



Corporation Tax Act 2010

2010 CHAPTER 4

[^{F1}PART 8A

PROFITS ARISING FROM THE EXPLOITATION OF PATENTS ETC

[^{F1}[^{F2}CHAPTER 2B

RELEVANT IP PROFITS: CASES MENTIONED IN SECTION 357A(7): INCOME FROM NEW IP

Textual Amendments

- F1** Pt. 8A inserted (with effect in accordance with [Sch. 2 paras. 7, 8](#) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 2 para. 1\(1\)](#)
- F2** Pt. 8A Chs. 2A, 2B inserted (with effect in accordance with s. 64(7) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 64\(3\)](#)

357BO Relevant IP profits

- (1) Section 357BF applies, with the modifications set out in section 357BQ, for the purposes of determining the relevant IP profits of a trade of a company for an accounting period in a case where—
- the accounting period begins before 1 July 2021,
 - the company is not a new entrant (see section 357A(11)), and
 - any amount of relevant IP income brought into account as a credit in calculating the profits of the trade for the accounting period is properly attributable to a new qualifying IP right (see section 357BP).
- (2) Where it is necessary for the purposes of section 357BF, as applied by this section, to determine the R&D fraction for a relevant IP income sub-stream, the company concerned is to be treated for the purposes of sections 357BLF and 357BLG as if it were a new entrant.

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- (3) Where section 357BF applies by reason of this section for the purposes of determining the relevant IP profits of a trade of a company for an accounting period, the company may not make a global streaming election for the accounting period under section 357BN(2)(c).

357BP Meaning of “new qualifying IP right” and “old qualifying IP right”

- (1) This section applies for the purposes of this Part.
- (2) “New qualifying IP right”, in relation to a company, means a qualifying IP right which meets condition A, B or C.
- (3) “Old qualifying IP right”, in relation to a company, means a qualifying IP right which does not meet any of those conditions.
- (4) Condition A is that the right was granted or issued to the company in response to an application filed on or after the relevant date.
- (5) Condition B is that the right was assigned to the company on or after the relevant date.
- (6) Condition C is that an exclusive licence in respect of the right was granted to the company on or after the relevant date.
- (7) The “relevant date” for the purposes of subsections (4), (5) and (6) is 1 July 2016; but this is subject to subsection (8).
- (8) The “relevant date” for the purposes of subsections (5) and (6) is 2 January 2016 if—
- the company and the person who assigned the right or granted the licence were connected at the time of the assignment or grant,
 - the main purpose, or one of the main purposes, of the assignment of the right or the grant of the licence was the avoidance of a foreign tax,
 - the person who assigned the right or granted the licence was not within the charge to corporation tax at the time of the assignment or grant, and
 - the person who assigned the right or granted the licence was not liable at the time of the assignment or grant to a foreign tax which is designated for the purposes of this section by regulations made by the Treasury.
- (9) Regulations may be made under subsection (8)(d) which designate a foreign tax only if it appears to the Treasury that the tax may be charged at a reduced rate under provisions of the law of the country or territory concerned which correspond to the provisions of this Part.
- (10) Regulations may not be made under subsection (8)(d) after 31 December 2016.
- (11) In this section “foreign tax” means a tax under the law of a country or territory outside the United Kingdom.
- (12) Section 1122 (meaning of “connected” persons) applies for the purposes of this section.
- [This section has effect subject to section 357GCZA (qualifying IP right held by another party to a cost-sharing arrangement) and section 357GCZB (exclusive licence held by another party to a cost-sharing arrangement).]

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Textual Amendments

F3 S. 357BP(13) inserted (with effect in accordance with s. 23(5) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 23\(4\)](#)

357BQ The modifications

- (1) The modifications of section 357BF referred to in section 357BO(1) are as follows.
 - (2) Omit subsection (1).
 - (3) In subsection (2)—
 - (a) in Step 2—
 - (i) before paragraph (a) insert—
 - “(aa) a sub-stream consisting of income properly attributable to old qualifying IP rights (“an old IP rights sub-stream”),”
 - (ii) in paragraph (a) before “qualifying IP right” insert “ new ”,
 - (iii) in the words after paragraph (c) for “and (7)” substitute “ to (7E) ”,
 - (b) in Step 6, for “relevant IP income sub-stream” substitute “ individual IP right sub-stream, each product sub-stream and each process sub-stream ”, and
 - (c) for Step 7 substitute—

“Step 7 Add together—

 - (a) the amount of any old IP rights sub-stream (following Steps 4 and 5), and
 - (b) the amount of each of the individual IP right sub-streams, each of the product sub-streams and each of the process sub-streams (following Step 6).”
 - (4) In subsection (7) for paragraph (a) substitute—
 - “(a) it would not be reasonably practicable to apportion the income between—
 - (i) individual IP rights sub-streams, or
 - (ii) individual IP rights sub-streams and an old IP rights sub-stream, or”.
 - (5) After subsection (7) insert—
 - “(7A) Subsections (7B) to (7E) apply where—
 - (a) income which is properly attributable to an IP item or IP process may in accordance with subsection (7) be allocated at Step 2 of subsection (2) to a product sub-stream or process sub-stream, and
 - (b) the IP item or IP process incorporates—
 - (i) at least one item or process in respect of which an old qualifying IP right held by the company has been granted, and
 - (ii) at least one item or process in respect of which a new qualifying IP right held by the company has been granted.
- (7B) If—

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- (a) the value of the IP item or IP process is wholly or mainly attributable to the incorporation in it of the items or processes referred to in subsection (7A)(b)(i), or
- (b) the old IP percentage for the IP item or IP process is 80% or more, the income properly attributable to the IP item or IP process may be treated as if it were properly attributable to old qualifying IP rights only; and, accordingly, the income may be allocated at Step 2 of subsection (2) to an old qualifying IP rights sub-stream (rather than to a product sub-stream or process sub-stream).
- (7C) If the old IP percentage for the IP item or IP process is less than 80% but not less than 20%, that percentage of the income which is properly attributable to the IP item or IP process may be treated as if it were properly attributable to old qualifying IP rights only; and, accordingly, that percentage of the income may be allocated at Step 2 of subsection (2) to an old IP rights sub-stream (and the remainder is to be allocated to a product sub-stream or process sub-stream).
- (7D) Where by reason of subsection (7C) only part of the income properly attributable to the IP item or IP process is allocated to a product sub-stream or process sub-stream, the IP item or IP process is to be treated, in determining the R&D fraction for the sub-stream, as if it did not incorporate the items or processes referred to in subsection (7A)(b)(i).
- (7E) For the purposes of subsection (7B) and (7C), the “old IP percentage” for an IP item or IP process is the percentage found by the following calculation—
- $$O \div T \times 100$$
- where—
- O is the number of items or processes incorporated in the IP item or IP process in respect of which an old qualifying IP right held by the company has been granted, and
- T is the number of items or processes incorporated in the IP item or IP process in respect of which an old or a new qualifying IP right held by the company has been granted.”]]

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 357CHA omitted by [2024 c. 3 Sch. 2 para. 14\(7\)](#)
- s. 658(1)(d)(e) inserted by [2010 c. 13 Sch. 6 para. 31](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 6 para. 31 omitted (retrospective to 6.4.2010) by virtue of Finance Act 2012 (c. 14), s. 52(2) (3))