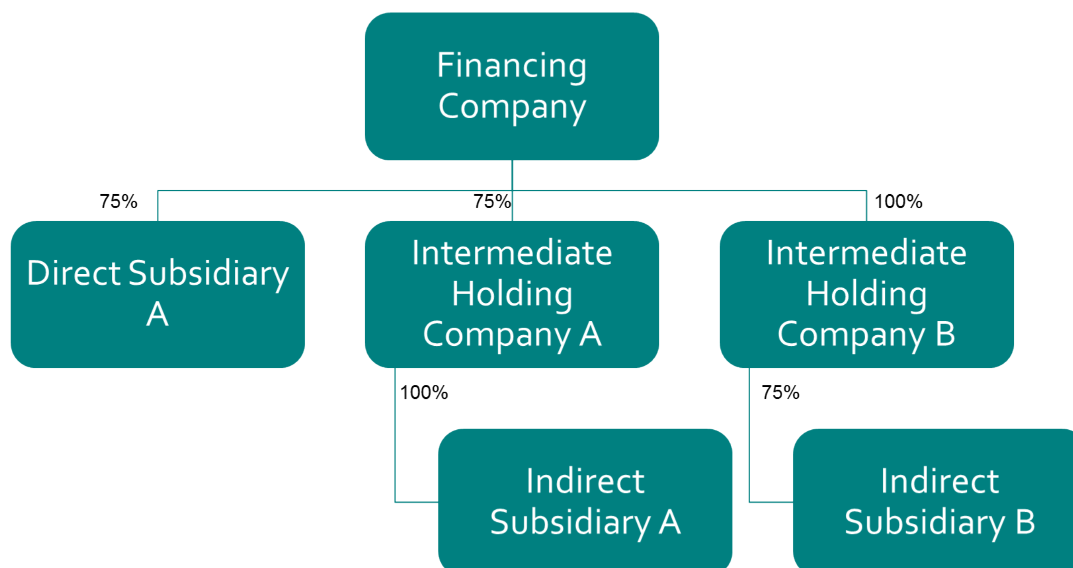

Figure 1: A diagram illustrating how a QFC group may potentially be structured.

In this example, the Financing Company:

a) directly holds 75% of:
   - Direct Subsidiary A,
   - Intermediate Holding Company A and Intermediate Holding Company B

b) indirectly holds 75% of:
   - Indirect Subsidiary A,
   - Indirect Subsidiary B, and

c) issues relevant loans to one or more of its direct or indirectly qualifying subsidiaries,

d) carries on no other activities (assumed).

Subject to the relevant qualifying criteria applying, the Financing Company will be a Qualifying Financing Company for the purposes of section 76E and external interest relief may be available.

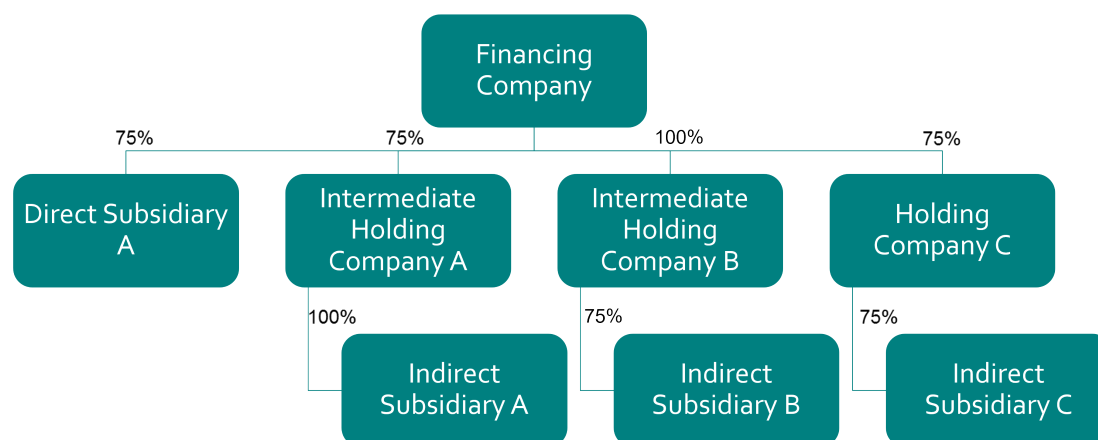

Figure 2: A diagram illustrating another example of how a QFC group may potentially be structured.

In the above example, the Financing Company has a 56.25% holding in Indirect Subsidiary C. As such, the subsidiary is not an Indirect Qualifying Subsidiary and the holding company is not an Intermediate Holding Company, within the meaning of section 76E.

As the Financing Company holds shares in a company that is not either a Qualifying Subsidiary or an Intermediate Holding company, the Financing Company is not a Qualifying Financing Company. As such the company cannot receive any external interest relief.

2.3 Relevant Loans

A relevant loan is any loan of money[2] (entered into by way of a bargain at arm's length) that is:

- advanced by a QFC to either its qualifying subsidiary or indirect qualifying subsidiary[3], and
- used by the qualifying subsidiary or indirect qualifying subsidiary wholly and exclusively for the purposes of a trade.

The funds cannot be used for—

- the redemption of or subscription for shares, or
- any other payments relating to shares or the capital structure of any company.

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[2] Note that this must be a loan and that other debt instruments, such as promissory notes, cannot be relevant loans.
[3] Note that the loan cannot be advanced to the intermediate holding company. It must be advanced directly from the QFC to the indirect qualifying subsidiary.

2.4 External Loans and External Interest

An external loan refers to a loan from a person who—

- does not have the beneficial ownership of, or the ability to control[4] (directly or indirectly) more than 5% of the ordinary share capital of the company, and
- is not an associated enterprise[5] of the company,

and external interest refers to the amount of interest payable on an external loan.

Section 4 of this manual sets out the anti-avoidance rules which apply to prevent certain back-to-back structures being used to disguise related party payments as external interest.

[4] 'control' is to be construed in accordance with section 432. See Tax and Duty Manual Part 01-00-05 Meaning of Control for further information.

[5] Refer to section 7 of Tax and Duty Manual Part 35C-00-01 - Guidance on the Anti-Hybrid Rules for the meaning of associated enterprise. In applying this test, the applicable percentage is 25% rather than 50%.

3 Tax Deduction of Interest Paid by QFCs

Absent section 76E, a company in receipt of Case III or Case IV interest income would not be entitled to any deduction in calculating the amount of profits charged to tax.

Section 76E(4) provides that a QFC may, when calculating its taxable profits under Case III or Case IV, deduct the external interest paid[6] by it in a chargeable period where the external interest paid is matched against interest income received on a relevant loan (or loans). It is important to note that the calculation must be done individually on a matched loan by matched loan basis (similar to a Case V computation, where rental profits are separately calculated on a property-by-property basis).

In matching external loans to relevant loans, subsection (6) sets out the default position which is that money advanced under an external loan to a QFC is to be automatically matched against the relevant loan (or loans) made by the QFC at or around the time the third-party debt was borrowed by the QFC. That is, where the QFC has raised amounts from third parties and has on lent those amounts to its (indirect) qualifying subsidiaries, then those loans are matched (i.e. the third-party monies borrowed by the QFC are to be matched with the amounts on-lent from those monies).

The next two pages contain examples that illustrate the basic computational principles of section 76E.

[6] The interest must be paid, rather than accrued. This matches both the basis of assessment for interest income that is taxable under Case III and IV and also relief under section 247.

Example 1 – Basic Computational Example

In this example:

- Company A is a QFC,
- Its subsidiaries (Subsidiaries B, C and D) are qualifying subsidiaries, and
- All of the loans the QFC makes to its subsidiaries are relevant loans.

Company A gets an external loan of €1,000 from Bank and will pay interest at 5% per annum on its borrowings (giving an annual interest expense of €50). Company A advances the following loans to its subsidiaries:

- €500 to Subsidiary B at 5.5% per annum (annual interest income of €27.50),
- €300 to Subsidiary C at 7% per annum (annual interest income of €21), and
- €200 to Subsidiary D at 6% per annum (annual interest income of €12).

The €1,000 external loan is apportioned, and each portion of the external loan is matched to one of the three relevant loans.

The QFC's taxable Case III income is computed as follows:

		B		**C**		**D**	**Total**
		€		**€**		**€**	**€**
Interest Income from Matched Relevant Loans		27.5		21		12	60.5
Section 76E Relief (being the lower of):							
Portion of External Interest Matched to Relevant Loan*	(25)		(15)		(10)		
Matched Relevant Loan Income	(27.5)	(25)	(21)	(15)	(12)	(10)	(50)
Taxable Case III Income from Matched Relevant Loans		**2.5**		**6**		**2**	**10.5**

*Calculated as ($\frac{Portion\ Advanced\ as\ Relevant\ Loan}{Total\ External\ Loan\ Amount} \times Total\ External\ Interest$)

Example 2 – Lower Rate Relevant Loan

In this example:

- Company A is a QFC,
- Its subsidiaries (Subsidiaries B, C and D) are qualifying subsidiaries, and
- All of the loans the QFC makes to its subsidiaries are relevant loans.

Company A gets an external loan of €1,000 from Bank and will pay interest at 5% per annum on its borrowings (giving an annual interest expense of €50).

Company A uses the amount borrowed from Bank to advance the following loans to its subsidiaries:

- €500 to Subsidiary B at 4% per annum (annual interest income of €20),
- €300 to Subsidiary C at 3% per annum (annual interest income of €9), and
- €200 to Subsidiary D at 6% per annum (annual interest income of €12).

The €1,000 external loan is apportioned, and each portion of the external loan is matched to one of the three relevant loans.

The QFC's taxable Case III income is computed as follows:

		B		C		D	Total
		€		€		€	€
Interest Income from Matched Relevant Loans		20		9		12	41
Section 76E Relief (being the lower of):							
Portion of External Interest Matched to Relevant Loan*	(25)		(15)		(10)		
Matched Relevant Loan Income	(20)	(20)	(9)	(9)	(12)	(10)	(39)
Taxable Case III Income from Matched Relevant Loans		**0**		**0**		**2**	**2**

* Calculated as ($\frac{\text{Portion Advanced as Relevant Loan}}{\text{Total External Loan Amount}} \times \text{Total External Interest}$)

3.1 Impact of Shareholder Debt

A QFC may only issue 'relevant loans' to its (indirect) qualifying subsidiaries. The source of funding for a relevant loan may be external debt or shareholder debt.

As relief is only available in respect of interest on external debt that has been correctly matched with a relevant loan, a taxpayer must ensure they correctly identify the source of funds used for relevant loans.

If an external loan is for the purpose of on-lending by way of relevant loan to a specific subsidiary, the loan is matched to that particular relevant loan. For example, where a bank loan is made to a QFC for the purposes of being on-lent to Subsidiary B to buy a particular asset (and it is in fact used for that purpose), the external bank loan is matched to the relevant loan to Subsidiary B).

Similarly, if a shareholder loan is issued to a QFC with a view to being on-lent to a particular subsidiary, no external financing is matched to that relevant loan.

It will usually be a matter of fact as to the source of relevant loans. External loans, or portions thereof, are matched to a relevant loan, or portion thereof, where "the moneys advanced under [the] external loan, or a portion of those moneys, are, at or about the time of the borrowing of the moneys under the external loan, on-lent under [the] relevant loan".

The next two examples illustrate the impact of shareholder debt on the computational principles of section 76E.

Example 3 – External Loan with Specified Purpose

In this example:

- Company A is a QFC,
- Its subsidiaries (Subsidiaries B and C) are qualifying subsidiaries, and
- All of the loans the QFC makes to its subsidiaries are relevant loans.

Company A gets an external loan of €1,000 from Bank and will pay interest at 5% per annum on its borrowings (giving an annual interest expense of €50). The external loan agreement states that the purpose of the loan is financing the acquisition of an asset in Subsidiary B.

Company A also receives a loan of €1,000 from its shareholder and will pay interest at 7% per annum on these borrowings (giving an annual interest expense of €70).

Company A uses the funds received from Bank and its shareholder to advance the following loans to its subsidiaries:

- €1,000 to Subsidiary B at 5.5% per annum (annual interest income of €55), and
- €1,000 to Subsidiary C at 7.5% per annum (annual interest income of €75).

As the external loan was advanced solely for the purpose of acquiring an asset in Subsidiary B, it is matched to the relevant loan to Subsidiary B only.

The QFC's taxable Case III income is computed as follows:

		B	**C**	**Total**
		€	**€**	**€**
Interest Income Generated from Shareholder Debt			75	75
Interest Income from Matched Relevant Loans		55		55
Section 76E Relief (being the lower of):				
Portion of External Interest Matched to Relevant Loan*	(50)			
Matched Relevant Loan Income	(55)	(50)		(50)
Taxable Case III Income		**5**	**75**	**80**

Example 4 – No Specified Purpose for any Loan

In this example:

- Company A is a QFC,
- Its subsidiaries (Subsidiaries B, C and D) are qualifying subsidiaries, and
- All of the loans the QFC makes to its subsidiaries are relevant loans.

Company A gets an external loan of €1,000 from Bank and will pay interest at 5% per annum on its borrowings (giving an annual interest expense of €50).

At the same time, Company A receives a loan of €1,000 from its shareholder and will pay interest at 7% per annum on these borrowings (giving an annual interest expense of €70).

Company A advances the following loans to its subsidiaries:

- €1,000 to Subsidiary B at 8% per annum (annual interest income of €80),
- €600 to Subsidiary C at 8% per annum (annual interest income of €48), and
- €400 to Subsidiary D at 8% per annum (annual interest income of €32).

Having regard to the timing of the external and shareholder borrowings and the purposes for which they were advanced, it is not possible to say which relevant loans were made from external loans and which from shareholder loans. Therefore, the €1,000 external loan is apportioned, and each portion of the external loan is matched to the appropriate portion of each of the three relevant loans issued[7].

The QFC's taxable Case III income is computed as follows:

		B		**C**		**D**	**Total**
		€		**€**		**€**	**€**
Interest Income Generated from Shareholder Debt		40		24		16	80
Interest Income from Matched Relevant Loans		40		24		16	
Section 76E Relief (being the lower of):							
Portion of External Interest Matched to Relevant Loan*	(25)		(15)		(10)		
Matched Relevant Loan Income	(40)	(25)	(24)	(15)	(16)	(10)	
Taxable Case III Income from Matched Relevant Loans		15		9		6	30
Taxable Case III Income							**110**

[7] In this example it is assumed each loan is 50:50 shareholder:externally financed, but a taxpayer may choose to allocate this differently. Once a taxpayer has apportioned a loan in Year 1, this apportionment cannot be amended.

3.2 Refinancings

The legislation provides for continued interest deductibility in certain scenarios where either the external loans are refinanced or there are changes in the relevant loans.

3.2.1 Replacement loans

As the interest on an external loan is only deductible against the interest arising on a matched relevant loan, there is no deduction of interest available under section 76E where the matching relevant loan has been repaid (subsection (5)). There is also no deductibility where the matching relevant loan is deemed to have been repaid to the QFC. The one exception to this is where:

- the proceeds of the repayment are used by the QFC to make further relevant loans (known as replacement loans), and
- the replacement loans are matched to the external debt.

Where a relevant loan is repaid and replaced with a replacement loan (or loans), subsection (6)(b) provides that the replacement shall be matched to the lower of:

- the external loan (or unmatched proportion thereof) against which the original relevant loan was matched, and
- the money actually received.

The option to have a new loan treated as a replacement loan is not available where the repayment on the original relevant loan was a deemed repayment by way of the sale or redemption of shares in:

- a company to whom the relevant loan was made, or
- an intermediate holding company of the QFC (where an indirect qualifying subsidiary of the holding company received the proceeds of the relevant loan).

3.2.2 External refinancings

In scenarios where a relevant loan that has been matched with an external loan (or portion thereof) and that external loan is subsequently refinanced, subsection (7) provides that the new third-party loan (or portion thereof) shall be matched to the same relevant loans (or portion of those loans as the case may be).

3.3 Repayments and Deemed Repayments to QFCs

Subsection (2) sets out the scenarios where a relevant loan will be treated as repaid to a QFC. These are as follows:

- actual repayment scenarios i.e.
    - o the repayment of the loan, or part of the loan, by a qualifying subsidiary or indirect qualifying subsidiary as the case may be, or

  - the disposal by the QFC of its interest in the loan, (with the amount treated as repaid being the higher of:
    - the outstanding principal, and
    - the market value of the loan).
- certain events deemed to be repayment events for recovery purposes, being the following:
  - the full or partial write-off/forgiveness of a relevant loan,
  - a sale of shares that results in a subsidiary or indirect subsidiary no longer qualifying, and the loan in turn no longer being a relevant loan (with the amount treated as repaid being the higher of
    - the outstanding principal, and
    - the market value of the shares), or
  - the repayment, redemption of or purchase of share capital by the qualifying subsidiary or indirect qualifying subsidiary (with the amount so repaid, redeemed, or purchased being deemed to be the amount of the loan repaid).

In addition to the scenarios listed above, subsection (13) provides that in scenarios where a qualifying subsidiary (or qualifying indirect subsidiary) has made a disguised capital payment to the QFC (whether directly or indirectly):

- the amount shall be treated as a repayment of the relevant loan by the subsidiary, and
- the QFC shall have no interest relief on the repayment of the corresponding third-party loan.

3.4 Other Miscellaneous Rules on Matching

On 1 January 2024 (the commencement date of section 76E), all existing external loans shall be matched with existing relevant loans in a manner consistent with the rules for matching set out above.

The total amount of relevant loans matched with external loans cannot exceed the total value of external loans held by the QFC.

Subsection (12) provides that relief is only available for external interest paid where the QFC identifies the relevant loan(s) against which the interest is matched in their tax return.

4 Anti-Avoidance

The deductibility rules for QFCs are subject to a number of anti-avoidance provisions.

4.1 Interaction with Sections 247 and 249

Both sections 76E and 247 provide relief for a Case III/IV company in scenarios where the company provides funds to its wider group for some identified business purposes. As such, the qualifying conditions of section 76E have been carefully designed so as not to undermine the targeted protections / anti-avoidance rules that have been inserted into sections 247[8] (and 249) over the years. As a result:

- the qualifying conditions for QFCs have been designed to dovetail with that of section 247,
- a company will never be able to meet the qualifying conditions for both section 76E and section 247.

Section 76E is therefore both:

- restrictive with regard to type of the companies that a QFC can on-lend to (see section 2), and
- subject to a number of recovery of capital rules (as well as deemed recovery of capital rules (see section 3.1)).

These provisions work in tandem to prevent interest deductibility continuing where the loan capital advanced by either the QFC or the external lender has been recovered.

In addition to the above listed provisions a QFC is also precluded (by virtue of subsections (8) and (9) and (10) respectively) from deducting external interest where:

- the matched relevant loan was made to a subsidiary who would not be able to claim a section 81 deduction for external interest if they had opted to borrow directly from the external lender instead of via the QFC,
- the interest is deductible under any other provision of the Acts,
- it is reasonable to consider that the payment of the third-party interest was:
    - not for bona fide commercial purposes, and
    - part of an arrangement[9] or scheme of which the main purpose[10], or one of the main purposes, is the avoidance of tax.

[8] Refer to Tax and Duty Manual Part 08-02-01 - Charges on income for corporation tax purposes and Tax and Duty Manual Part 08-02-01a - Rules relating to recovery of capital and replacement for further information.

[9] Arrangement includes any agreement, understanding, scheme, transaction or series of transactions (whether enforceable or not)

[10] Refer to Tax and Duty Manual Part 33-03-01 - Main Purpose Tests for more details on the application of main purposes tests.

4.2 Back-to-Back Lending

Subsection (11) precludes the making of back-to-back loans in order to access a deduction for interest paid.

The provision counters a number of arrangements where interest is routed through a third-party so that the interest (which would not qualify as deductible by a QFC if it was paid to a connected company) would be treated as if it were deductible external interest.

The specific arrangements countered are as follows:

a) Arrangements where:

- interest is payable by a QFC to another enterprise[11] where the loan would be an external loan as the QFC and that enterprise are not associated[12], and
- interest is payable by some other enterprise not associated with the QFC to an enterprise which is associated.

b) Arrangements where:

- interest is payable by a QFC to another non-associated enterprise, and
- that non-associated enterprise has either:
    - been advanced money by a different enterprise which is associated with the QFC, or
    - received a deposit from a different enterprise associated with the QFC.

c) Arrangements entered into in relation to a QFC and the effect of those arrangements is that:

- any amount has been advanced or made available indirectly from an associate of a QFC to the QFC, or
- that interest is paid indirectly by a QFC to an associate.

d) Arrangements where:

- associates of a QFC advance or make available amounts to a second QFC that they are not associated with, and
- associates of that second QFC advance or make available amounts to the first mentioned QFC,

and those QFCs or associates are acting together.

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[11] Enterprise has the same meaning as in Part 35C. See Chapter 3.1 of Tax and Duty Manual Part 35C-00-01 – Guidance on the Anti-Hybrid Rules for further information.

[12] Associated enterprise refers to an enterprise that is an associated enterprise of a company for the purposes of Chapter 4 of Part 35C (i.e. where the entities are associated enterprises for the purposes of that Chapter).