

Series Editor: Michael Lang

Editors: Georg Kofler, Richard Krever, Michael Lang,  
Jeffrey Owens, Pasquale Pistone, Alexander Rust,  
Josef Schuch, Karoline Spies, Claus Staringer

# Controlled Foreign Company Legislation

17

European and International  
Tax Law and Policy Series



# Controlled Foreign Company Legislation

## Why this book?

Controlled foreign company legislation is an international tax topic that has become increasingly important in recent years. Both the OECD and the European Union have taken initiatives to introduce controlled foreign company rules as anti-avoidance tax provisions that are applicable by a large number of states. The OECD released its recommendations on strengthening controlled foreign company rules in the Base Erosion and Profit Shifting Project Action 3 Final Report. The European Union consequently adopted Council Directive 2016/1164, laying down rules against tax avoidance practices that directly affect the functioning of the internal market and introducing the obligation for Member States to implement controlled foreign company rules in their domestic legislation. The aim of this book is to provide tax authorities, policymakers, courts and practitioners with an overview of the effectiveness of controlled foreign company rules and the approach towards recent amendments in the participating countries introducing or changing such rules.

The book comprises 41 national reports from countries across the globe and is the outcome of a conference on controlled foreign company legislation that took place from 4-7 July 2019 in Rust (Austria). More than 100 experts, including the authors of the national reports, were brought together to discuss recent developments in the field of controlled foreign company legislation. A general report highlights the most important findings of the conference.

<b>Title:</b>	Controlled Foreign Company Legislation
<b>Editor(s):</b>	Georg Kofler et al.
<b>Date of publication:</b>	November 2020
<b>ISBN:</b>	978-90-8722-644-2 (print/online), 978-90-8722-645-9 (ePub), 978-90-8722-646-6 (PDF)
<b>Type of publication:</b>	Book
<b>Number of pages:</b>	936
<b>Terms:</b>	Shipping fees apply. Shipping information is available on our website
<b>Price (print/online):</b>	EUR 145 / USD 175 (VAT excl.)
<b>Price (eBook: ePub or PDF):</b>	EUR 116 / USD 140 (VAT excl.)

## Order information

To order the book, please visit [www.ibfd.org/IBFD-Products/shop](http://www.ibfd.org/IBFD-Products/shop). You can purchase a copy of the book by means of your credit card, or on the basis of an invoice. Our books encompass a wide variety of topics, and are available in one or more of the following formats:

- IBFD Print books
- IBFD eBooks – downloadable on a variety of electronic devices
- IBFD Online books – accessible online through the IBFD Tax Research Platform



IBFD, Your Portal to Cross-Border Tax Expertise

IBFD

*Visitors' address:*  
Rietlandpark 301  
1019 DW Amsterdam  
The Netherlands

*Postal address:*  
P.O. Box 20237  
1000 HE Amsterdam  
The Netherlands

Telephone: 31-20-554 0100  
Email: [info@ibfd.org](mailto:info@ibfd.org)  
[www.ibfd.org](http://www.ibfd.org)

© 2020 IBFD

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the written prior permission of the publisher. Applications for permission to reproduce all or part of this publication should be directed to: [permissions@ibfd.org](mailto:permissions@ibfd.org).

### **Disclaimer**

This publication has been carefully compiled by IBFD and/or its author, but no representation is made or warranty given (either express or implied) as to the completeness or accuracy of the information it contains. IBFD and/or the author are not liable for the information in this publication or any decision or consequence based on the use of it. IBFD and/or the author will not be liable for any direct or consequential damages arising from the use of the information contained in this publication. However, IBFD will be liable for damages that are the result of an intentional act (*opzet*) or gross negligence (*grove schuld*) on IBFD's part. In no event shall IBFD's total liability exceed the price of the ordered product. The information contained in this publication is not intended to be an advice on any particular matter. No subscriber or other reader should act on the basis of any matter contained in this publication without considering appropriate professional advice.

Where photocopying of parts of this publication is permitted under article 16B of the 1912 Copyright Act jo. the Decree of 20 June 1974, Stb. 351, as amended by the Decree of 23 August 1985, Stb. 471, and article 17 of the 1912 Copyright Act, legally due fees must be paid to Stichting Reprorecht (P.O. Box 882, 1180 AW Amstelveen). Where the use of parts of this publication for the purpose of anthologies, readers and other compilations (article 16 of the 1912 Copyright Act) is concerned, one should address the publisher.

ISBN 978-90-8722-644-2 (print)  
ISBN 978-90-8722-645-9 (eBook, ePub); 978-90-8722-646-6 (eBook, PDF)  
ISSN 2451-8360 (print); 2589-9694 (electronic)  
NUR 826

---

## Table of Contents

<b>Preface</b>	xli
----------------	-----

### Part One

<b>Chapter 1:</b>	<b>Controlled Foreign Company Legislation: General Report</b>	<b>3</b>
	<i>Richard Krever</i>	
1.0.	Introduction	3
1.1.	The Anti-Tax Avoidance Directive	6
1.2.	When is a foreign company “controlled” by resident persons?	7
1.3.	Do the attribution rules apply to all natural persons and legal persons?	9
1.4.	Do the CFC attribution rules apply to all CFCs or only those located in lower tax jurisdictions?	9
1.5.	Do the attribution rules apply to all income of the CFC or only particular forms of income?	10
1.6.	Do the attribution rules catch roll-up funds?	11
1.7.	Do the attribution rules catch trusts?	12
1.8.	How is CFC income attributed to resident shareholders?	13
1.9.	The state of play and looking forward	13

<b>Chapter 2:</b>	<b>The European Union and the Anti-Tax Avoidance Directive</b>	15
	<i>Martin Klokar and Mario Riedl</i>	
2.1.	The European Union and its powers in the field of direct taxation	15
2.2.	The Anti-Tax Avoidance Directive	18
Part Two		
<b>Chapter 3:</b>	<b>Controlled Foreign Company Legislation in Argentina</b>	23
	<i>Axel A. Verstraeten</i>	
3.1.	Characteristics of Argentine CFC legislation	23
3.2.	Implementation of Articles 7 and 9 of the ATAD	32
3.3.	Special CFC Rules	32
3.4.	CFC legislation and other anti-abuse provision	37
3.5.	CFC legislation and tax treaties	37
3.6.	CFC legislation and constitutional law/EU law	38
3.7.	Improving the current rules	38
3.8.	Outlook: The future of CFC legislation	40
<b>Chapter 4:</b>	<b>Controlled Foreign Company Legislation in Australia</b>	41
	<i>Richard Krever and Kerrie Sadiq</i>	
4.1.	Characteristics of Australian CFC legislation	41
4.1.1.	Main policy considerations and changes over time	41
4.1.2.	Definition of CFC	44
4.1.3.	Attributable income of a CFC	45
4.1.4.	Rules against double taxation	48

4.2.	Implementation of Articles 7 and 8 of the Anti-Tax Avoidance Directive	48
4.3.	Special CFC rules	48
4.3.1.	Foreign investment fund regime	49
4.3.2.	Foreign branch income investment fund regime	50
4.3.3.	Transferor trust regime	50
4.3.4.	Limited partnerships	53
4.4.	CFC legislation and other anti-abuse provisions	53
4.5.	CFC legislation and tax treaties	54
4.6.	CFC legislation and constitutional law/EU law	55
4.7.	Improving the current rules	55
4.8.	Outlook: The future of CFC legislation	56
<b>Chapter 5:</b>	<b>Controlled Foreign Company Legislation in Austria</b>	59
	<i>Martin Klokár and Mario Riedl</i>	
5.1.	Characteristics of Austrian CFC legislation	59
5.1.1.	Object and purpose of CFC legislation	59
5.1.2.	Austria's initial rejection of CFC legislation	60
5.1.3.	Similar existing provisions in Austria	61
5.2.	Implementation of Articles 7 and 8 of the Anti-Tax Avoidance Directive	61
5.2.1.	EU CFC requirements	61
5.2.2.	Austrian Annual Tax Act 2018	62
5.2.3.	CFC legislation in section 10a Austrian Corporate Income Tax Act	63
5.2.4.	Technical implementation of CFC legislation in Austria	70
5.3.	Special CFC rules	72

5.4.	CFC legislation and other anti-abuse provisions	73
5.4.1.	General anti-abuse rule: Section 22 Federal Fiscal Code	73
5.4.2.	Switch-over clause: Section 10a(7) Corporate Income Tax Act	75
5.4.3.	Relationship between SAAR and GAAR in Austria	76
5.5.	CFC legislation and tax treaties	79
5.5.1.	Tax treaties and the applicability of CFC rules	79
5.5.2.	Explicit treaty override	80
5.5.3.	Elimination of double taxation	81
5.6.	CFC legislation and constitutional law/EU law	83
5.6.1.	Compatibility of CFC rules with EU law	83
5.6.2.	The Austrian substance test and EU law	84
5.7.	Improving the current rules	86
5.8.	Outlook: The future of CFC legislation	86
<b>Chapter 6:</b>	<b>Controlled Foreign Company Legislation in Belgium</b>	89
	<i>Gilles Van Hulle and Jean-Philippe Van West</i>	
6.1.	Characteristics of Belgian CFC legislation	89
6.1.1.	Qualification of a CFC – foreign entity	90
6.1.2.	Qualification of a CFC – control requirement	90
6.1.3.	Qualification of a CFC – low taxation	91
6.1.4.	Attribution of income	91
6.2.	Implementation of Articles 7 and 8 of the Anti-Tax-Avoidance Directive	93
6.3.	Special CFC rules	97
6.4.	CFC legislation and other anti-abuse provisions	98
6.5.	CFC legislation and tax treaties	100
6.6.	CFC legislation and constitutional law/EU law	101



6.7.	Improving the current rules	102
6.7.1.	Risk of double (CFC) taxation	102
6.7.2.	Compliance costs	104
6.7.3.	<i>De minimis</i> threshold	104
6.7.4.	Burden of proof	104
6.8.	Outlook: The future of CFC legislation	105
<b>Chapter 7:</b>	<b>Controlled Foreign Company Legislation in Brazil</b>	107
	<i>Luís Eduardo Schoueri and Guilherme Galdino</i>	
7.1.	Characteristics of Brazilian CFC legislation	107
7.1.1.	Four phases of Brazilian WWIT legislation	107
7.1.2.	The current taxation on worldwide basis under Law 12,973/2014	112
7.1.2.1.	Definitions of controlled and associated companies	112
7.1.2.2.	Legally differentiated companies	114
7.1.2.3.	The taxation imposed by Law 12,973/2014	116
7.1.3.	Brazilian WWIT legislation: Not a typical CFC legislation	119
7.2.	Special CFC rules	120
7.3.	CFC legislation and other anti-abuse provisions	121
7.4.	CFC legislation and tax treaties	122
7.5.	CFC legislation and constitutional law	125
7.6.	Improving the current rules	126
7.7.	Outlook: The future of CFC legislation	128
<b>Chapter 8:</b>	<b>Controlled Foreign Company Legislation in Bulgaria</b>	131
	<i>Ivan Lazarov</i>	
8.1.	Characteristics of Bulgarian CFC legislation	131
8.2.	Implementation of Articles 7 and 8 of the Anti-Tax-Avoidance Directive	135

8.3.	Special CFC rules	138
8.4.	CFC legislation and other anti-abuse provisions	138
8.5.	CFC legislation and tax treaties	139
8.6.	CFC legislation and constitutional law/EU law	140
8.7.	Improving the current rules	141
8.8.	Outlook: The future of CFC legislation	142
<b>Chapter 9:</b>	<b>Controlled Foreign Company Legislation in Chile</b>	145
	<i>Andrés Bustos Baraona and Felipe Yáñez</i>	
9.1.	Characteristics of Chilean CFC legislation	145
9.2.	Implementation of Articles 7 and 8 of the Anti-Tax-Avoidance Directive	150
9.3.	Special CFC rules	151
9.4.	CFC legislation and other anti-abuse provisions	151
9.5.	CFC legislation and tax treaties	153
9.6.	CFC legislation and constitutional law	154
9.7.	Improving the current rules	154
9.8.	Outlook: The future of CFC legislation	155
<b>Chapter 10:</b>	<b>Controlled Foreign Company Legislation in China</b>	157
	<i>Bristar Mingxing Cao and Chun Geng</i>	
10.1.	Characteristics of Chinese CFC legislation	157
10.1.1.	China's current CFC rules	157
10.1.2.	Three conditions for determining a controlled foreign company	157
10.1.3.	Formula for calculating profit distribution	158

10.1.4.	Definition of a CFC	159
10.1.5.	Definition of CFC income	159
10.1.5.1.	How to define CFC income in China	159
10.1.5.2.	The main method in China	159
10.1.5.3.	Tax exemptions and thresholds	160
10.1.6.	CFC and anti-double taxation	160
10.1.6.1.	Deduction in accordance with relevant provisions of tax treaties or tax laws	160
10.1.6.2.	Other provisions	161
10.1.7.	Treatment of income earned by lower-tier subsidiaries	161
10.1.8.	Does your country apply CFC legislation only to corporations or also to individuals as shareholders?	161
10.2.	Special CFC rules	163
10.2.1.	China's CFC rules	163
10.2.2.	Typical ways to avoid falling under the scope of CFC legislation	164
10.2.3.	Other anti-deferral rules	165
10.3.	Provisions of China's domestic law on anti-abuse measures	166
10.3.1.	The beneficial owner clause	166
10.3.2.	Terms for reasonable commercial purposes	167
10.3.3.	Procedural rules	168
10.4.	CFC legislation and tax treaties	169
10.4.1.	A general description	169
10.4.1.1.	Overview of tax treaties in China	169
10.4.1.2.	Overview of CFC Legislation in China	169
10.4.1.3.	Role of the OECD Model in the interpretation of tax treaties	170
10.4.2.	Relationships with tax treaties	170
10.4.2.1.	The relationship between international law and domestic law	170
10.4.2.2.	The relationship between CFC regulations and tax treaties	170
10.4.2.3.	The impact of OECD Model (2017) on the relationship between CFC legislation and tax treaties in China	171

10.5.	Improving the current rules	171
10.5.1.	Main problems	171
10.5.2.	Improvement	173
10.5.3.	CFC rules implementing cost and efficiency	174
10.6.	Outlook: The future of CFC legislation	175
10.6.1.	The principle of CFC legislation	175
10.6.2.	The necessity of CFC legislation	176
10.6.3.	The rationality of the CFC legislation	177
10.6.4.	International cooperation is the trend	177
	Bibliography	178
<b>Chapter 11:</b>	<b>Controlled Foreign Company Legislation in Croatia</b>	183
	<i>Nevia Čičin-Šain and Stjepan Gadžo</i>	
11.1.	Characteristics of Croatian CFC legislation	183
11.2.	Implementation of Articles 7 and 8 of the Anti-Tax-Avoidance Directive	186
11.3.	Special CFC rules	188
11.4.	CFC legislation and other anti-abuse provisions	188
11.5.	CFC legislation and tax treaties	190
11.6.	CFC legislation and constitutional law/EU law	192
11.7.	Improving the current rules	193
11.8.	Outlook: The future of CFC legislation	194
<b>Chapter 12:</b>	<b>Controlled Foreign Company Legislation in Cyprus</b>	199
	<i>Eleni Apostolidou</i>	
12.1.	Characteristics of CFC legislation	199
12.2.	Implementation of Articles 7 and 8 of the Anti-Tax-Avoidance Directive	201

12.3.	Special CFC rules	206
12.4.	CFC legislation and other anti-abuse provisions	207
12.5.	CFC legislation and tax treaties	212
12.6.	CFC legislation and constitutional law/EU law	214
12.7.	Improving the current rules	217
12.8.	Outlook: The future of CFC legislation	217
<b>Chapter 13:</b>	<b>Controlled Foreign Company Legislation in Czech Republic</b>	221
	<i>Petra Kamínková and Jiří Kostohryz</i>	
13.1.	Characteristics of Czech CFC legislation	221
13.2.	Implementation of Articles 7 and 8 of the Anti-Tax Avoidance Directive	222
13.2.1.	Attribution of CFC income	222
13.2.2.	Definition of controlling and controlled company	222
13.2.3.	Low taxation and lack of substantive economic activity	223
13.2.4.	CFC income	224
13.2.5.	Prevention of double taxation	226
13.2.6.	Procedural rules	227
13.3.	Special CFC rules	228
13.4.	CFC legislation and other anti-abuse provisions	228
13.5.	CFC legislation and tax treaties	230
13.6.	CFC legislation and constitutional law/EU law	231
13.7.	Improving current rules	232
13.8.	Outlook: The future of CFC legislation	233

<b>Chapter 14:</b>	<b>Controlled Foreign Company Legislation in Denmark</b>	235
	<i>Peter Koerver Schmidt</i>	
14.1.	Characteristics of CFC legislation	235
14.2.	Implementation of Articles 7 and 8 of the Anti-Tax Avoidance Directive	243
14.3.	Special CFC rules	246
14.4.	CFC legislation and other anti-abuse provisions	247
14.5.	CFC legislation and tax treaties	249
14.6.	CFC legislation and constitutional law/EU law	250
14.7.	Improving the current rules	254
14.8.	Outlook: The future of CFC legislation	255
<b>Chapter 15:</b>	<b>Controlled Foreign Company Legislation in Finland</b>	257
	<i>Kristiina Äimä and Henri Lyyski</i>	
15.1.	Characteristics of Finnish CFC legislation	257
15.1.1.	Background	257
15.1.2.	Structure of the CFC rules	258
15.1.3.	Ownership requirement	259
15.1.4.	Calculation of CFC income	260
15.1.5.	Prevention of double taxation	261
15.2.	Implementation of Articles 7 and 8 of the Anti-Tax Avoidance Directive	262
15.3.	Special CFC rules	264
15.4.	CFC legislation and other anti-avoidance rules	264
15.4.1.	General anti-avoidance rule	264
15.4.2.	Arm's length principle	266
15.4.3.	Permanent establishments	266
15.4.4.	Hierarchy of different mechanisms	267

15.5.	CFC legislation and tax treaties	267
15.6.	CFC legislation and constitutional law/EU law	270
15.7.	Improving the current rules	270
15.8.	Outlook: The future of CFC legislation	271
<b>Chapter 16:</b>	<b>Controlled Foreign Company Legislation in France</b>	273
	<i>Clémence Garcia</i>	
16.1.	Characteristics of the CFC legislation in France	273
16.1.1.	The path to the current legislation	273
16.1.2.	Outline of the CFC rules for corporate taxpayers (Sec. 209 B FTC)	274
16.1.2.1.	General principles	274
16.1.2.2.	Indirect holding of stock	275
16.1.2.3.	Privileged tax regime	275
16.1.2.4.	Taxable income	276
16.1.2.5.	Safe harbour clauses	277
16.1.3.	Outline of the CFC rules for individuals (Sec. 123 bis FTC)	279
16.1.3.1.	General principles	279
16.1.3.2.	CFCs located in non-cooperative states	280
16.1.3.3.	Safe harbour clause	281
16.2.	Implementation of the ATAD	282
16.2.1.	Article 7: Controlled foreign company rules	282
16.2.2.	Article 8: Computation of foreign company income	283
16.3.	Special CFC rules	283
16.4.	CFC legislation and other anti-abuse provisions	284
16.4.1.	Overview of anti-abuse provisions	284
16.4.2.	General anti-abuse rule (GAAR) and CFC legislation	285
16.5.	CFC legislation and tax treaties	287
16.5.1.	The <i>Schneider</i> decision (2002)	287
16.5.2.	Current status of the CFC rules regarding tax treaties	288

16.6.	CFC legislation and constitutional law/EU law	289
16.6.1.	CFC rules and the Constitution	289
16.6.2.	CFC rules and EU law	290
16.7.	Improving the current rules	291
16.8.	Outlook: The future of CFC legislation	292
<b>Chapter 17:</b>	<b>Controlled Foreign Company Legislation in Germany</b>	293
	<i>Jochen Gerbracht</i>	
17.1.	Characteristics of German CFC legislation	293
17.1.1.	Main policy considerations	293
17.1.2.	Taxpayer definition	294
17.1.3.	CFC definition	295
17.1.3.1.	Covered entities	295
17.1.3.2.	Control	296
17.1.3.3.	Low taxation	297
17.1.4.	CFC income	298
17.1.4.1.	Conceptual design	298
17.1.4.2.	Substance carve-out	299
17.1.4.3.	<i>De minimis</i> rule	299
17.1.5.	Legal consequences	300
17.1.5.1.	Computation of the CFC amount	300
17.1.5.2.	Attribution of the CFC amount	301
17.1.5.3.	Taxation of the CFC amount	301
17.1.5.4.	Loss relief	302
17.1.5.5.	Avoidance of double taxation	302
17.1.5.6.	Tax return	303
17.2.	Implementation of Articles 7 and 8 of the Anti-Tax Avoidance Directive	303
17.2.1.	Current state of implementation	303
17.2.2.	Main differences between the ATAD and German CFC legislation	304
17.2.2.1.	Control	304
17.2.2.2.	Low taxation	305
17.2.2.3.	CFC income	305



17.3.	Special CFC rules	306
17.3.1.	Income with capital investment nature	306
17.3.2.	Avoidance of CFC rules	307
17.4.	CFC legislation and other anti-abuse provisions	308
17.5.	CFC legislation and tax treaties	309
17.5.1.	Relationship between CFC legislation and tax treaties	310
17.5.2.	Resolving the (potential) norm conflict	311
17.6.	CFC legislation and constitutional law/EU law	311
17.6.1.	Constitutional limits	311
17.6.1.1.	Structural enforcement deficit	312
17.6.1.2.	Ability to pay	313
17.6.1.3.	Clarity of law	314
17.6.2.	EU law	315
17.7.	Improving the current rules	316
17.7.1.	Addressing the “penalty taxation”	317
17.7.2.	Avoiding legal uncertainty	317
17.7.3.	Improving clarity of law and promoting innovation	317
17.8.	Outlook: The future of CFC legislation	318
<b>Chapter 18:</b>	<b>Controlled Foreign Company Legislation in Hungary</b>	319
	<i>Borbála Kolozs and Annamária Kőszegi</i>	
18.1.	Characteristics of Hungarian CFC legislation	319
18.1.1.	General introduction	319
18.1.2.	Policy considerations over time	319
18.2.	Implementation of Articles 7 and 8 of the Anti-Tax Avoidance Directive	326
18.3.	Special CFC rules	327
18.4.	CFC legislation and other anti-abuse provisions	328
18.5.	CFC legislation and tax treaties	329

18.6.	CFC legislation and constitutional law/EU law	330
18.7.	Improving the current rules	330
18.8.	Outlook: The future of CFC legislation	331
<b>Chapter 19:</b>	<b>Controlled Foreign Company Legislation in Indonesia</b>	333
	<i>Yusuf Wangko Ngantung and R. Herjuno Wahyu Aji</i>	
19.1.	Characteristics of the Indonesian CFC legislation	333
19.1.1.	Indonesia's worldwide tax system	333
19.1.2.	History of Indonesia CFC regulation	334
19.1.3.	Features of Indonesia's CFC regime	337
19.1.3.1.	Definition of a CFC	338
19.1.3.2.	Level of foreign tax paid by a CFC	339
19.1.3.3.	Nature of income earned by a CFC	339
19.1.3.4.	Computation of CFC income	340
19.1.3.5.	Exemption for public companies	341
19.1.3.6.	Foreign tax credits	341
19.1.3.7.	The timing of deemed dividends	342
19.2.	Implementation of Articles 7 and 8 of the Anti-Tax Avoidance Directive	342
19.3.	Special CFC rules	342
19.4.	CFC legislation and other anti-abuse provisions	343
19.5.	CFC legislation and tax treaties	344
19.6.	CFC legislation and constitutional law	345
19.7.	Improving the current rules	347
19.8.	Outlook: The future of CFC legislation	348

<b>Chapter 20:</b>	<b>Controlled Foreign Company Legislation in Italy</b>	351
	<i>Raul-Angelo Papotti and Simone S. Schiavini</i>	
20.1.	Characteristics of Italian CFC legislation	351
20.1.1.	Introduction	351
20.1.2.	Policy considerations	351
20.1.3.	Subjective scope	353
20.1.4.	Objective scope	353
20.1.4.1.	Control requirements	354
20.1.4.2.	Identification of “low-tax jurisdictions”	355
20.1.5.	Attribution of income to the shareholder	357
20.1.5.1.	Exemptions to the attribution of income to the shareholder (safe harbours)	359
20.1.5.2.	Procedural issues	361
20.1.6.	“White-list” CFC legislation	361
20.1.6.1.	Exemption to the white-list CFC rule (safe harbour)	363
20.1.7.	Elimination of double taxation	364
20.1.8.	Audit procedure	366
20.2.	Implementation of Articles 7 and 8 of the ATAD	366
20.2.1.	Exemption to the attribution of income to the shareholder (safe harbour)	369
20.3.	Special CFC rules	369
20.4.	CFC legislation and other anti-abuse provisions	370
20.5.	CFC legislation and tax treaties	370
20.6.	CFC legislation and constitutional law/EU law	371
20.7.	Improving the current rules	373
20.8.	Outlook: The future of CFC legislation	373
<b>Chapter 21:</b>	<b>Controlled Foreign Company Legislation in Japan</b>	375
	<i>Saki Urushi and Michiko Suzuki</i>	
21.1.	Characteristics of Japanese CFC legislation	375
21.1.1.	Main policy of CFC legislation in Japan	375
21.1.2.	Overview of the CFC amendments	377

21.1.3.	Overview of current CFC rules	380
21.1.3.1.	Taxpayer	381
21.1.3.2.	Definition of “foreign related company”	382
21.1.3.3.	CFC taxation on entity basis	382
21.1.3.4.	CFC taxation on passive income	387
21.1.3.5.	Tax credit	389
21.1.4.	Summary	389
21.2.	Implementation of Articles 7 and 8 of the ATAD	389
21.3.	Special CFC rules	390
21.4.	CFC legislation and other anti-avoidance measures	390
21.4.1.	The nature of CFC legislation and relation between CFC legislation and “principle of taxation on actual beneficiaries”	390
21.4.2.	<i>Souki Steamship</i> case	391
21.4.3.	Analysis	392
21.4.4.	Relation between CFC legislation and other anti-avoidance measures	393
21.5.	CFC legislation and tax treaties	395
21.5.1.	Situations in other countries and the OECD	395
21.5.2.	<i>Glaxo</i> case	395
21.5.3.	Analysis	397
21.6.	Constitution and CFC legislation	398
21.7.	Improving the current rule	400
21.8.	Outlook: The future of the CFC legislation	402
<b>Chapter 22:</b>	<b>Controlled Foreign Company Legislation in Latvia</b>	<b>405</b>
	<i>Karlis Ketners</i>	
22.1.	Characteristic of the controlled foreign company legislation in Latvia	405
22.2.	Implementation of Articles 7 and 8 of the Anti-Tax Avoidance Directive	413

22.3.	Special CFC rules	413
22.4.	CFC legislation and other anti-abuse provisions	414
22.5.	CFC legislation and tax treaties	415
22.6.	CFC legislation and constitutional law/EU law	415
22.7.	Improving the current rules	416
22.8.	Outlook: The future of CFC legislation	416
<b>Chapter 23:</b>	<b>Controlled Foreign Company Legislation in the Republic of North Macedonia</b>	419
	<i>Aleksandra Maksimovska Stojkova</i>	
23.1.	Characteristics of the CFC legislation in the Republic of North Macedonia	419
23.1.1.	Defining a CFC	420
23.1.2.	Determinants of CFC in North Macedonia	421
23.1.3.	CFC rules in practice	423
23.2.	Implementation of Articles 7 and 8 of the Anti-Tax Avoidance Directive	423
23.2.1.	Differences of Macedonian legislation from other EU countries	423
23.2.2.	The new legal changes regarding anti-avoidance rules	424
23.2.3.	CFC control requirements for affiliated companies	424
23.3.	Special CFC rules	425
23.4.	CFC legislation and other anti-abuse provisions	425
23.4.1.	New thin capitalization rules	428
23.4.2.	Miscellaneous rules	429
23.5.	CFC and tax treaties	429
23.5.1.	Rules to prevent or eliminate double taxation	429
23.6.	CFC legislation and constitutional law/EU law	430

23.7.	Improving the current rules	431
23.8.	Outlook: The future of CFC legislation in the country	432
<b>Chapter 24:</b>	<b>Controlled Foreign Company Legislation in the Netherlands</b>	433
	<i>Raymond P.C. Adema, Jan N. Bouwman and Irene J.J. Burgers</i>	
24.1.	Characteristics of the Dutch CFC legislation before implementation of Articles 7 and 8 of the Anti-Tax-Avoidance Directive	433
24.1.1.	Introduction	433
24.1.2.	Policy considerations regarding CFCs in the Netherlands and the minor role of CFC legislation until 2019	433
24.1.3.	CFC legislation applied to individuals	437
24.2.	Implementation of Articles 7 and 8 of the Anti-Tax Avoidance Directive	438
24.2.1.	Policy considerations regarding the implementation in the Netherlands	438
24.2.1.1.	CFC provisions were already part of Dutch national tax legislation	438
24.2.1.2.	As from 2019, additional CFC rules that are (partly) based on Model A are applicable	439
24.2.2.	Additional CFC rules implemented in the Netherlands	439
24.2.2.1.	Controlled foreign company located in a low-tax jurisdiction	439
24.2.2.1.1.	Controlling interest test	440
24.2.2.1.2.	Located in a designated state (residence requirement)	440
24.2.2.1.3.	Exceptions	442
24.2.2.2.	PE located in a low-tax jurisdiction	442
24.2.2.2.1.	Located in a designated state	443
24.2.2.2.2.	Exception	443
24.2.2.3.	Tainted income	443
24.2.2.4.	Substance carve-out	445
24.2.2.5.	Crediting of foreign corporate tax	446
24.2.2.5.1.	Avoidance of juridical double taxation	446

24.3.	Special CFC rules	447
24.4.	CFC legislation and other anti-abuse provisions	447
24.4.1.	<i>Fraus legis</i> doctrine	447
24.4.2.	Relation between the <i>fraus legis</i> doctrine and the CFC provisions of the ATAD	448
24.5.	CFC legislation and tax treaties	449
24.5.1.	Introduction	449
24.5.2.	Article 15e(10) and (11) and Article 13ab of the CTA	449
24.5.2.1.	Tainted PE income (Article 15e(10) and (11) CTA)	449
24.5.2.2.	Tainted CFC income (Article 13ab CTA)	451
24.5.2.3.	Article 13ab CTA complimentary to the arm's length principle and effective place of management rules	451
24.5.2.4.	No grandfathering rule for treaty countries designated as a low-tax jurisdiction	451
24.5.3.	Article 8b CTA and the OECD Transfer Pricing Guidelines	452
24.5.4.	Tax treaties containing the pre-2010 Article 7 OECD Model and the ATAD	452
24.6.	CFC legislation and constitutional law/EU law	453
24.6.1.	Constitutional law	453
24.6.2.	EU law	453
24.7.	Improving the current rules	454
24.8.	Outlook: The future of CFC legislation	460
<b>Chapter 25:</b>	<b>Controlled Foreign Company Legislation in New Zealand</b>	463
	<i>Andrew M.C. Smith and Adrian J. Sawyer</i>	
25.1.	Characteristics of New Zealand's CFC legislation	463
25.2.	Implementation of Articles 7 and 8 of the Anti-Tax Avoidance Directive	470
25.3.	Special CFC rules	471

25.4.	CFC legislation and other anti-abuse provisions	474
25.5.	CFC legislation and tax treaties	475
25.6.	CFC legislation and constitutional law/EU law	480
25.7.	Improving the current rules	480
25.8.	Outlook: The future of CFC legislation	481
	Appendix: Article 23 of the China-New Zealand DTA	482
<b>Chapter 26:</b>	<b>Controlled Foreign Company Legislation in Norway</b>	485
	<i>Thor Leegard</i>	
26.1.	Characteristics of Norwegian CFC legislation	485
26.1.1.	Introduction	485
26.1.2.	Overview of the legislation	488
26.1.3.	Norwegian control test	488
26.1.4.	Definition of low-taxed entities	491
26.1.5.	Determination of CFC income	493
26.1.6.	Chain of CFCs	495
26.1.7.	Distributions from and gains on realization of a CFC	495
26.1.8.	Exit from CFC	496
26.1.9.	Exceptions from CFC taxation – Tax treaties and the EEA Agreement	497
26.2.	Implementation of Articles 7 and 8 of the ATAD	499
26.3.	Special CFC rules	499
26.4.	CFC legislation and other anti-abuse provisions	501
26.5.	CFC legislation and tax treaties	501
26.6.	CFC legislation and constitutional law/EEA law	501
26.7.	Improving the current rules	503
26.8.	Outlook: The future of CFC legislation	506



<b>Chapter 27: Controlled Foreign Company Legislation in Pakistan</b>	509
<i>Muhammad Ashfaq Ahmed</i>	
27.1. Characteristics of Pakistani CFC legislation	509
27.1.1. Defining a CFC	511
27.1.2. Legal and economic control	512
27.1.3. Timing of control	512
27.1.4. Qualifying thresholds	512
27.1.5. Listing on the stock exchange	513
27.1.6. Passive income	513
27.1.7. Attribution	513
27.1.8. Onus	514
27.1.9. Miscellaneous	514
27.2. Implementation of Articles 7 and 8 of the Anti-Tax Avoidance Directive	515
27.3. Special CFC rules	515
27.4. CFC legislation and other anti-abuse provisions	516
27.5. CFC legislation and tax treaties	518
27.6. CFC legislation and constitutional law/EU law	520
27.7. Improving the current rules	520
27.8. Outlook: The Future of CFC Legislation	521
<b>Chapter 28: Controlled Foreign Company Legislation in Peru</b>	523
<i>Manuel Augusto Carrión Camayo</i>	
28.1. Characteristics of Peruvian controlled foreign company legislation	523
28.1.1. General concepts	523
28.1.2. Attribution of income to controller	524
28.1.3. Entities that can qualify as a CFC	525
28.1.3.1. Characteristics	525
28.1.3.2. Independent personality requirement	526
28.1.3.3. Location requirement: Definition of low-taxation jurisdiction	526

28.1.3.4.	Ownership requirement: Verifying control over the entity	528
28.1.3.5.	Entities included (top- and low-tier companies)	529
28.1.4.	Income of the CFC attributable to the controller	529
28.1.4.1.	General definition of passive income	529
28.1.4.2.	Source of the income	530
28.1.4.3.	Exceptions to passive income	532
28.1.5.	Calculation of CFC income	533
28.1.5.1.	Rules to calculate CFC income	533
28.1.5.2.	Attribution of income to the controller	534
28.1.5.3.	Thresholds	535
28.1.5.4.	Obligations for the controller	536
28.1.6.	Prevention of double taxation	536
28.1.7.	Application of CFC Regime to physical persons	537
28.2.	Implementation of Articles 7 and 8 of the Anti-Tax Avoidance Directive	537
28.3.	Special CFC rules	538
28.3.1.	Special CFC rules in function of the location of the CFC or its activity	538
28.3.2.	Special rules for funds and trusts	539
28.3.3.	Typical ways to avoid falling under the scope of a CFC regime	539
28.4.	CFC legislation and other anti-abuse provisions	540
28.4.1.	CFC legislation and other specific anti-abuse rules	540
28.4.2.	CFC legislation and the Peruvian GAAR	541
28.4.2.1.	Status of the Peruvian GAAR	541
28.4.2.2.	Relation with the GAAR	542
28.5.	CFC legislation and tax treaties	544
28.5.1.	General approach	544
28.5.2.	Special cases: DTCs with Portugal and Mexico	546
28.6.	CFC legislation and constitutional law/EU law	547
28.7.	Improving the current rules	547
28.8.	Outlook: The future of CFC legislation	548

<b>Chapter 29: Controlled Foreign Company Legislation in Poland</b>	<b>551</b>
<i>Adrian Wardzynski</i>	
29.1. Characteristics of CFC legislation in Poland	551
29.1.1. Defining a CFC	552
29.1.1.1. Entity considerations	553
29.1.1.2. Type 1 CFCs	553
29.1.1.3. Types 2 and 3 CFCs	557
29.1.2. Defining CFC income	559
29.1.3. Attribution of CFC income	559
29.1.4. Rules to prevent and avoid double taxation	561
29.1.4.1. Foreign tax credits	561
29.1.4.2. Dividends and gains on disposition of shares	562
29.1.5. Substance carve-out	562
29.1.6. Internal anti-abuse rule	563
29.2. Implementation of Articles 7 and 8 of the ATAD	563
29.2.1. Entity scope	564
29.2.2. Determination of control	564
29.2.3. Carry-forward of losses	565
29.2.4. Attributable CFC income	565
29.2.5. <i>De minimis</i> thresholds	566
29.2.6. Anti-abuse safeguards	567
29.3. Special CFC rules	567
29.4. CFC legislation and other anti-abuse provisions	567
29.5. CFC legislation and tax treaties	568
29.6. CFC legislation and constitutional law/EU law	569
29.7. Improving the current rules	569
29.8. Outlook: The future of CFC legislation	571

<b>Chapter 30:</b>	<b>Controlled Foreign Company Legislation in Portugal</b>	<b>573</b>
	<i>Ricardo da Palma Borges and Marta Carmo</i>	
30.1.	Characteristics of the Portuguese CFC legislation	573
30.1.1.	Historical developments and object and purpose of the CFC legislation	573
30.1.2.	Taxable event	575
30.1.2.1.	Shareholder	575
30.1.2.2.	Foreign entities	577
30.1.2.3.	Control	577
30.1.2.4.	Definition of “low taxation”	577
30.1.2.5.	Type of income covered	580
30.1.2.6.	Other criteria	580
30.1.2.7.	Exceptions	580
30.1.3.	Consequences	582
30.1.3.1.	Subject to tax	582
30.1.3.2.	Attributed income	582
30.1.3.3.	Concept or nature	584
30.1.3.4.	Relevance of taxation in the CFC state and other states	585
30.1.3.5.	Avoidance of double taxation (at a future distribution or transfer for a consideration)	585
30.1.3.6.	Losses	587
30.2.	Implementation of Articles 7 and 8 of the ATAD	587
30.3.	Special CFC rules	587
30.4.	CFC legislation and other anti-abuse provisions	587
30.5.	CFC legislation and tax treaties	589
30.6.	CFC legislation and constitutional law/EU law	591
30.7.	Improving the current rules	593
30.7.1.	Attributed income determined under the IRC Code and compliance costs	593
30.7.2.	“Income from invoicing companies that earn commercial and services income derived from goods and services purchased from and sold to related entities ... and that add no or little economic value”	593

30.7.3.	“Income derived by financial assets” vs “capital income”	597
30.7.4.	Madeira Free Zone loophole	598
30.7.5.	Policy and the non-habitual resident regime	599
30.8.	Outlook: The future of CFC legislation	600
<b>Chapter 31:</b>	<b>Controlled Foreign Company Legislation in Romania</b>	601
	<i>Ioana-Felicia Rosca</i>	
31.1.	Characteristics of CFC legislation under Romanian law	601
31.1.1.	Policy considerations	601
31.1.2.	Attribution of income from the CFC to the shareholder	602
31.1.3.	Definition of CFC	603
31.1.4.	Exclusions of CFC	605
31.1.5.	Definition of CFC income	606
31.1.6.	Computation of CFC income at the level of the shareholder	607
31.1.7.	Rules to prevent double taxation	608
31.2.	Implementation of Articles 7 and 8 of the ATAD	609
31.2.1.	Transposition of the CFC rule under the ATAD into Romanian Fiscal Code	609
31.2.2.	Mechanism of the CFC rule opted by Romania	611
31.2.3.	Minimum standard	612
31.3.	Special CFC rules	613
31.3.1.	Absence of special CFC rules under Romanian law	613
31.3.2.	Application of CFC rule to taxpayers qualifying for turnover taxation	613
31.4.	CFC legislation and other anti-abuse provisions	614
31.4.1.	GAAR under Romanian Law	614
31.4.2.	Relationship between GAAR and CFC rule	615
31.5.	CFC legislation and tax treaties	616
31.5.1.	Tax treaties application under Romanian law	616
31.5.2.	Relationship between CFC rule and tax treaty provisions	617

31.6.	CFC legislation and constitutional law/EU law	618
31.6.1.	Constitutional limits on implementation of CFC legislation	618
31.6.2.	Possible conflicts between CFC rule and primary EU law	619
31.7.	Improving the current rules	620
31.7.1.	Shortcomings of the current CFC rule under Romanian legislation	620
31.7.2.	Recommendations for improvement of the current CFC rule	623
31.8.	Outlook: The future of CFC legislation	624
31.8.1.	Development of the CFC rules in future	624
31.8.2.	Administrative efforts to make CFC rule effective	625
31.8.3.	Concluding remarks	625
<b>Chapter 32:</b>	<b>Controlled Foreign Company Legislation in Russia</b>	627
	<i>Nikolai Milogolov and Kermen Tsagan-Mandzhieva</i>	
32.1.	Characteristics of CFC legislation in the Russian Federation	627
32.1.1.	Attribution of CFC income	629
32.1.2.	Defining a CFC	630
32.1.3.	Defining CFC income	633
32.1.4.	Computing CFC income	635
32.1.5.	Rules to prevent and avoid double taxation	636
32.2.	Implementation of Articles 7 and 8 of the Anti-Tax Avoidance Directive	637
32.3.	Special CFC rules	637
32.4.	CFC Legislation and other anti-abuse provisions	638
32.5.	CFC legislation and tax treaties	639
32.6.	CFC legislation and constitutional law/EU law	639

32.7.	Improving the current rules	640
32.8.	Outlook: The future of CFC legislation	642
<b>Chapter 33:</b>	<b>Controlled Foreign Company Legislation in the Slovak Republic</b>	645
	<i>Matej Kačaljak and Andrea Koroncziová</i>	
33.1.	Characteristics of Slovak CFC legislation	645
33.2.	Implementation of Articles 7 and 8 of the ATAD	649
33.3.	Special CFC rules	650
33.4.	CFC Legislation and other anti-abuse provisions	652
33.5.	CFC legislation and tax treaties	654
33.6.	CFC legislation and constitutional law /EU law	656
33.7.	Improving the current rules	657
33.8.	Outlook: The future of CFC legislation	658
<b>Chapter 34:</b>	<b>Controlled Foreign Company Legislation in South Africa</b>	659
	<i>Jennifer Roeleveld and Tracy Johnson</i>	
34.1.	Characteristics of South African CFC legislation	659
34.1.1.	Introduction	659
34.1.2.	Policy considerations: A brief history	659
34.1.3.	Rules for defining a CFC	664
34.1.4.	Definition of CFC income	665
34.1.5.	CFC exemption and threshold requirements	666
34.1.6.	Rules for computing income	669
34.1.7.	Rules for attributing income	669
34.1.8.	Rules to prevent or eliminate double taxation	670
34.2.	Implementation of Articles 7 and 8 of the Anti-Tax-Avoidance Directive	671

34.3.	Special CFC rules	671
34.4.	CFC legislation and other anti-abuse provisions	672
34.5.	CFC legislation and tax treaties	672
34.6.	CFC legislation and constitutional law/EU law	673
34.7.	Improving the current rules	673
34.7.1.	Area for improvement: High tax rate exemption	674
34.7.2.	Area for improvement: FBE exemption	674
34.7.3.	Area for improvement: Rebate for foreign taxes paid	676
34.8.	Outlook: The future of CFC legislation	677
<b>Chapter 35:</b>	<b>Controlled Foreign Company Legislation in the Republic of Korea</b>	679
	<i>Ji-Hyun Yoon and Ji-Heon Jin</i>	
35.1.	Characteristics of Korean CFC legislation	679
35.1.1.	Introduction and definition of CFC	679
35.1.1.1.	Requirement of low-tax jurisdiction	679
35.1.1.2.	“Control” requirement	680
35.1.1.3.	Scope of shareholders who are taxed	681
35.1.2.	Scope of CFC income	682
35.1.2.1.	<i>De minimis</i> rule	684
35.1.3.	Deemed dividend approach	684
35.1.4.	Relief for double taxation	685
35.1.5.	Miscellaneous	686
35.1.5.1.	Problem of low-tier subsidiaries	686
35.1.5.2.	In the case of lack of information from the resident shareholder’s side	686
35.1.6.	Policy considerations behind CFC legislation	686
35.2.	Special CFC rules	688
35.3.	CFC legislation and other anti-abuse provisions	688
35.4.	CFC legislation and tax treaties	690
35.5.	CFC legislation and constitutional law	690



35.6.	Improving the current rules	690
35.7.	Outlook: The future of CFC legislation	692
<b>Chapter 36:</b>	<b>Controlled Foreign Company Legislation in Spain</b>	695
	<i>José Manuel Almudí Cid</i>	
36.1.	Characteristics of Spanish CFC Legislation	695
36.2.	Implementation of Articles 7 and 8 of the ATAD	701
36.2.1.	Definition and object of control	701
36.2.2.	Taxation of the controlled foreign company	703
36.2.3.	Tainted income	704
36.2.3.1.	Tainted income according to its legal nature	704
36.2.3.2.	Tainted income according to the capacity and means of the foreign entity	708
36.2.4.	Limits to inclusion of tainted income in taxable base of shareholder	711
36.2.5.	Correction of double taxation	713
36.2.6.	Temporal issues	715
36.3.	Special CFC rules	716
36.4.	CFC legislation and other anti-abuse provisions	716
36.5.	CFC legislation and tax treaties	716
36.5.1.	Application of tax treaties to CFC rules	716
36.5.2.	Distributive rules – Articles 6-21 Model Convention for Income Tax	718
36.5.2.1.	Business profits according to Article 7 OECD Model	718
36.5.2.2.	Dividends according to Article 10 OECD Model	719
36.5.2.3.	Other income according to Article 21 OECD Model	720
36.5.3.	Exemption method, tax sparing and the MLI saving clause	720
36.6.	CFC legislation and constitutional law/EU law	721
36.6.1.	Constitutional law	721
36.6.2.	EU law	722

36.7.	Improving the current rules	725
36.8.	Outlook: The future of CFC legislation	726
<b>Chapter 37:</b>	<b>Controlled Foreign Company Legislation in Sweden</b>	727
	<i>Björn Westberg</i>	
37.1.	Characteristics of Swedish CFC legislation	727
37.1.1.	The main policy considerations regarding CFC legislation in Sweden	727
37.1.2.	Income attribution from the CFC to the shareholder	730
37.1.3.	Definition of a CFC	730
37.1.3.1.	The development and content of the Swedish CFC legislation	730
37.1.3.2.	Basic definitions	731
37.1.3.3.	White lists	732
37.1.4.	Definition of CFC income	734
37.1.5.	Computation of CFC income	735
37.1.6.	The rules to prevent or eliminate double taxation	736
37.1.7.	Treatment of income earned by lower-tier subsidiaries	738
37.1.8.	Application of CFC legislation to corporations and individuals as shareholders	739
37.2.	Implementation of Articles 7 and 8 of the ATAD	739
37.3.	Special CFC rules	740
37.4.	CFC legislation and other anti-abuse provisions	741
37.5.	The relationship between CFC legislation and tax treaties	742
37.6.	CFC legislation and constitutional law/EU law	742
37.7.	Improving the current rules	743
37.8.	Outlook: The future of CFC legislation	744
37.8.1.	EU law	744

37.8.2.	White, grey or blacklists	745
37.8.3.	Corporate tax rates	745
37.8.4.	Not only a general anti-abuse rule	745
<b>Chapter 38:</b>	<b>Controlled Foreign Company Legislation in Chinese Taipei, Taiwan</b>	747
	<i>Yuan-Chun Martin Lan</i>	
38.1.	Characteristics of CFC legislation in Chinese Taipei	747
38.1.1.	Income attributed	749
38.1.2.	Define a CFC	749
38.1.3.	Define CFC income	750
38.1.4.	Compute CFC income	752
38.1.5.	Eliminate double taxation	753
38.1.6.	Lower-tier subsidiaries	754
38.1.7.	CFC legislation to individuals	754
38.2.	Implementation of Articles 7 and 8 of the ATAD	755
38.3.	Special CFC rules	755
38.4.	CFC legislation and other anti-abuse provisions	755
38.5.	CFC legislation and tax treaties	757
38.6.	CFC legislation and constitutional law/EU law	757
38.7.	Improving the current rules	758
38.8.	Outlook: The future of CFC legislation	758
Appendix		759
<b>Chapter 39:</b>	<b>Controlled Foreign Company Legislation in Turkey</b>	761
	<i>Emrah Ferhatoğlu</i>	
39.1.	Characteristics of CFC legislation in Turkey	761
39.1.1.	Definition of CFC	762
39.1.1.1.	Foreign entities covered by the CFC rules	762
39.1.1.2.	Control requirements	763
39.1.1.2.1.	Shareholder	763

39.1.1.2.2.	Control threshold and timing	764
39.1.1.2.3.	Passive income	765
39.1.1.2.4.	Tax burden of foreign subsidiary	766
39.1.1.2.5.	De minimis test	767
39.1.2.	Defining CFC income	767
39.1.3.	Attribution of CFC income to shareholder	768
39.1.4.	Prevent and eliminate double taxation	769
39.2.	Implementation of Articles 7 and 8 of the Anti-Tax Avoidance Directive	770
39.3.	Special CFC rules	770
39.4.	CFC legislation and other anti-abuse provisions	770
39.5.	CFC legislation and tax treaties	771
39.5.1.	Taxation of CFC profits under DTCs before distribution of CFC profits	772
39.5.2.	Taxation of CFC profits under DTCs after distribution of CFC profits	772
39.6.	CFC legislation and constitutional law/EU law	773
39.6.1.	Principle of equality in tax law	774
39.6.2.	Other constitutional limits	775
39.7.	Improving the current rules	776
39.7.1.	Interaction between CFC legislation and transfer pricing rules	776
39.7.2.	Interaction between CFC legislation and participation exemption	777
39.7.3.	Lack of any rules regarding outbound investments	777
39.8.	Outlook: The future of CFC legislation	778
<b>Chapter 40:</b>	<b>Controlled Foreign Company Legislation in Ukraine</b>	779
	<i>Svitlana Buriak</i>	
40.1.	Main characteristics of the CFC Regulations	779
40.1.1.	Policy considerations	779
40.1.2.	Rules for defining a CFC and a controlling person	781
40.1.2.1.	What foreign entity can be regarded as a CFC?	781

40.1.2.2.	Who can be regarded as a controlling person?	781
40.1.2.3.	Legal control	782
40.1.2.4.	De facto and economic control	783
40.1.3.	Attribution of income from CFC to shareholders	784
40.2.	Implementation of Articles 7 and 8 of the Anti-Tax Avoidance Directive	785
40.3.	Special CFC rules	787
40.3.1.	Exemptions from taxation of profits of a CFC	787
40.3.2.	Special rules for adjusting the CFC income	788
40.4.	CFC legislation and other anti-abuse provisions	789
40.4.1.	Interaction between CFC and transfer pricing rules	789
40.4.2.	Interaction between the CFC rules and the domestic GAAR	791
40.5.	CFC legislation and tax treaties	791
40.6.	CFC legislation and constitutional law	793
40.7.	Improving the current rules	794
40.8.	Outlook: The future of the CFC legislation	795
<b>Chapter 41:</b>	<b>Controlled Foreign Company Legislation in the United Kingdom</b>	797
	<i>Paul Bowes</i>	
41.1.	Characteristics of UK CFC legislation	797
41.1.1.	Outline of UK CFC provisions	797
41.1.2.	Entity-level exemptions	801
41.1.2.1.	The “tax exemption” exemption	802
41.1.2.2.	The excluded territories exemption	802
41.1.2.3.	The low profits exemption	802
41.1.2.4.	The low profit margin exemption	803
41.1.2.5.	The exempt period exemption	803
41.1.3.	The CFC gateway charge	804
41.1.3.1.	Profits attributable to UK activities	804
41.1.3.2.	Non-trading finance profits	805
41.1.3.3.	Trading finance profits	807
41.1.3.4.	Captive insurance profits	808

41.1.3.5.	Solo-consolidation	808
41.1.4.	Finance companies and partial/full exemption regime	809
41.1.5.	The meaning of control for UK CFC purposes	813
41.1.6.	Tax credits available against tax on CFC chargeable profits	815
41.2.	Implementation of Articles 7 and 8 of ATAD I	816
41.3.	Special CFC rules	817
41.4.	CFC legislation and other anti-abuse provisions	817
41.4.1.	Diverted profits tax and diverted profits generally	817
41.4.2.	Offshore receipts in respect of intangible property	821
41.4.3.	The operation of the UK GAAR	823
41.5.	UK CFC legislation and tax treaties	824
41.6.	UK CFC legislation and constitutional law/EU law	825
41.7.	Improving the current rules	828
41.8.	Outlook: The future of CFC legislation	829
<b>Chapter 42:</b>	<b>Controlled Foreign Company Legislation in the United States</b>	<b>833</b>
	<i>Yariv Brauner and Christine A. Davis</i>	
42.1.	Characteristics of US CFC legislation	833
42.1.1.	Subpart F	834
42.1.2.	Definition of a CFC	836
42.1.3.	Subpart F income	838
42.1.4.	Calculation of Subpart F income	841
42.1.5.	Section 956 – Investments of earnings in US property	843
42.1.6.	Special rules	844
42.2.	Implementation of Articles 7 and 8 of the Anti-Tax Avoidance Directive	845

42.3.	Special anti-deferral rules	845
42.3.1.	PFIC	846
42.3.1.1.	PFIC defined	846
42.3.1.2.	Tax consequences of PFIC designation	846
42.3.1.3.	PFIC and CFC	847
42.3.2.	Global intangible low-taxed income (GILTI)	847
42.3.2.1.	FDII	849
42.4.	CFC legislation and other anti-abuse provisions	850
42.5.	CFC legislation and tax treaties	854
42.6.	CFC legislation and constitutional law/EU law	855
42.7.	Improving the current rules	855
42.8.	Outlook: The future of CFC legislation	856
<b>Chapter 43:</b>	<b>Controlled Foreign Company Legislation</b>	
	<b>in Uruguay</b>	859
	<i>Andrea Laura Riccardi Sacchi</i>	
43.1.	Characteristics of Uruguayan controlled foreign company legislation	859
43.1.1.	Preliminary considerations to our analysis	859
43.1.2.	Tax policy considerations	861
43.1.3.	Defining low- or no-tax entities	862
43.1.4.	Introducing a deemed dividend approach	864
43.1.5.	Establishing exceptions	865
43.1.6.	Type of income	865
43.1.7.	Determining the income assigned as dividend	866
43.1.8.	Elimination of double taxation	867
43.2.	Implementation of Articles 7 and 8 of the Anti-Tax Avoidance Directive	868
43.3.	Special CFC rules	868
43.4.	CFC legislation and other anti-abuse provisions	869
43.5.	CFC legislation and tax treaties	870

## Table of Contents

---

43.6.	CFC legislation and constitutional law/EU law	871
43.7.	Improving the current rules	871
43.8.	Outlook: The future of CFC legislation	872
	Annex	874
	<b>List of Contributors</b>	875
	Editors	875
	Authors	876



---

## Preface

In recent years, several important developments have taken place with respect to anti-tax avoidance provisions under international and European tax law. Controlled foreign company rules as anti-abuse provisions have been increasingly gaining in importance. Both the OECD and the European Union took initiatives to promote and introduce controlled foreign company rules as anti-avoidance tax provisions. The OECD released its recommendations on strengthening controlled foreign company legislation in the Base Erosion and Profit Shifting Action 3 Report that was issued in October 2015. The European Union consequently adopted Council Directive 2016/1164 laying down rules against tax avoidance practices that directly affect the functioning of the internal market, introducing the obligation for Member States to implement controlled foreign company rules in their domestic legislation. The transposition deadline in respect to the controlled foreign company rules to be implemented by Member States was set at 31 December 2018.

From 4-7 July 2019, the Institute for Austrian and International Tax Law hosted its annual Rust Conference. Participants from more than 41 countries representing all continents were brought together to discuss recent developments in the field of controlled foreign company legislation, which was also the general topic of the conference. The focus of the conference revolved around the actual implementation of the controlled foreign company rules, the relationship between them and tax treaties/constitutional law/European Union law, the shortcomings of the current controlled foreign company rules and recommendations for an increased effectiveness of the controlled foreign company legislation. The conference participants presented their own country's perspective on different substantive and procedural aspects.

We are very grateful to all National Reporters and authors. They displayed enormous discipline in completing their National Reports, taking into account the guidelines provided. They participated in the discussions at the conference with great enthusiasm. After presenting the results at the conference, they immediately completed their National Reports. The editors believe that the reports presented in this book are of high value and, therefore, will be of particular interest for academics, tax consultants, public officers and all of those interested in international tax law.

This project was conducted with the kind support of the Austrian Science Fund (FWF). We are grateful to the FWF for its funding of the DIBT programme (project number: W 1235-G16). We would like to express our

sincere thanks to IBFD for its cooperation and the swift realization of this publication project. Ms Jenny Hill contributed greatly to the completion of this book by editing and polishing the texts for the authors, for whom English is – to a great extent – a foreign language. Above all, we would like to thank the members of the secretariat and the research assistants of the Institute for Austrian and International Tax, especially Ms Renée Pestuka, Ms Angelina Papulova, Ms Lisa Maria Ramharter, Ms Ioana-Felicia Rosca and Mrs Layomi Gunatilleke-Jester who were responsible for the organization and preparation of the conference in Rust as well as the publication of this book. Without their dedication and talent for organization, the success of the conference and the completion of this book would not have been possible.

Vienna, July 2020

### **The Editors**

Georg Kofler  
Richard Krever  
Michael Lang  
Jeffrey Owens  
Pasquale Pistone  
Alexander Rust  
Joseph Schuch  
Karoline Spies  
Claus Staringer



## Contact

IBFD Head Office  
Rietlandpark 301  
1019 DW Amsterdam  
P.O. Box 20237  
1000 HE Amsterdam  
The Netherlands

**Tel.:** +31-20-554 0100 (GMT+1)

**Email:** [info@ibfd.org](mailto:info@ibfd.org)

**Web:** [www.ibfd.org](http://www.ibfd.org)



IBFD, Your Portal to Cross-Border Tax Expertise