Finance (No. 2) Act 2017

2017 CHAPTER 32

PART 1

DIRECT TAXES

Corporation tax

18 Carried-forward losses

(1) Schedule 4 makes provision about corporation tax relief for losses and other amounts that are carried forward.

(2) The Commissioners for Her Majesty's Revenue and Customs may by regulations made by statutory instrument make provision consequential on any provision made by Schedule 4.

(3) Regulations under subsection (2)—

(a) may make provision amending or modifying any provision of the Taxes Acts (including any provision inserted by Schedule 4),

(b) may make incidental, supplemental, transitional, transitory or saving provision, and

(c) may make different provision for different purposes.

(4) A statutory instrument containing regulations under subsection (2) is subject to annulment in pursuance of a resolution of the House of Commons.

(5) In this section "the Taxes Acts" has the same meaning as in the Taxes Management Act 1970 (see section 118(1) of that Act).

19 Losses: counteraction of avoidance arrangements

(1) Any loss-related tax advantage that would (in the absence of this section) arise from relevant tax arrangements is to be counteracted by the making of such adjustments as are just and reasonable.

(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—

(a) an assessment,

(b) the modification of an assessment,

(c) amendment or disallowance of a claim,

or otherwise.

(3) For the purposes of this section arrangements are "relevant tax arrangements" if conditions A and B are met.

(4) Condition A is that the purpose, or one of the main purposes, of the arrangements is to obtain a loss-related tax advantage.

(5) Condition B is that it is reasonable to regard the arrangements as circumventing the intended limits of relief under the relevant provisions or otherwise exploiting shortcomings in the relevant provisions.

(6) In determining whether or not condition B is met all the relevant circumstances are to be taken into account, including whether the arrangements include any steps that—

(a) are contrived or abnormal, or

(b) lack a genuine commercial purpose.

(7) In this section "loss-related tax advantage" means a tax advantage as a result of a deduction (or increased deduction) under a provision mentioned in subsection (8).

(8) The provisions are—

(a) sections 457, 459, 461, 462, 463B, 463G and 463H of CTA 2009 (non-trading deficits from loan relationships);

(b) section 753 of CTA 2009 (non-trading losses on intangible fixed assets);

(c) section 1219 of CTA 2009 (management expenses etc);

(d) sections 37, 45, 45A, 45B and 45F of CTA 2010 (deductions in respect of trade losses);

(e) section 62(3) of CTA 2010 (losses of a UK property business);

(f) Part 5 of CTA 2010 (group relief);

(g) Part 5A of CTA 2010 (group relief for carried-forward losses);

(h) sections 303B, 303C and 303D of CTA 2010 (non-decommissioning losses of ring-fence trades);

(i) sections 124A, 124B and 124C of FA 2012 (carried-forward BLAGAB trade losses).

(9) In this section—

"arrangements" includes any agreement, understanding, scheme transaction or series of transactions (whether or not legally enforceable);

"tax advantage" has the meaning given by section 1139 of CTA 2010.

(10) This section has effect in relation to a tax advantage that relates (or would apart from this section relate) to an accounting period beginning on or after 1 April 2017 (regardless of when the arrangements in question were made).

(11) Where a tax advantage would (apart from this subsection) relate to an accounting period beginning before 1 April 2017 and ending on or after that date ("the straddling period")—

(a) so much of the straddling period as falls before 1 April 2017, and so much of that period as falls on or after that date, are treated as separate accounting periods, and

(b) the extent (if any) to which the tax advantage relates to the second of those accounting periods is to be determined by apportioning amounts—

(i) in accordance with section 1172 of CTA 2010 (time basis), or

(ii) if that method would produce a result that is unjust or unreasonable, on a just and reasonable basis.

(12) In the case of a tax advantage as a result of a deduction (or increased deduction) under—

(a) section 463H of CTA 2009,

(b) section 62(3) of CTA 2010,

(c) section 303B, 303C or 303D of CTA 2010, or

(d) section 124A or 124C of FA 2012,

subsections (10) and (11) have effect as if the references to 1 April 2017 were to 13 July 2017.

20 Corporate interest restriction

Schedule 5 makes provision about the amounts that may be brought into account for the purposes of corporation tax in respect of interest and other financing costs.

21 Museum and gallery exhibitions

Schedule 6 makes provision about relief in respect of the production of museum and gallery exhibitions.

22 Grassroots sport

(1) CTA 2010 is amended as follows.

(2) In section 1(2) (overview of Act)—

(a) omit the "and" at the end of paragraph (g), and

(b) after that paragraph insert—

"(ga) relief for expenditure on grassroots sport (see Part 6A), and".

(3) In section 99(1) (group relief: losses and other amounts which may be surrendered), after paragraph (d) insert—

"(da) amounts allowable as qualifying expenditure on grassroots sport (see Part 6A),".

(4) In section 105(4) (group relief: order in which amounts are treated as surrendered)—

(a) after paragraph (a) insert—

"(aa) second, expenditure within section 99(1)(da),",

(b) in paragraph (b), for "second" substitute "third",

(c) in paragraph (c), for "third" substitute "fourth", and

(d) in paragraph (d), for "fourth" substitute "fifth".

(5) After Part 6 insert—

"**PART 6A**

RELIEF FOR EXPENDITURE ON GRASSROOTS SPORT

217A Relief for expenditure on grassroots sport

(1) A payment made by a company which is qualifying expenditure on grassroots sport (and which is not refunded) is allowed as a deduction in accordance with this section from the company's total profits in calculating the corporation tax chargeable for the accounting period in which the payment is made.

(2) The deduction is from the company's total profits for the accounting period after any other relief from corporation tax other than—

(a) relief under Part 6,

(b) group relief, and

(c) group relief for carried-forward losses.

(3) If the company is a qualifying sport body at the time of the payment, a deduction is allowed for the amount of the payment.

See section 217C for the meaning of "qualifying sport body".

(4) If the company is not a qualifying sport body at the time of the payment, a deduction is allowed—

(a) if the payment is to a qualifying sport body, for the amount of the payment, and

(b) if the payment does not fall within paragraph (a) (a "direct payment"), in accordance with subsections (7) and (8).

(5) If at any time on or after 1 April 2017 the company receives income for use for charitable purposes which are purposes for facilitating participation in amateur eligible sport, a deduction is allowed only if, and in so far as, the payment exceeds an amount which is equal to the amount of that income which—

(a) the company does not have to bring into account for corporation tax purposes, and

(b) has not previously been taken into account under this subsection to disallow a deduction under this Part of all or any part of a payment.

See section 217B(3) for the meaning of terms used in this subsection.

(6) But in any case, the amount of the deduction is limited to the amount that reduces the company's taxable total profits for the accounting period to nil.

(7) If the total of all the direct payments made by the company in the accounting period is equal to or less than the maximum deduction for direct payments, a deduction is allowed under subsection (4)(b) in respect of that total.

(8) If the total of all the direct payments made by the company in the accounting period is more than the maximum deduction for direct payments, a deduction is allowed under subsection (4)(b) in respect of so much of that total as does not exceed the maximum deduction for direct payments.

(9) The maximum deduction for direct payments is £2,500 or, if the accounting period is shorter than 12 months, a proportionately reduced amount.

(10) The Treasury may by regulations amend subsection (9) by substituting a higher amount for the amount for the time being specified there.

217B Meaning of qualifying expenditure on grassroots sport

(1) For the purposes of this Part, a payment is qualifying expenditure on grassroots sport if—

(a) it is expenditure incurred for charitable purposes which are purposes for facilitating participation in amateur eligible sport, and

(b) apart from this Part, no deduction from total profits, or in calculating any component of total profits, would be allowed in respect of the payment.

For the meaning of charitable purposes, see sections 2, 7 and 8 of the Charities Act 2011.

(2) Where expenditure is incurred for both—

(a) charitable purposes which are purposes for facilitating participation in amateur eligible sport, and

(b) other purposes,

then, for the purposes of subsection (1), it is to be apportioned between the purposes in paragraph (a) and the purposes in paragraph (b) on a just and reasonable basis.

(3) For the purposes of section 217A(5) and subsection (1)(a)—

(a) paying a person to play or take part in a sport does not facilitate participation in amateur sport, but paying coaches or officials for their services may do so, and

(b) "eligible sport" means a sport that for the time being is an eligible sport for the purposes of Chapter 9 of Part 13 (see section 661).

217C Meaning of qualifying sport body

(1) For the purposes of this Part, a "qualifying sport body" is—

(a) a recognised sport governing body;

(b) a body which is wholly owned by a recognised sport governing body.

(2) A "recognised sport governing body" is a body which is included from time to time in a list, maintained by the National Sports Councils, of governing bodies of sport recognised by them.

(3) The Treasury may by regulations—

(a) amend this section for the purpose of altering the meaning of "qualifying sport body";

(b) designate bodies to be treated as qualifying sport bodies for the purposes of this Part.

(4) Regulations under section (3)(b) may designate a body by reference to its inclusion in a class or description of bodies.

(5) In this section "the National Sports Councils" means—

(a) the United Kingdom Sports Council,

(b) the English Sports Council,

(c) the Scottish Sports Council,

(d) the Sports Council for Wales, and

(e) the Sports Council for Northern Ireland.

(6) Regulations under subsection (3)(b) made before 1 April 2018 may include provision having effect in relation to times before the regulations are made (but not times earlier than 1 April 2017).

217D Relationship between this Part and Part 6

If, but for section 217A, an amount—

(a) would be deductible under Part 6, or

(b) would be deductible under Part 6 but for Chapter 2A of Part 6,

the amount is not deductible under this Part, and nothing in this Part affects the amount's deductibility (or non-deductibility) under Part 6."

(6) The amendments made by this section have effect for the purpose of allowing deductions for payments made on or after 1 April 2017.

(7) Where a company has an accounting period beginning before 1 April 2017 and ending on or after that date, the accounting period for the purposes of the new section 217A(9) is so much of the accounting period as falls on or after 1 April 2017.

23 Profits from the exploitation of patents: cost-sharing arrangements

(1) Part 8A of CTA 2010 (profits from the exploitation of patents) is amended as follows.

(2) After section 357BLE insert—

"**357BLEA Cases where the company is a party to a CSA**

(1) Subsection (2) applies if during the relevant period—

(a) the company is a party to a cost-sharing arrangement (see section 357GC),

(b) the company incurs expenditure in making payments under the arrangement that are within section 357BLC(2) by reason of section 357GCZC, and

(c) persons who are not connected with the company make payments under the arrangement to the company in respect of relevant research and development undertaken or contracted out by the company.

(2) So much of the expenditure referred to in paragraph (b) of subsection (1) as is equal to the amount of the payments referred to in paragraph (c) of that subsection is to be disregarded in determining the R&D fraction for the sub-stream.

(3) Subsection (4) applies if during the relevant period—

(a) the company is a party to a cost-sharing arrangement,

(b) the company incurs expenditure in making payments under the arrangement that are within subsection (5), and

(c) the company receives payments under the arrangement that are within subsection (6).

(4) So much of the expenditure referred to in paragraph (b) of subsection (3) as is equal to the amount of the payments referred to in paragraph (c) of that subsection is to be disregarded in determining the R&D fraction for the sub-stream.

(5) A payment is within this subsection if—

(a) it is within section 357BLD(2) by reason of section 357GCZC, or

(b) it is within section 357BLE(2) or (3) by reason of section 357GCZD.

(6) A payment is within this subsection if—

(a) it is made by persons connected with the company in respect of relevant research and development undertaken or contracted out by the company, or

(b) it is made in respect of an assignment to the company of a relevant qualifying IP right or a grant or transfer to the company of an exclusive licence in respect of such a right."

(3) For section 357GC substitute—

"**357GC Meaning of "cost-sharing arrangement" etc**

(1) This section applies for the purposes of this Part.

(2) A "cost-sharing arrangement" is an arrangement under which—

(a) each of the parties to the arrangement is required to contribute to the cost of, or undertake activities for the purpose of, creating or developing an item or process,

(b) each of those parties—

(i) is entitled to a share of any income attributable to the item or process, or

(ii) has one or more rights in respect of the item or process, and

(c) the amount of any income received by each of those parties is proportionate to its participation in the arrangement as described in paragraph (a).

(3) "Invention", in relation to a cost-sharing arrangement, means the item or process that is the subject of the arrangement (or any item or process incorporated within it).

357GCZA Qualifying IP right held by another party to CSA

(1) This section applies if—

(a) a company is a party to a cost-sharing arrangement,

(b) another party to the arrangement ("P") holds a qualifying IP right granted in respect of the invention, and

(c) the company does not hold an exclusive licence in respect of the right.

(2) But this section does not apply if the arrangement produces for the company a return within section 357BG(1)(c).

(3) The company is to be treated for the purposes of this Part as if it held the right.

(4) The right is to be treated for the purposes of this Part as a new qualifying IP right in relation to the company if—

(a) the company or P (or both) became a party to the arrangement on or after 1 April 2017, or

(b) the right is a new qualifying IP right in relation to P (or would be if P was a company).

(5) Subsection (4) does not apply if—

(a) the company held an exclusive licence in respect of the right immediately before it became a party to the arrangement, and

(b) that licence was granted to the company before the relevant date.

(6) The right is to be treated for the purposes of this Part as an old qualifying IP right in relation to the company if it is not to be treated as a new qualifying IP right by reason of subsection (4).

(7) Subsections (7) and (8) of section 357BP (meaning of "relevant date") apply for the purposes of subsection (5) of this section as they apply for the purposes of subsection (6) of that section.

357GCZB Exclusive licence held by another party to CSA

(1) This section applies if—

(a) a company is a party to a cost-sharing arrangement,

(b) another party to the arrangement ("P") holds an exclusive licence in respect of a qualifying IP right granted in respect of the invention, and

(c) the company does not hold the right or another exclusive licence in respect of it.

(2) But this section does not apply if the arrangement produces for the company a return within section 357BG(1)(c).

(3) The company is to be treated for the purposes of this Part as if it held an exclusive licence in respect of the right.

(4) The right is to be treated for the purposes of this Part as a new qualifying IP right in relation to the company if—

(a) the company or P (or both) became a party to the arrangement on or after 1 April 2017, or

(b) the right is a new qualifying IP right in relation to P (or would be if P was a company).

(5) Subsection (4) does not apply if—

(a) the company held the right immediately before it became a party to the arrangement, and

(b) either—

(i) the right had been granted or issued to the company in response to an application filed before 1 July 2016, or

(ii) the right had been assigned to the company before the relevant date.

(6) Subsection (4) also does not apply if—

(a) the company held an exclusive licence in respect of the right immediately before it became a party to the arrangement, and

(b) that licence was granted to the company before the relevant date.

(7) The right is to be treated for the purposes of this Part as an old qualifying IP right in relation to the company if it is not to be treated as a new qualifying IP right by reason of subsection (4).

(8) Subsections (7) and (8) of section 357BP (meaning of "relevant date") apply for the purposes of subsections (5) and (6) of this section as they apply for the purposes of subsections (5) and (6) of that section.

357GCZC R&D undertaken or contracted out by another party to CSA

(1) Subsection (2) applies if—

(a) a company is a party to a cost-sharing arrangement, and

(b) another party to the arrangement ("P") undertakes research and development for the purpose of creating or developing the invention.

(2) The research and development is to be treated for the purposes of sections 357BLC and 357BLD as having been contracted out by the company to P.

(3) Subsection (4) applies if—

(a) a company is a party to a cost-sharing arrangement,

(b) another party to the arrangement ("P") contracts out to another person ("A") research and development for the purpose of creating or developing the invention, and

(c) the company makes a payment under the arrangement in respect of that research and development (whether to P or to A).

(4) For the purposes of sections 357BLC and 357BLD—

(a) the company is to be treated as having contracted out to P research and development which is the same as that contracted out by P to A, and

(b) the payment mentioned in subsection (3)(c) is to be treated as if it were a payment made to P in respect of the research and development the company is treated as having contracted out to P.

(5) In this section "research and development" has the meaning given by section 1138.

357GCZD Acquisition of qualifying IP rights etc by another party to CSA

(1) Subsection (2) applies if—

(a) a company is a party to a cost-sharing arrangement,

(b) a person ("A") assigns to another party to the arrangement ("P") a qualifying IP right,

(c) the qualifying IP right is a right in respect of the invention, and

(d) the company makes under the arrangement a payment in respect of the assignment (whether to A or to P).

(2) The payment is to be treated for the purposes of section 357BLE as if it were a payment to A in respect of the assignment by A to the company of the right.

(3) Subsection (4) applies if—

(a) a company is a party to a cost-sharing arrangement,

(b) a person ("A") grants or transfers to another party to the arrangement ("P") an exclusive licence in respect of qualifying IP right,

(c) the qualifying IP right is a right granted in respect of the invention, and

(d) the company makes a payment under the arrangement in respect of the grant or transfer (whether to A or to P).

(4) The payment is to be treated for the purposes of section 357BLE as if it were a payment to A in respect of the grant or transfer by A to the company of the licence.

357GCZE Treatment of expenditure in connection with formation of CSA etc

(1) Where—

(a) a company makes a payment to a person ("P") in consideration of that person entering into a cost-sharing arrangement with the company, and

(b) P holds a qualifying IP right granted in respect of the invention or holds an exclusive licence in respect of such a right,

a just and reasonable amount of the payment is to be treated for the purposes of section 357BLE as if it was an amount paid in respect of the assignment to the company of the right or (as the case may be) the transfer to the company of the licence.

(2) Where—

(a) a company makes a payment to a party to a cost-sharing arrangement ("P") in consideration of P agreeing to the company becoming a party to the arrangement (whether in place of P or in addition to P), and

(b) any party to the arrangement holds a qualifying IP right in respect of the invention or holds an exclusive licence in respect of such a right,

a just and reasonable amount of the payment is to be treated for the purposes of section 357BLE as if it was an amount paid in respect of the assignment to the company of the right or (as the case may be) the transfer to the company of the licence.

(3) Where—

(a) a company that is a party to a cost-sharing arrangement makes a payment to another party to the arrangement in consideration of that party agreeing to the company becoming entitled to a greater share of the income attributable to the invention or acquiring additional rights in relation to the invention, and

(b) any party to the arrangement holds a qualifying IP right in respect of the invention or holds an exclusive licence in respect of such a right,

a just and reasonable amount of the payment is to be treated for the purposes of section 357BLE as if it was an amount paid in respect of the assignment to the company of the right or (as the case may be) the transfer to the company of the licence.

357GCZF Treatment of income in connection with formation of CSA etc

(1) Where—

(a) a company receives a payment in consideration of its entering into a cost-sharing arrangement, and

(b) the company holds a qualifying IP right granted in respect of the invention or holds an exclusive licence in respect of such a right,

a just and reasonable amount of the payment is to be treated as relevant IP income of the company.

(2) Where—

(a) a company that is a party to a cost-sharing arrangement receives a payment from a person in consideration of its agreeing to that person becoming a party to the arrangement (whether in place of the company or in addition to it), and

(b) any party to the arrangement holds a qualifying IP right in respect of the invention or holds an exclusive licence in respect of such a right,

a just and reasonable amount of the payment is to be treated as relevant IP income of the company.

(3) Where—

(a) a company that is a party to a cost-sharing arrangement receives a payment from another party to the arrangement in consideration of its agreeing to that party becoming entitled to a greater share of the income attributable to the invention or acquiring additional rights in relation to the invention, and

(b) any party to the arrangement holds a qualifying IP right in respect of the invention or holds an exclusive licence in respect of such a right,

a just and reasonable amount of the payment is to be treated as relevant IP income of the company."

(4) In section 357BP (meaning of "new qualifying IP right") after subsection (12) insert—

"(13) 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)."

(5) The amendments made by this section have effect in relation to accounting periods beginning on or after 1 April 2017.

24 Hybrid and other mismatches

(1) Part 6A of TIOPA 2010 (hybrid and other mismatches) is amended as follows.

(2) In section 259B(3) (local taxes), for "is not outside the scope of subsection (2) by reason only that" substitute "is outside the scope of subsection (2) if".

(3) In section 259CC(2) (hybrid and other mismatches from financial instruments: meaning of "permitted" taxable period of a payee), for paragraph (b) substitute—

"(b) the period begins at a later time and it is just and reasonable for the amount of ordinary income to arise for the period (rather than an earlier one)."

(4) In section 259DD(2) (hybrid transfer deduction/non-inclusion mismatches: meaning of "permitted" taxable period of a payee), for paragraph (b) substitute—

"(b) the period begins at a later time and it is just and reasonable for the amount of ordinary income to arise for the period (rather than an earlier one)."

(5) In section 259EB (hybrid payer deduction/non-inclusion mismatches and their extent), after subsection (1) insert—

"(1A) But there is no hybrid payer deduction/non-inclusion mismatch so far as the relevant deduction is—

(a) a debit in respect of amortisation that is brought into account under section 729 or 731 of CTA 2009 (writing down the capitalised cost of an intangible fixed asset), or

(b) an amount that is deductible in respect of amortisation under a provision of the law of a territory outside the United Kingdom that is equivalent to either of those sections."

(6) In section 259FA (deduction/non-inclusion mismatches relating to transfers by permanent establishments), after subsection (4) insert—

"(4A) For the purposes of this section "the PE deduction" does not include—

(a) a debit in respect of amortisation that is brought into account under section 729 or 731 of CTA 2009 (writing down the capitalised cost of an intangible fixed asset), or

(b) an amount that is deductible in respect of amortisation under a provision of the law of a territory outside the United Kingdom that is equivalent to either of those sections."

(7) In section 259GB (hybrid payee deduction/non-inclusion mismatches and their extent), after subsection (1) insert—

"(1A) But there is no hybrid payee deduction/non-inclusion mismatch so far as the relevant deduction is—

(a) a debit in respect of amortisation that is brought into account under section 729 or 731 of CTA 2009 (writing down the capitalised cost of an intangible fixed asset), or

(b) an amount that is deductible in respect of amortisation under a provision of the law of a territory outside the United Kingdom that is equivalent to either of those sections."

(8) In section 259HB (multinational payee deduction/non-inclusion mismatches and their extent), after subsection (1) insert—

"(1A) But there is no multinational payee deduction/non-inclusion mismatch so far as the relevant deduction is—

(a) a debit in respect of amortisation that is brought into account under section 729 or 731 of CTA 2009 (writing down the capitalised cost of an intangible fixed asset), or

(b) an amount that is deductible in respect of amortisation under a provision of the law of a territory outside the United Kingdom that is equivalent to either of those sections."

(9) In section 259KB (imported mismatches: meaning of "excessive PE deduction" etc), after subsection (3) insert—

"(3A) For the purposes of this section a "PE deduction" does not include—

(a) a debit in respect of amortisation that is brought into account under section 729 or 731 of CTA 2009 (writing down the capitalised cost of an intangible fixed asset), or

(b) an amount that is deductible in respect of amortisation under a provision of the law of a territory outside the United Kingdom that is equivalent to either of those sections."

(10) The amendment made by subsection (2)—

(a) has effect, in the case of its application to Chapter 6 of Part 6A of TIOPA 2010, in relation to excessive PE deductions in relation to which the relevant PE period begins on or after 13 July 2017,

(b) has effect, in the case of its application to Chapter 9 or 10 of that Part, in relation to accounting periods beginning on or after that date, and

(c) has effect, in the case of its application to any other Chapter of that Part, in relation to—

(i) payments made on or after date, or

(ii) quasi-payments in relation to which the payment period begins on or after that date.

(11) For the purposes of subsection (10)(a), (b) and (c)(ii), where there is a straddling period—

(a) so much of the straddling period as falls before 13 July 2017, and so much of it as falls on or after that date, are to be treated as separate accounting periods or separate taxable periods (as the case may be), and

(b) if it is necessary to apportion an amount for the straddling period to the two separate periods, it is to be apportioned—

(i) on a time basis according to the respective length of the separate periods, or

(ii) if that would produce a result that is unjust or unreasonable, on a just and reasonable basis.

(12) A "straddling period" means an accounting period or payment period (as the case may be) beginning before 13 July 2017 and ending on or after that date.

(13) Part 6A of TIOPA 2010 has effect, and is to be deemed always to have had effect, with the amendments set out in subsections (3) to (9).

25 Trading profits taxable at the Northern Ireland rate

Schedule 7 contains—

(a) amendments of Part 8B of CTA 2010 (trading profits taxable at the Northern Ireland rate), and

(b) amendments consequential on or related to those amendments.