



Corporation Tax Act 2010

2010 CHAPTER 4

[^{F1}PART 8A

PROFITS ARISING FROM THE EXPLOITATION OF PATENTS ETC

[^{F1}CHAPTER 4

STREAMING

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\(1\)](#)

357D Alternative method of calculating relevant IP profits: “streaming”

- (1) A company may elect to apply section 357DA (instead of section 357C) for the purposes of determining the relevant IP profits of any trade of the company for an accounting period.
- (2) An election made under subsection (1) is known as a “streaming election”.
- (3) A streaming election has effect—
 - (a) for the accounting period for which it is made, and
 - (b) for each subsequent accounting period.This is subject to section 357DB.
- (4) If any of the mandatory streaming conditions in section 357DC is met in relation to a trade of a company for an accounting period, the company must apply section 357DA (instead of section 357C) for the purposes of determining the relevant IP profits of the trade for that accounting period.

Status: Point in time view as at 17/07/2012.

Changes to legislation: Corporation Tax Act 2010, CHAPTER 4 is up to date with all changes known to be in force on or before 08 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

357DA Relevant IP profits

- (1) To determine the relevant IP profits of a trade of a company for an accounting period in accordance with this section—

Step 1 Take any amounts which are brought into account as credits in calculating the profits of the trade for the accounting period, other than any amounts of finance income (see section 357CB), and divide them into two “streams”, amounts of relevant IP income (see sections 357CC and 357CD) and amounts that are not amounts of relevant IP income. The stream consisting of relevant IP income is “the relevant IP income stream”.

Step 2 Take any amounts which are brought into account as debits in calculating the profits of the trade for the accounting period, other than any amounts referred to in section 357CG(3), and allocate them on a just and reasonable basis between the two streams. (See also section 357CG(5).)

Step 3 Deduct from the relevant IP income stream the amounts allocated to that stream under Step 2.

Step 4 Deduct from the amount given by Step 3 the routine return figure (see subsection (4)). The amount given by this step is the “qualifying residual profit”.

If the amount of the qualifying residual profit is not greater than nil, go to Step 7.

Step 5 If the company has elected for small claims treatment, calculate the small claims amount in relation to the trade (see section 357CM). If the company has not, go to Step 6.

Step 6 Deduct from the qualifying residual profit the marketing assets return figure (see section 357CN and subsection (6)).

Step 7 If the company has made an election under section 357CQ (which provides in certain circumstances for profits arising before the grant of a right to be treated as relevant IP profits), add to the amount given by Step 5 or 6 (or, if the amount of the qualifying residual profit was not greater than nil, Step 4) any amount determined in accordance with subsection (3) of that section.

- (2) If the amount given by subsection (1) is greater than nil, that amount is the relevant IP profits of the trade for the accounting period.
- (3) If the amount given by subsection (1) is less than nil, that amount is the relevant IP losses of the trade for the accounting period (see Chapter 5).
- (4) The routine return figure, in relation to a trade of a company for an accounting period, is 10% of the aggregate of any routine deductions which—
- (a) have been made by the company in calculating the profits of the trade for the accounting period, and
 - (b) have been allocated to the relevant IP income stream under Step 2.

In this subsection “routine deductions” is to be read in accordance with sections 357CJ and 357CK.

- (5) Subsections (2) and (3) of section 357CI have effect for the purposes of subsection (4) of this section as they have effect for the purposes of that section.
- (6) For the purposes of determining the marketing assets return figure in Step 6, section 357CP (actual marketing royalty) has effect as if the reference to X% of the aggregate of any sums falling within subsection (1) of that section were a reference to the aggregate of any such sums which have been allocated to the relevant IP income stream under Step 2.

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357DB Method of allocation

- (1) In this section “method of allocation” means the method of allocating, for the purposes of Step 2 in section 357DA(1), the amounts mentioned in that step.
- (2) A company that applies section 357DA for the purposes of determining the relevant IP profits of a trade of the company for an accounting period must use the same method of allocation in relation to the trade for that accounting period as it used in the last accounting period of the company for which it applied that section for the purposes of determining the relevant IP profits of the trade.
- (3) But subsection (2) does not apply if there is a change of circumstances relating to the trade which makes the use of that method of allocation in relation to the trade for the accounting period inappropriate.
- (4) In such a case, the company may—
 - (a) use a different method of allocation in relation to the trade for the accounting period (and subsection (2) applies accordingly for subsequent accounting periods), or
 - (b) elect not to apply section 357DA for the purposes of determining the relevant IP profits of the trade for the accounting period.
- (5) Subsection (4)(b) does not prevent the company making a fresh streaming election in relation to the trade for any subsequent accounting period.

357DC The mandatory streaming conditions

- (1) Mandatory streaming condition A is met in relation to a trade of a company for an accounting period if—
 - (a) any amount brought into account as a credit in calculating the profits of the trade for the accounting period is not fully recognised as revenue for the accounting period, and
 - (b) the amount, or the aggregate of any such amounts, is substantial.
- (2) An amount is a “substantial” amount for the purposes of this section if it is greater than—
 - (a) £2,000,000, or
 - (b) 20% of the total gross income of the trade for the accounting period,whichever is the lower.
- (3) But an amount is not a substantial amount for the purposes of this section if it does not exceed £50,000.
- (4) The reference in subsection (1)(a) to an amount brought into account as a credit includes a reference to any amount brought into account by virtue of section 147 of TIOPA 2010 (basic transfer-pricing rule).
- (5) Mandatory streaming condition B is met in relation to a trade of a company for an accounting period if the total gross income of the trade for the accounting period includes—
 - (a) relevant IP income, and
 - (b) a substantial amount of licensing income that is not relevant IP income.

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- (6) In subsection (5) “licensing income” means income consisting of any licence fee, royalty or other payment which the company has received under an agreement granting another person any right in respect of any intellectual property held by the company.
- “Intellectual property” has the meaning given by section 712(3) of CTA 2009.
- (7) Mandatory streaming condition C is met in relation to a trade of a company for an accounting period if the total gross income of the trade for the accounting period includes—
- (a) income that is not relevant IP income, and
 - (b) a substantial amount of relevant Head 2 income.
- (8) Income is “relevant Head 2 income” for the purposes of subsection (7) if—
- (a) it is relevant IP income received under an agreement falling within subsection (6) of section 357CC, and
 - (b) every qualifying IP right—
 - (i) in respect of which a right within paragraph (a) of that subsection is granted by the agreement, or
 - (ii) which is granted in respect of an invention in respect of which a right within paragraph (b) of that subsection is granted by the agreement, is a right in respect of which the company holds an exclusive licence.
- (9) In a case where—
- (a) relevant IP income is received under an agreement falling within section 357CC(6), but
 - (b) the condition in paragraph (b) of subsection (8) above is not met,
- so much of the relevant IP income as on a just and reasonable apportionment is attributable to any qualifying IP right falling within that paragraph is relevant Head 2 income for the purposes of subsection (7).]

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