



Corporation Tax Act 2010

2010 CHAPTER 4

[^{F1}PART 8C

RESTITUTION INTEREST

[^{F1}CHAPTER 1

AMOUNTS TAXED AS RESTITUTION INTEREST

Textual Amendments

- F1** Pt. 8C inserted (18.11.2015) (with effect in accordance with s. 38(9)-(12) of the amending Act) by Finance (No. 2) Act 2015 (c. 33), s. **38(3)**

357YA Charge to corporation tax on restitution interest

[^{F2}(1)] The charge to corporation tax on income applies to restitution interest arising to a company.

[^{F3}(2) In subsection (1) the reference to a company does not include a charitable company.]

Textual Amendments

- F2** S. 357YA renumbered as s. 357YA(1) (with effect in accordance with reg. 2 of the amending S.I.) by The Corporation Tax Act 2010 (Part 8C) (Amendment) Regulations 2017 (S.I. 2017/364), regs. 1, **5(a)**
- F3** S. 357YA(2) inserted (with effect in accordance with reg. 2 of the amending S.I.) by The Corporation Tax Act 2010 (Part 8C) (Amendment) Regulations 2017 (S.I. 2017/364), regs. 1, **5(b)**

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357YB Restitution interest chargeable as income

(1) Profits arising to a company which consist of restitution interest are chargeable to tax as income under this Part (regardless of whether the profits are of an income or capital nature).

[^{F4}(1A) In subsection (1) the reference to a company does not include a charitable company.]

(2) In this Part references to “profits” are to be interpreted in accordance with section 2(2) of CTA 2009.

Textual Amendments

F4 S. 357YB(1A) inserted (with effect in accordance with reg. 2 of the amending S.I.) by [The Corporation Tax Act 2010 \(Part 8C\) \(Amendment\) Regulations 2017 \(S.I. 2017/364\)](#), regs. 1, 6

357YC Meaning of “restitution interest”

(1) In this Part “restitution interest” means profits in relation to which Conditions A to C are met.

(2) Condition A is that the profits are interest paid or payable by the Commissioners [^{F5}for Her Majesty’s Revenue and Customs] in respect of [^{F6}a company’s right (or possible right) to restitution] with regard to either of the following matters (or alleged matters)

- (a) the payment of an amount to the Commissioners under a mistake of law relating to a taxation matter, or
- (b) the unlawful collection by the Commissioners of an amount in respect of taxation.

(3) Condition B is that—

- (a) a court has made a final determination that the Commissioners are liable to pay the interest, or
- [^{F7}(b) the Commissioners have in final settlement of a claim in respect of the right (or possible right) mentioned in subsection (2) entered into an agreement under which a person is entitled to be paid, or is to retain, the interest.]

(4) Condition C is that the interest determined to be due, or agreed upon, as mentioned in subsection (3) is not limited to simple interest at a statutory rate (see section 357YU).

(5) Subsection (4) does not prevent so much of an amount of interest determined to be due, or agreed upon, as represents or is calculated by reference to simple interest at a statutory rate from falling within the definition of “restitution interest”.

(6) For the purposes of subsection (2) it does not matter whether the interest is paid or payable—

- (a) pursuant to a judgment or order of a court,
- (b) as an interim payment in court proceedings,
- (c) under an agreement to settle a claim, or
- (d) in any other circumstances.

(7) For the purposes of this section—

- (a) “interest” includes an amount equivalent to interest, and

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- (b) an amount paid or payable by the Commissioners as mentioned in subsection (2) is “equivalent to interest” so far as it is an amount determined by reference to the time value of money.
- (8) For the purposes of this section a determination made by a court is “final” if the determination cannot be varied on appeal (whether because of the absence of any right of appeal, the expiry of a time limit for making an appeal without an appeal having been brought, the refusal of permission to appeal, the abandonment of an appeal or otherwise).
- (9) Any power to grant permission to appeal out of time is to be disregarded for the purposes of subsection (8).

Textual Amendments

- F5** Words in s. 357YC(2) inserted (with effect in accordance with reg. 3 of the amending S.I.) by [The Corporation Tax Act 2010 \(Part 8C\) \(Amendment\) Regulations 2017 \(S.I. 2017/364\)](#), regs. 1, **13**
- F6** Words in s. 357YC(2) substituted (with effect in accordance with reg. 2 of the amending S.I.) by [The Corporation Tax Act 2010 \(Part 8C\) \(Amendment\) Regulations 2017 \(S.I. 2017/364\)](#), regs. 1, **7(a)**
- F7** S. 357YC(3)(b) substituted (with effect in accordance with reg. 2 of the amending S.I.) by [The Corporation Tax Act 2010 \(Part 8C\) \(Amendment\) Regulations 2017 \(S.I. 2017/364\)](#), regs. 1, **7(b)**

357YD Further provision about amounts included, or not included, in “restitution interest”

- (1) Interest paid to a company is not restitution interest for the purposes of this Part if—
 - (a) Condition B was not met in relation to the interest until after the interest was paid, and
 - (b) the amount paid was limited to simple interest at a statutory rate
- (2) Subsection (1) does not prevent so much of a relevant amount of interest determined to be due, agreed upon or otherwise paid as represents or is calculated by reference to simple interest at a statutory rate from falling within the definition of “restitution interest”.
- (3) In subsection (2) “relevant amount of interest” means an amount of interest the whole of which was paid before Condition B was met in relation to it.
- (4) Section 357YC(7) applies in relation to this section as in relation to section 357YC.

[^{F8}357YDA] Life insurance companies: amounts representing policyholder income

- (1) This section applies if—
 - (a) an amount of interest paid or payable by the Commissioners for Her Majesty’s Revenue and Customs would (but for this section) be restitution interest arising to a company, and
 - (b) were this Part not to have effect, that amount would be taken into account under section 73 of FA 2012 (the I-E basis) as income chargeable for an accounting period of the company that is referable to its basic life assurance and general annuity business.
- (2) So much (if any) of the amount as represents policyholder income is to be treated for the purposes of this Part as if it were not restitution interest.

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- (3) To determine how much (if any) of the amount mentioned in subsection (1) (amount “A”) represents policyholder income, take the following steps—

Step 1

- (a) Take so much of amount A as consists of non-ACT interest (“the non-ACT amount”).
- (b) Determine how much (in total) of the non-ACT amount is to be assigned to with-profits funds (one or more) of the company.

Call this total amount “P”.

In this step “non-ACT interest” means interest which is not interest in respect of advance corporation tax.

Step 2

Determine how much of P is to be assigned to each of the with-profits funds concerned.

This is the “assignable amount” in the case of each fund.

Step 3

In the case of each fund mentioned in step 2, determine in what proportions profits of the fund concerned are to be divided between policyholders and shareholders under the distribution policy for the fund.

Step 4

Express the policyholders’ proportion (as determined under step 3) as a percentage of the whole.

This is the “policyholder percentage” for the fund.

Step 5

Multiply each assignable amount by the policyholder percentage for the fund in question.

The result is the “policyholder amount” in the case of each fund.

Step 6

Amount A “represents policyholder income” so far as it does not exceed the total policyholder amounts found under step 5.

- (4) For the purposes of subsection (3) “the distribution policy for the fund” means the basis on which the company has decided profits of the fund are to be divided between policyholders and shareholders.
- (5) The distribution policy for a with-profits fund is to be determined as at the time when the interest arises, and with particular reference to—
 - (a) any relevant information in the company’s articles of association, and
 - (b) any relevant information or document published by the company in connection with obligations under the FCA Handbook.
- (6) In this section—

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“the FCA Handbook” means the Handbook made by the Financial Conduct Authority under the Financial Services and Markets Act 2000, and

“interest” has the same meaning as in section 357YC.]

Textual Amendments

F8 S. 357YDA inserted (with effect in accordance with reg. 2 of the amending S.I.) by [The Corporation Tax Act 2010 \(Part 8C\) \(Amendment\) Regulations 2017 \(S.I. 2017/364\)](#), regs. 1, 8

357YE Period in which amounts are to be brought into account

- (1) The amounts to be brought into account as restitution interest for any period for the purposes of this Part are those that are recognised in determining the company's profit or loss for the period in accordance with generally accepted accounting practice.
- (2) If Condition A in section 357YC is met, in relation to any amount, after the end of the period for which the amount is to be brought into account as restitution interest in accordance with subsection (1), any necessary adjustments are to be made; and any time limits for the making of adjustments are to be disregarded for this purpose.

357YF Companies without GAAP-compliant accounts

- (1) If a company—
 - (a) draws up accounts which are not GAAP-compliant accounts, or
 - (b) does not draw up accounts at all,this Part applies as if GAAP-compliant accounts had been drawn up.
- (2) Accordingly, references in this Part to amounts recognised for accounting purposes are references to amounts that would have been recognised if GAAP-compliant accounts had been drawn up for the period of account in question and any relevant earlier period.
- (3) For this purpose a period of account is relevant to a later period if the accounts for the later period rely to any extent on amounts derived from the earlier period.
- (4) In this section “GAAP-compliant accounts” means accounts drawn up in accordance with generally accepted accounting practice.

357YG Restitution interest: appeals made out of time

- (1) This section applies where—
 - (a) an amount of interest (“the interest”) arises to a company as restitution interest for the purposes of this Part,
 - (b) Condition B in section 357YC is met in relation to the interest as a result of the making by a court of a final determination as mentioned in subsection (3) (a) of that section,
 - (c) on a late appeal (or a further appeal subsequent to such an appeal) a court reverses that determination, or varies it so as to negative it, and
 - (d) the determination reversing or varying the determination by virtue of which Condition B was met is itself a final determination.
- (2) This Part has effect as if the interest had never been restitution interest.

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- (3) If—
- (a) the Commissioners for Her Majesty's Revenue and Customs have under section 357YO(2) deducted a sum representing corporation tax from the interest, or
 - (b) a sum has been paid as corporation tax in respect of the interest under section 357YQ,
- that sum is treated for all purposes as if it had never been paid to, or deducted or held by, the Commissioners as or in respect of corporation tax.
- (4) Any adjustments are to be made that are necessary in accordance with this section; and any time limits applying to the making of adjustments are to be ignored.
- (5) In this section—
- “final determination” has the same meaning as in section 357YC;
 - “late appeal” means an appeal which is made by reason of a court giving leave to appeal out of time.

357YH Countering effect of avoidance arrangements

- (1) Any ^{F9}... tax advantages that would (in the absence of this section) arise from relevant avoidance arrangements are to be counteracted by the making of such adjustments as are just and reasonable in relation to amounts to be brought into account for the purposes of this Part.
- (2) Any adjustments required to be made under this section (whether or not by an officer of Revenue and Customs) may be made by way of an assessment, the modification of an assessment, amendment or otherwise.
- (3) For the meaning of “relevant avoidance arrangements” and “[^{F10}tax advantage]” see section 357YI.

Textual Amendments

- F9** Word in s. 357YH(1) omitted (with effect in accordance with reg. 3 of the amending S.I.) by virtue of [The Corporation Tax Act 2010 \(Part 8C\) \(Amendment\) Regulations 2017 \(S.I. 2017/364\)](#), regs. 1, **14(a)**
- F10** Words in s. 357YH(3) substituted (with effect in accordance with reg. 3 of the amending S.I.) by [The Corporation Tax Act 2010 \(Part 8C\) \(Amendment\) Regulations 2017 \(S.I. 2017/364\)](#), regs. 1, **14(b)**

357YI Interpretation of section 357YH

- (1) This section applies for the interpretation of section 357YH (and this section).
- (2) “Arrangements” include any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
- (3) Arrangements are “relevant avoidance arrangements” if their main purpose, or one of their main purposes, is to enable a company to obtain a tax advantage in relation to the application of the charge to tax at the restitution payments rate.

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- (4) But arrangements are not “relevant avoidance arrangements” if the obtaining of any tax advantages that would (in the absence of section 357YH) arise from them can reasonably be regarded as consistent with wholly commercial arrangements.
- (5) “Tax advantage” includes—
- (a) a repayment of tax or increased repayment of tax,
 - (b) the avoidance or reduction of a charge to tax or an assessment to tax,
 - (c) the avoidance of a possible assessment to tax,
 - (d) deferral of a payment of tax or advancement of a repayment of tax, or
 - (e) the avoidance of an obligation to deduct or account for tax.
- (6) In subsection (5)(b) and (c) the references to avoidance or reduction include an avoidance or reduction effected by receipts accruing in such a way that the recipient does not bear tax on them as restitution interest under this Part.]

357YJ Examples of results that may indicate exclusion not applicable

[^{F11}(1)] Each of the following is an example of something which might indicate that arrangements whose main purpose, or one of whose main purposes, is to enable a company to obtain a ^{F12}... tax advantage are not excluded by section 357YI(4) from being “relevant avoidance arrangements” for the purposes of section 357YH—

- (a) existing the elimination or reduction for the purposes of this Part of amounts chargeable as restitution interest arising to the company in connection with a particular claim, if for economic purposes other or greater profits arise to the company in connection with the claim;
- (b) preventing or delaying the recognition as an item of profit or loss of an amount that would apart from the arrangements be recognised in the company's accounts as an item of profit or loss, or be so recognised earlier;
- (c) ensuring that a receipt is treated for accounting purposes in a way in which it would not have been treated in the absence of some other transaction forming part of the arrangements.

[^{F13}(2) In this section “arrangements” and “tax advantage” have the meaning given by section 357YI.]

Textual Amendments

F11 S. 357J renumbered as s. 257J(1) (with effect in accordance with reg. 3 of the amending S.I.) by [The Corporation Tax Act 2010 \(Part 8C\) \(Amendment\) Regulations 2017 \(S.I. 2017/364\)](#), regs. 1, **15(a)**

F12 Words in s. 357YJ(1) omitted (with effect in accordance with reg. 3 of the amending S.I.) by virtue of [The Corporation Tax Act 2010 \(Part 8C\) \(Amendment\) Regulations 2017 \(S.I. 2017/364\)](#), regs. 1, **15(b)**

F13 S. 357YJ(2) inserted (with effect in accordance with reg. 3 of the amending S.I.) by [The Corporation Tax Act 2010 \(Part 8C\) \(Amendment\) Regulations 2017 \(S.I. 2017/364\)](#), regs. 1, **15(c)**

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