



Corporation Tax Act 2010

2010 CHAPTER 4

[^{F1}PART 8A

PROFITS ARISING FROM THE EXPLOITATION OF PATENTS ETC

[^{F1}CHAPTER 3

RELEVANT IP PROFITS

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\(1\)](#)

Steps for calculating relevant IP profits of a trade

357C Relevant IP profits

- (1) To determine the relevant IP profits of a trade of a company for an accounting period—

Step 1 Calculate the total gross income of the trade for the accounting period (see section 357CA).

Step 2 Calculate the percentage (“X%”) given by the following formula—

$$\text{RIPI} \div \text{TI} \times 100$$

where—

“RIPI” is so much of the total gross income of the trade for the accounting period as is relevant IP income (see sections 357CC and 357CD), and

“TI” is the total gross income of the trade for the accounting period.

Step 3 Calculate X% of the profits of the trade for the accounting period. If there are no such profits, calculate X% of the losses of the trade (expressed as a

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negative figure) for the accounting period. In calculating the profits of the trade for the purposes of this step, make any adjustments required by section 357CG (and references in this step to the profits or losses of the trade are to be read subject to any such adjustments).

Step 4 Deduct from the amount given by Step 3 the routine return figure (see section 357CI). 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).

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).

Total gross income of trade

357CA Total gross income of a trade

- (1) For the purposes of this Part the “total gross income” of a trade of a company for an accounting period is the aggregate of the amounts falling within the Heads set out in—
 - (a) subsection (3) (revenue),
 - (b) subsection (5) (compensation),
 - (c) subsection (6) (adjustments),
 - (d) subsection (7) (proceeds from intangible fixed assets),
 - (e) subsection (8) (profits from patent rights).
- (2) But the total gross income of the trade does not include any finance income (see section 357CB).
- (3) Head 1 is any amounts which—
 - (a) in accordance with generally accepted accounting practice (“GAAP”) are recognised as revenue in the company's profit and loss account or income statement for the accounting period, and
 - (b) are brought into account as credits in calculating the profits of the trade for the accounting period.
- (4) Where the company does not draw up accounts for an accounting period in accordance with GAAP, the reference in subsection (3)(a) to any amounts which in accordance with GAAP are recognised as revenue in the company's profit and loss account or income statement for the accounting period is to be read as a reference to any amounts

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which would be so recognised if the company had drawn up such accounts for that accounting period.

- (5) Head 2 is any amounts of damages, proceeds of insurance or other compensation (so far as not falling within Head 1) which are brought into account as credits in calculating the profits of the trade for the accounting period.
- (6) Head 3 is any amounts (so far as not falling within Head 1) which are brought into account as receipts under section 181 of CTA 2009 (adjustment on change of basis) in calculating the profits of the trade for the accounting period.
- (7) Head 4 is any amounts (so far as not falling within Head 1) which are brought into account as credits under Chapter 4 of Part 8 of CTA 2009 (realisation of intangible fixed assets) in calculating the profits of the trade for the accounting period.
- (8) Head 5 is any profits from the sale by the company of the whole or part of any patent rights held for the purposes of the trade which are taxed under section 912 of CTA 2009 in the accounting period.

357CB Finance income

- (1) For the purposes of this Part “finance income”, in relation to a trade of a company, means—
 - (a) any credits which are treated as receipts of the trade by virtue of—
 - (i) section 297 of CTA 2009 (credits in respect of loan relationships), or
 - (ii) section 573 of CTA 2009 (credits in respect of derivative contracts),
 - (b) any amount which in accordance with generally accepted accounting practice falls to be recognised as arising from a financial asset, and
 - (c) any return, in relation to an amount, which—
 - (i) is produced for the company by an arrangement to which it is party, and
 - (ii) is economically equivalent to interest.
- (2) In subsection (1)—

“economically equivalent to interest” is to be construed in accordance with section 486B(2) and (3) of CTA 2009, and

“financial asset” means a financial asset as defined for the purposes of generally accepted accounting practice.
- (3) For the purposes of subsection (1)(c), the amount of a return is the amount which by virtue of the return would, in calculating the company's chargeable profits, be treated under section 486B of CTA 2009 (disguised interest to be regarded as profit from loan relationship) as a profit arising to the company from a loan relationship.

But, in calculating that profit for the purposes of this subsection, sections 486B(7) and 486C to 486E of that Act are to be ignored.

Relevant IP income

357CC Relevant IP income

- (1) For the purposes of this Part “relevant IP income” means income falling within any of the Heads set out in—

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- (a) subsection (2) (sales income),
- (b) subsection (6) (licence fees),
- (c) subsection (7) (proceeds of sale etc),
- (d) subsection (8) (damages for infringement),
- (e) subsection (9) (other compensation).

This is subject to section 357CE (excluded income).

- (2) Head 1 is income arising from the sale by the company of any of the following items—
- (a) items in respect of which a qualifying IP right held by the company has been granted (“qualifying items”);
 - (b) items incorporating one or more qualifying items;
 - (c) items that are wholly or mainly designed to be incorporated into items within paragraph (a) or (b).
- (3) For the purposes of this Part an item and its packaging are not to be treated as a single item, unless the packaging performs a function that is essential for the use of the item for the purposes for which it is intended to be used.
- (4) In subsection (3) “packaging”, in relation to an item, means any form of container or other packaging used for the containment, protection, handling, delivery or presentation of the item, including by way of attaching the item to, or winding the item round, some other article.
- (5) In a case where a qualifying item and an item that is designed to incorporate that item (“the parent item”) are sold together as, or as part of, a single unit for a single price, the reference in subsection (2)(b) to an item incorporating a qualifying item includes a reference to the parent item.
- (6) Head 2 is income consisting of any licence fee or royalty which the company receives under an agreement granting another person any of the following rights only—
- (a) a right in respect of any qualifying IP right held by the company,
 - (b) any other right in respect of a qualifying item or process, and
 - (c) in the case of an agreement granting any right within paragraph (a) or (b), a right granted for the same purposes as those for which that right was granted.
- In this subsection “qualifying process” means a process in respect of which a qualifying IP right held by the company has been granted.
- (7) Head 3 is any income arising from the sale or other disposal of a qualifying IP right or an exclusive licence in respect of such a right.
- (8) Head 4 is any amount received by the company in respect of an infringement, or alleged infringement, of a qualifying IP right held by the company at the time of the infringement or alleged infringement.
- (9) Head 5 is any amount of damages, proceeds of insurance or other compensation, other than an amount in respect of an infringement or alleged infringement of a qualifying IP right, which is received by the company in respect of an event and—
- (a) is paid in respect of any items that fell within subsection (2) at the time of that event, or
 - (b) represents a loss of income which would, if received by the company at the time of that event, have been relevant IP income.

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- (10) But income is not relevant IP income by virtue of subsection (8) or (9) unless the event in respect of which the income is received, or any part of that event, occurred at a time when—
 - (a) the company was a qualifying company, and
 - (b) an election under section 357A had effect in relation to it.
- (11) In a case where the whole of that event does not occur at such a time, subsection (8) or (9) (as the case may be) applies only to so much of the amount received by the company in respect of the event as on a just and reasonable apportionment is properly attributable to such a time.
- (12) Any reference in this section to a qualifying IP right held by the company includes a reference to a qualifying IP right in respect of which the company holds an exclusive licence.

357CD Notional royalty

- (1) This section applies where—
 - (a) a company, for the purposes of any trade of the company, holds any rights mentioned in paragraph (a), (b) or (c) of section 357BB(1) (rights to which this Part applies) or an exclusive licence in respect of any such rights, and
 - (b) the rights are relevant qualifying IP rights.
- (2) For the purposes of this section a qualifying IP right is a “relevant qualifying IP right” in relation to an accounting period if—
 - (a) the total gross income of the trade of the company for the accounting period includes any income arising from things done by the company that involve the exploitation by the company of that right, and
 - (b) that income is not relevant IP income or excluded income.Such income is referred to in this section as “IP-derived income”.
- (3) The company may elect that the notional royalty in respect of the trade for the accounting period is to be treated for the purposes of this Part as if it were relevant IP income.
- (4) The notional royalty in respect of a trade of a company for an accounting period is the appropriate percentage of the IP-derived income for that accounting period.
- (5) The “appropriate percentage” is the proportion of any IP-derived income for an accounting period which the company would pay another person (“P”) for the right to exploit the relevant qualifying IP rights in that accounting period if the company were not otherwise able to exploit them.
- (6) For the purposes of determining the appropriate percentage under this section, assume that—
 - (a) the company and P are dealing at arm's length,
 - (b) the company, or the company and persons authorised by it, will have the right to exploit the relevant qualifying IP rights to the exclusion of any other person (including P),
 - (c) the company will have the same rights in relation to the relevant qualifying IP rights as it actually has,
 - (d) the relevant qualifying IP rights are conferred on the relevant day,

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- (e) the appropriate percentage for the accounting period is determined at the beginning of the accounting period,
 - (f) the appropriate percentage for the accounting period will apply for each succeeding accounting period for which the company will have the right to exploit the relevant qualifying IP rights, and
 - (g) no income other than IP-derived income will arise from anything done by the company that involves the exploitation by the company of the relevant qualifying IP rights.
- (7) In subsection (6)(d) “the relevant day”, in relation to a relevant qualifying IP right or a licence in respect of such a right, means—
- (a) the first day of the accounting period, or
 - (b) if later, the day on which the company first began to hold the right or licence.
- (8) In determining the appropriate percentage, the company must act in accordance with—
- (a) Article 9 of the OECD Model Tax Convention, and
 - (b) the OECD transfer pricing guidelines.
- (9) In this section “excluded income” means any income falling within any of the Heads in section 357CE.

357CE Excluded income

- (1) For the purposes of this Part income falling within any of the Heads set out in the following subsections is not relevant IP income—
- (a) subsection (2) (ring fence income),
 - (b) subsection (3) (income attributable to non-exclusive licences).
- (2) Head 1 is income arising from oil extraction activities or oil rights.
- In this subsection “oil extraction activities” and “oil rights” have the same meaning as in Part 8 (see sections 272 and 273).
- (3) Head 2 is income which on a just and reasonable apportionment is properly attributable to a licence (a “non-exclusive licence”) held by the company which—
- (a) is a licence in respect of an item or process, but
 - (b) is not an exclusive licence in respect of a qualifying IP right.
- (4) In a case where—
- (a) a company holds an exclusive licence in respect of a qualifying IP right, and
 - (b) the licence also confers on the company (or on the company and persons authorised by it) any right in respect of the invention otherwise than to the exclusion of all other persons,

the licence is to be treated for the purposes of this Part as if it were two separate licences, one an exclusive licence that does not confer any such rights, and the other a non-exclusive licence conferring those rights.

357CF Mixed sources of income

- (1) This section applies to any income that—
- (a) is mixed income, or
 - (b) is paid under a mixed agreement.

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- (2) “Mixed income” means the proceeds of sale in a case where an item falling within subsection (2) of section 357CC and an item not falling within that subsection are sold together as, or as part of, a single unit for a single price.
- (3) A “mixed agreement” is an agreement providing for—
- (a) one or more of the matters in paragraphs (a) to (c) of subsection (4), and
 - (b) one or more of the matters in paragraphs (d) to (g) of that subsection.
- (4) The matters are—
- (a) the sale of an item falling within section 357CC(2),
 - (b) the grant of any right falling within paragraph (a), (b) or (c) of section 357CC(6),
 - (c) a sale or disposal falling within section 357CC(7),
 - (d) the sale of any other item,
 - (e) the grant of any other right,
 - (f) any other sale or disposal,
 - (g) the provision of any services.
- (5) So much of the income as on a just and reasonable apportionment is properly attributable to—
- (a) the sale of an item falling within section 357CC(2),
 - (b) the grant of any right falling within paragraph (a), (b) or (c) of section 357CC(6), or
 - (c) a sale or disposal falling within section 357CC(7),
- is to be regarded for the purposes of this Part as relevant IP income.
- (6) But where the amount of income that on such an apportionment is properly attributable to any of the matters in paragraphs (d) to (g) of subsection (4) is a trivial proportion of the income to which this section applies, all of that income is to be regarded for the purposes of this Part as relevant IP income.

Calculating profits of trade

357CG Adjustments in calculating profits of trade

- (1) This section applies for the purposes of determining the relevant IP profits of a trade of a company for an accounting period.
- (2) In calculating the profits of the trade for the accounting period—
- (a) there are to be added the amounts in subsection (3), and
 - (b) there are to be deducted the amounts in subsection (4).
- (3) The amounts to be added are—
- (a) the amount of any debits which are treated as expenses of the trade by virtue of—
 - (i) section 297 of CTA 2009 (debts in respect of loan relationships), or
 - (ii) section 573 of CTA 2009 (debts in respect of derivative contracts),

F2
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- (b) the amount of any additional deduction for the accounting period obtained by the company under Part 13 of CTA 2009 for expenditure on research and development in relation to the trade.
 - [^{F3}(c) the amount of any additional deduction for the accounting period obtained by the company under Part 15A of CTA 2009 in respect of qualifying expenditure on a television programme, and
 - (d) the amount of any additional deduction for the accounting period obtained by the company under Part 15B of CTA 2009 in respect of qualifying expenditure on a video game.]
- (4) The amounts to be deducted are [^{F4}—
- (a) the amount of any R&D expenditure credits (within the meaning of Chapter 6A of Part 3 of CTA 2009) brought into account in calculating the profits of the trade for the accounting period, and]
 - (b) any amounts of finance income brought into account in calculating the profits of the trade for the accounting period.
(For the meaning of “finance income”, see section 357CB.)
- (5) In a case where there is a shortfall in R&D expenditure in relation to the trade for a relevant accounting period (see section 357CH), the amount of R&D expenditure brought into account in calculating the profits of the trade for that accounting period is to be increased by the amount mentioned in section 357CH(2).
- [^{F5}(5A) In a case where—
- (a) the company is—
 - (i) a television production company in relation to a television programme, or
 - (ii) a video games development company in relation to a video game, and
 - (b) there is a shortfall in qualifying expenditure in relation to the separate programme trade or (as the case may be) the separate video game trade for a relevant accounting period (see section 357CHA),
- the amount of qualifying expenditure brought into account in calculating the profits of the trade for that accounting period is to be increased by the amount mentioned in section 357CHA(2).]
- (6) For the purposes of [^{F6}subsections (5) and (5A)] —
- [^{F7}“qualifying expenditure”—
- (a) in relation to a company that is a television production company, has the same meaning as in Chapter 3 of Part 15A of CTA 2009, and
 - (b) in relation to a company that is a video games development company, has the same meaning as in Chapter 3 of Part 15B of that Act,]
- “R&D expenditure” means expenditure on research and development in relation to the trade,
- “relevant accounting period”, in relation to a company, means—
- (a) the first accounting period for which—
 - (i) the company is a qualifying company, and
 - (ii) an election under section 357A has effect in relation to it, and
 - (b) each accounting period that begins before the end of the period of 4 years beginning with that accounting period, ^{F8}...

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“research and development” means activities, other than oil and gas exploration and appraisal, that fall to be treated as research and development in accordance with generally accepted accounting practice.

[^{F9}“the separate programme trade”, in relation to a television production company, has the same meaning as in Chapter 2 of Part 15A of CTA 2009 (see section 1216B),

“the separate video game trade”, in relation to a video games development company, has the same meaning as in Chapter 2 of Part 15B of CTA 2009 (see section 1217B),

“television production company” has the same meaning as in Part 15A of CTA 2009 (see section 1216AE), and

“video games development company” has the same meaning as in Part 15B of CTA 2009 (see section 1217AB).]

Textual Amendments

- F2** Word in s. 357CG(3)(a) omitted (with effect in accordance with Sch. 18 para. 23 of the amending Act) by virtue of Finance Act 2013 (c. 29), Sch. 18 paras. 18(2), 22; S.I. 2013/1817, art. 2(2); S.I. 2014/1962, art. 2(3)
- F3** S. 357CG(3)(c)(d) inserted (with effect in accordance with Sch. 18 para. 23 of the amending Act) by Finance Act 2013 (c. 29), Sch. 18 paras. 18(2), 22; S.I. 2013/1817, art. 2(2); S.I. 2014/1962, art. 2(3)
- F4** Words in s. 357CG(4) inserted (with effect in accordance with Sch. 15 para. 27 of the amending Act) by Finance Act 2013 (c. 29), Sch. 15 para. 10(a)
- F5** S. 357CG(5A) inserted (with effect in accordance with Sch. 18 para. 23 of the amending Act) by Finance Act 2013 (c. 29), Sch. 18 paras. 18(3), 22; S.I. 2013/1817, art. 2(2); S.I. 2014/1962, art. 2(3)
- F6** Words in s. 357CG(6) substituted (with effect in accordance with Sch. 18 para. 23 of the amending Act) by Finance Act 2013 (c. 29), Sch. 18 paras. 18(4)(a), 22; S.I. 2013/1817, art. 2(2); S.I. 2014/1962, art. 2(3)
- F7** Words in s. 357CG(6) inserted (with effect in accordance with Sch. 18 para. 23 of the amending Act) by Finance Act 2013 (c. 29), Sch. 18 paras. 18(4)(b), 22; S.I. 2013/1817, art. 2(2); S.I. 2014/1962, art. 2(3)
- F8** Word in s. 357CG(6) omitted (with effect in accordance with Sch. 18 para. 23 of the amending Act) by virtue of Finance Act 2013 (c. 29), Sch. 18 paras. 18(4)(c), 22; S.I. 2013/1817, art. 2(2); S.I. 2014/1962, art. 2(3)
- F9** Words in s. 357CG(6) inserted (with effect in accordance with Sch. 18 para. 23 of the amending Act) by Finance Act 2013 (c. 29), Sch. 18 paras. 18(4)(d), 22; S.I. 2013/1817, art. 2(2); S.I. 2014/1962, art. 2(3)

357CH Shortfall in R&D expenditure

- (1) There is a shortfall in R&D expenditure in relation to a trade of a company for a relevant accounting period if the actual R&D expenditure of the trade for the accounting period (as adjusted under subsections (8) to (11)) is less than 75% of the average amount of R&D expenditure.
- (2) The amount that is to be added to the actual R&D expenditure for the purposes of section 357CG(5) is an amount equal to the difference between—
 - (a) 75% of the average amount of R&D expenditure, and
 - (b) the actual R&D expenditure, as adjusted under subsections (8) to (11).
- (3) In this section—

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- (a) the “actual R&D expenditure” of a trade of a company for an accounting period is the amount of R&D expenditure that (ignoring section 357CG(5)) is brought into account in calculating the profits of the trade for the accounting period, and
- (b) “R&D expenditure” and “relevant accounting period” have the meaning given by section 357CG(6).

(4) The average amount of R&D expenditure is—

$$\frac{E}{N} \times 365$$

where—

E is the amount of R&D expenditure that—

- (a) has been incurred by the company during the relevant period, and
- (b) has been brought into account in calculating the profits of the trade for any accounting period ending before the first relevant accounting period, and

N is the number of days in the relevant period.

(5) The relevant period is the shorter of—

- (a) the period of 4 years ending immediately before the first relevant accounting period, and
- (b) the period beginning with the day on which the company begins to carry on the trade and ending immediately before the first relevant accounting period.

(6) For a relevant accounting period of less than 12 months, the average amount of R&D expenditure is proportionately reduced.

(7) Subsections (8) to (11) apply for the purposes of determining—

- (a) whether there is a shortfall in R&D expenditure for a relevant accounting period, and
- (b) if there is such a shortfall, the amount to be added by virtue of subsection (2).

(8) If the amount of the actual R&D expenditure for a relevant accounting period is greater than the average amount of R&D expenditure, the difference between the two amounts is to be added to the actual R&D expenditure for the next relevant accounting period.

(9) If—

- (a) there is not a shortfall in R&D expenditure for a relevant accounting period, but
- (b) in the absence of any additional amount, there would be a shortfall in R&D expenditure for that accounting period,

the remaining portion of the additional amount is to be added to the actual R&D expenditure for the next relevant accounting period.

(10) For the purposes of this section—

“additional amount”, in relation to a relevant accounting period, means any amount added to the actual R&D expenditure for that accounting period by virtue of subsection (8), (9) or (11), and

“the remaining portion” of an additional amount is so much of that amount as exceeds the difference between—

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- (a) the actual R&D expenditure for the relevant accounting period in the absence of the additional amount, and
 - (b) 75% of the average amount of R&D expenditure.
- (11) If—
- (a) there is not a shortfall in R&D expenditure for a relevant accounting period, and
 - (b) there would not be a shortfall in R&D expenditure for that accounting period in the absence of any additional amount,
- the additional amount is to be added to the actual R&D expenditure for the next relevant accounting period (in addition to any additional amount so added by virtue of subsection (8)).

[^{F10}357C] Shortfall in qualifying expenditure

- (1) There is a shortfall in qualifying expenditure in relation to the separate programme trade of a television production company or (as the case may be) the separate video game trade of a video games development company for a relevant accounting period if the actual qualifying expenditure of the trade for the accounting period (as adjusted under subsections (8) to (11)) is less than 75% of the average amount of qualifying expenditure.
- (2) The amount that is to be added to the actual qualifying expenditure for the purposes of section 357CG(5A) is an amount equal to the difference between—
 - (a) 75% of the average amount of qualifying expenditure, and
 - (b) the actual qualifying expenditure, as adjusted under subsections (8) to (11).
- (3) In this section—
 - (a) the “actual qualifying expenditure” of a trade of a company for an accounting period is the amount of qualifying expenditure that (ignoring section 357CG(5A)) is brought into account in calculating the profits of the trade for the accounting period, and
 - (b) the following terms have the meaning given by section 357CG(6)—
 - “qualifying expenditure”,
 - “relevant accounting period”,
 - “the separate programme trade”,
 - “the separate video game trade”,
 - “television production company”,
 - “video games development company”.
- (4) The average amount of qualifying expenditure is—

$$E N \times 365$$

where—

E is the amount of qualifying expenditure that—

- (a) has been incurred by the company during the relevant period, and
- (b) has been brought into account in calculating the profits of the trade for any accounting period ending before the first relevant accounting period, and

N is the number of days in the relevant period.

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- (5) The relevant period is the shorter of—
- (a) the period of 4 years ending immediately before the first relevant accounting period, and
 - (b) the period beginning with the day on which the company begins to carry on the trade and ending immediately before the first relevant accounting period.
- (6) For a relevant accounting period of less than 12 months, the average amount of qualifying expenditure is proportionately reduced.
- (7) Subsections (8) to (11) apply for the purposes of determining—
- (a) whether there is a shortfall in qualifying expenditure for a relevant accounting period, and
 - (b) if there is such a shortfall, the amount to be added by virtue of subsection (2).
- (8) If the amount of the actual qualifying expenditure for a relevant accounting period is greater than the average amount of qualifying expenditure, the difference between the two amounts is to be added to the actual qualifying expenditure for the next relevant accounting period.
- (9) If—
- (a) there is not a shortfall in qualifying expenditure for a relevant accounting period, but
 - (b) in the absence of any additional amount, there would be a shortfall in qualifying expenditure for that accounting period,
- the remaining portion of the additional amount is to be added to the actual qualifying expenditure for the next relevant accounting period.
- (10) For the purposes of this section—
- “additional amount”, in relation to a relevant accounting period, means any amount added to the actual qualifying expenditure for that accounting period by virtue of subsection (8), (9) or (11), and
- “the remaining portion” of an additional amount is so much of that amount as exceeds the difference between—
- (a) the actual qualifying expenditure for the relevant accounting period in the absence of the additional amount, and
 - (b) 75% of the average amount of qualifying expenditure.
- (11) If—
- (a) there is not a shortfall in qualifying expenditure for a relevant accounting period, and
 - (b) there would not be a shortfall in qualifying expenditure for that accounting period in the absence of any additional amount,
- the additional amount is to be added to the actual qualifying expenditure for the next relevant accounting period (in addition to any additional amount so added by virtue of subsection (8)).]

Textual Amendments

F10 S. 357CHA inserted (with effect in accordance with Sch. 18 para. 23 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 18 paras. 19, 22](#); [S.I. 2013/1817](#), [art. 2\(2\)](#); [S.I. 2014/1962](#), [art. 2\(3\)](#)

Status: Point in time view as at 17/07/2014.

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Routine return figure

357CI Routine return figure

- (1) To determine the routine return figure in relation to a trade of a company for an accounting period—
 - Step 1* Take the aggregate of any routine deductions made by the company in calculating the profits of the trade for the accounting period. For the meaning of “routine deductions”, see sections 357CJ and 357CK.
 - Step 2* Multiply that amount by 0.1.
 - Step 3* Calculate X% of the amount given by Step 2. “X%” is the percentage given by Step 2 in section 357C(1).
- (2) In a case where—
 - (a) the company (“C”) is a member of a group,
 - (b) another member of the group incurs expenses on behalf of C,
 - (c) had they been incurred by C, C would have made a deduction in respect of the expenses in calculating the profits of the trade for the accounting period, and
 - (d) the deduction would have been a routine deduction,C is to be treated for the purposes of subsection (1) as having made such a routine deduction.
- (3) Where expenses are incurred by any member of the group on behalf of C and any other member of the group, subsection (2) applies in relation to so much of the amount of the expenses as on a just and reasonable apportionment may properly be regarded as incurred on behalf of C.

357CJ Routine deductions

- (1) For the purposes of section 357CI “routine deductions” means deductions falling within any of the Heads set out in—
 - (a) subsection (2) (capital allowances),
 - (b) subsection (3) (costs of premises),
 - (c) subsection (4) (personnel costs),
 - (d) subsection (5) (plant and machinery costs),
 - (e) subsection (6) (professional services),
 - (f) subsection (7) (miscellaneous services).This is subject to section 357CK (deductions that are not routine deductions).
- (2) Head 1 is any allowances under CAA 2001.
- (3) Head 2 is any deductions made by the company in respect of any premises occupied by the company.
- (4) Head 3 is any deductions made by the company in respect of—
 - (a) any director or employee of the company, or
 - (b) any externally provided workers.
- (5) Head 4 is any deductions made by the company in respect of any plant or machinery used by the company.

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- (6) Head 5 is any deductions made by the company in respect of any of the following services—
- (a) legal services, other than IP-related services;
 - (b) financial services, including—
 - (i) insurance services, and
 - (ii) valuation or actuarial services;
 - (c) services provided in connection with the administration or management of the company's directors and employees;
 - (d) any other consultancy services.
- (7) Head 6 is any deductions made by the company in respect of any of the following services—
- (a) the supply of water, fuel or power;
 - (b) telecommunications services;
 - (c) computing services, including computer software;
 - (d) postal services;
 - (e) the transportation of any items;
 - (f) the collection, removal and disposal of refuse.
- (8) In this section—
- “externally provided worker” has the same meaning as in Part 13 of CTA 2009 (see section 1128 of that Act),
- “IP-related services” means services provided in connection with—
- (a) any application for a right to which this Part applies, or
 - (b) any proceedings relating to the enforcement of any such right,
- “premises” includes any land,
- “telecommunications service” means any service that consists in the provision of access to, and of facilities for making use of, any telecommunication system (whether or not one provided by the person providing the service), and
- “telecommunication system” means any system (including the apparatus comprised in it) which exists for the purpose of facilitating the transmission of communications by any means involving the use of electrical or electromagnetic energy.
- (9) The Treasury may by order amend this section.

357CK Deductions that are not routine deductions

- (1) For the purposes of section 357CI a deduction is not a “routine deduction” if it falls within any of the Heads set out in—
- (a) subsection (2) (loan relationships and derivative contracts),
 - (b) subsection (3) (R&D expenses),
 - (c) subsection (4) (capital allowances for R&D or patents),
 - (d) subsection (5) (R&D-related employee share acquisitions).
 - [subsection (7A) (television production expenditure),
 - ^{F11}(e) subsection (7B) (video games development expenditure).]

Status: Point in time view as at 17/07/2014.

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- (2) Head 1 is any debits which are treated as expenses of the trade by virtue of —
- (a) section 297 of CTA 2009 (debits in respect of loan relationships), or
 - (b) section 573 of CTA 2009 (debits in respect of derivative contracts).
- (3) Head 2 is—
- (a) the amount of any expenditure on research and development in relation to the trade
 - ^{F12}(i) for which an additional deduction for the accounting period is obtained by the company under Part 13 of CTA 2009, and
[^{F13}, or
 - (ii) in respect of which the company is entitled to an R&D expenditure credit for the accounting period under Chapter 6A of Part 3 of CTA 2009,]
 - (b) [^{F14}where the company obtains an additional deduction as mentioned in paragraph (a)(i),] the amount of that additional deduction.
- (4) Head 3 is any allowances under—
- (a) Part 6 of CAA 2001 (research and development allowances), or
 - (b) Part 8 of CAA 2001 (patent allowances).
- (5) Head 4 is the appropriate proportion of any deductions allowed under Part 12 of CTA 2009 (relief for employee share acquisitions) in a case where—
- (a) shares are acquired by an employee or another person because of the employee's employment by the company, and
 - (b) the employee is wholly or partly engaged directly and actively in relevant research and development (within the meaning of section 1042 of CTA 2009).
- (6) In subsection (5) “the appropriate proportion”, in relation to a deduction allowed in respect of an employee, is the proportion of the staffing costs in respect of the employee which are attributable to relevant research and development for the purposes of Part 13 of CTA 2009 (see section 1124 of that Act).
- “Staffing costs” has the same meaning as in that Part (see section 1123 of that Act).
- (7) Subsections (5) and (6) of section 1124 of CTA 2009 apply for the purposes of subsection (5)(b) as they apply for the purposes of that section.
- [Head 5 is—
- ^{F15}(7A) (a) the amount of any qualifying expenditure on a television programme for which an additional deduction for the accounting period is obtained by the company under Part 15A of CTA 2009, and
- (b) the amount of that additional deduction.
- (7B) Head 6 is—
- (a) the amount of any qualifying expenditure on a video game for which an additional deduction for the accounting period is obtained by the company under Part 15B of CTA 2009, and
 - (b) the amount of that additional deduction.]
- (8) The Treasury may by order amend this section.

Status: Point in time view as at 17/07/2014.

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Textual Amendments

- F11** S. 357CK(1)(e)(f) inserted (with effect in accordance with Sch. 18 para. 23 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 18 paras. 20(2), 22**; S.I. 2013/1817, art. 2(2); S.I. 2014/1962, art. 2(3)
- F12** Words in s. 357CK(3)(a) renumbered as s. 357CK(3)(a)(i) (with effect in accordance with Sch. 15 para. 27 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 15 para. 11(a)**
- F13** S. 357CK(3)(a)(ii) and word inserted (with effect in accordance with Sch. 15 para. 27 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 15 para. 11(b)**
- F14** Words in s. 357CK(3)(b) inserted (with effect in accordance with Sch. 15 para. 27 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 15 para. 11(c)**
- F15** S. 357CK(7A)(7B) inserted (with effect in accordance with Sch. 18 para. 23 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 18 paras. 20(3), 22**; S.I. 2013/1817, art. 2(2); S.I. 2014/1962, art. 2(3)

Election for small claims treatment

357CL Companies eligible to elect for small claims treatment

- (1) A company may elect for small claims treatment for an accounting period if condition A or B is met in relation to the accounting period.
- (2) Condition A is that the aggregate of the amounts of qualifying residual profit of each trade of the company for the accounting period does not exceed £1,000,000.
- (3) Condition B is that—
 - (a) the aggregate of the amounts of qualifying residual profit of each trade of the company for the accounting period does not exceed the relevant maximum, and
 - (b) the company did not take Step 6 in section 357C(1) or 357DA(1) for the purpose of calculating the relevant IP profits of any trade of the company for any previous accounting period beginning within the relevant 4-year period.
- (4) In subsection (3)(b) “the relevant 4-year period” means the period of 4 years ending immediately before the accounting period mentioned in subsection (3)(a).
- (5) If ^{F16}no other company is a related 51% group company of the company] in the accounting period, the relevant maximum is £3,000,000.
- (6) If ^{F17}one or more other companies are related 51% group companies of the company,] in the accounting period, the relevant maximum is—

$$£ 3,000,000 \ 1 + N$$
 where N is the number of ^{F18}those related 51% group] companies in relation to which an election under section 357A has effect for the accounting period.
- (7) For an accounting period of less than 12 months, the relevant maximum is proportionately reduced.
- (8) Any amount of qualifying residual profit of a trade of the company that is not greater than nil is to be disregarded for the purposes of this section.

^{F19}(9)

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Textual Amendments

- F16** Words in s. 357CL(5) substituted (with effect in accordance with Sch. 1 para. 21 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 1 para. 13\(2\)\(a\)](#)
- F17** Words in s. 357CL(6) substituted (with effect in accordance with Sch. 1 para. 21 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 1 para. 13\(2\)\(b\)\(i\)](#)
- F18** Words in s. 357CL(6) substituted (with effect in accordance with Sch. 1 para. 21 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 1 para. 13\(2\)\(b\)\(ii\)](#)
- F19** S. 357CL(9) omitted (with effect in accordance with Sch. 1 para. 21 of the amending Act) by virtue of [Finance Act 2014 \(c. 26\)](#), [Sch. 1 para. 13\(2\)\(c\)](#)

357CM Small claims amount

- (1) This section applies where a company elects for small claims treatment for an accounting period.
- (2) The small claims amount in relation to each trade of the company for the accounting period is—
 - (a) if the amount in subsection (3) is lower than the small claims threshold, 75% of the qualifying residual profit of the trade for the accounting period;
 - (b) in any other case, the amount given by—

SCT T

where—

SCT is the small claims threshold, and

T is the number of trades of the company.

- (3) The amount referred to in subsection (2)(a) is—

$$0.75 \times QRP$$

where QRP is the aggregate of the amounts of qualifying residual profit of each trade of the company for the accounting period (but see subsection (4)).

- (4) Any amount of qualifying residual profit of a trade of the company that is not greater than nil is to be disregarded for the purposes of subsection (3).
- (5) If ^{F20}no other company is a related 51% group company of the company] in the accounting period, the small claims threshold is £1,000,000.
- (6) If ^{F21}one or more other companies are related 51% group companies of the company,] in the accounting period, the small claims threshold is—

$$£ 1,000,000 \frac{1}{1 + N}$$

where N is the number of ^{F22}those related 51% group] companies in relation to which an election under section 357A has effect for the accounting period.

- (7) For an accounting period of less than 12 months, the small claims threshold is proportionately reduced.

^{F23}(8)

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Textual Amendments

- F20** Words in s. 357CM(5) substituted (with effect in accordance with Sch. 1 para. 21 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 1 para. 13\(3\)\(a\)](#)
- F21** Words in s. 357CM(6) substituted (with effect in accordance with Sch. 1 para. 21 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 1 para. 13\(3\)\(b\)\(i\)](#)
- F22** Words in s. 357CM(6) substituted (with effect in accordance with Sch. 1 para. 21 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 1 para. 13\(3\)\(b\)\(ii\)](#)
- F23** S. 357CM(8) omitted (with effect in accordance with Sch. 1 para. 21 of the amending Act) by virtue of [Finance Act 2014 \(c. 26\)](#), [Sch. 1 para. 13\(3\)\(c\)](#)

Marketing assets return figure

357CN Marketing assets return figure

- (1) The marketing assets return figure in relation to a trade of a company for an accounting period is—

$$\text{NMR} - \text{AMR}$$

where—

NMR is the notional marketing royalty in respect of the trade for the accounting period (see section 357CO), and

AMR is the actual marketing royalty in respect of the trade for the accounting period (see section 357CP).

- (2) Where—
- (a) AMR is greater than NMR, or
 - (b) the difference between NMR and AMR is less than 10% of the qualifying residual profit of the trade for the accounting period,
- the marketing assets return figure is nil.

357CO Notional marketing royalty

- (1) The notional marketing royalty in respect of a trade of a company for an accounting period is the appropriate percentage of the relevant IP income for that accounting period.

In this section “relevant IP income”, in relation to a trade of a company for an accounting period, means so much of the total gross income of the trade for the accounting period as is relevant IP income.

- (2) The “appropriate percentage” is the proportion of any relevant IP income for an accounting period which the company would pay another person (“P”) for the right to exploit the relevant marketing assets in that accounting period if the company were not otherwise able to exploit them.
- (3) For the purposes of this section a marketing asset is a “relevant marketing asset” in relation to an accounting period if the relevant IP income of the trade of the company for the accounting period includes any income arising from things done by the company that involve the exploitation by the company of that marketing asset.

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- (4) For the purposes of determining the appropriate percentage under this section, assume that—
- (a) the company and P are dealing at arm's length,
 - (b) the company, or the company and persons authorised by it, will have the right to exploit the relevant marketing assets to the exclusion of any other person (including P),
 - (c) the company will have the same rights in relation to the relevant marketing assets as it actually has,
 - (d) the right to exploit the relevant marketing assets is conferred on the relevant day,
 - (e) the appropriate percentage for the accounting period is determined at the beginning of the accounting period,
 - (f) the appropriate percentage for the accounting period will apply for each succeeding accounting period for which the company will have the right to exploit the relevant marketing assets, and
 - (g) no income other than relevant IP income will arise from anything done by the company that involves the exploitation by the company of the relevant marketing assets.
- (5) In subsection (4)(d) “the relevant day”, in relation to a relevant marketing asset, means—
- (a) the first day of the accounting period, or
 - (b) if later, the day on which the company first acquired the relevant marketing asset or the right to exploit the asset.
- (6) In determining the appropriate percentage, the company must act in accordance with—
- (a) Article 9 of the OECD Model Tax Convention, and
 - (b) the OECD transfer pricing guidelines.
- (7) In this section “marketing asset” means any of the following (whether or not capable of being transferred or assigned)—
- (a) anything in respect of which proceedings for passing off could be brought, including a registered trade mark (within the meaning of the Trade Marks Act 1994),
 - (b) anything that corresponds to a marketing asset within paragraph (a) and is recognised under the law of a country or territory outside the United Kingdom,
 - (c) any signs or indications (so far as not falling within paragraph (a) or (b)) which may serve, in trade, to designate the geographical origin of goods or services, and
 - (d) any information which relates to customers or potential customers of the company, or any other member of a group of which the company is a member, and is intended to be used for marketing purposes.

357CP Actual marketing royalty

- (1) The actual marketing royalty in respect of a trade of a company for an accounting period is X% of the aggregate of any sums which—
- (a) were paid by the company for the purposes of acquiring any relevant marketing assets, or the right to exploit any such assets, and

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- (b) were brought into account as debits in calculating the profits of the trade for the accounting period.

(2) In this section—

- “relevant marketing assets” has the same meaning as in section 357CO, and
- “X%” is the percentage given by Step 2 in section 357C(1).

Profits arising before grant of right

357CQ Profits arising before grant of right

(1) This section applies where a company—

- (a) holds a right mentioned in paragraph (a), (b) or (c) of section 357BB(1) (rights to which this Part applies) or an exclusive licence in respect of such a right, or
- (b) would hold such a right or licence but for the fact that the company disposed of any rights in the invention or (as the case may be) the licence before the right was granted.

(2) The company may elect that, for the purposes of determining the relevant IP profits of a trade of the company for the accounting period in which the right is granted, there is to be added the amount determined in accordance with subsection (3) (the “additional amount”).

(3) The additional amount is the difference between—

- (a) the aggregate of the relevant IP profits of the trade for each relevant accounting period, and
- (b) the aggregate of what the relevant IP profits of the trade for each relevant accounting period would have been if the right had been granted on the relevant day.

(4) For the purposes of determining the additional amount, the amount of any relevant IP profits to which section 357A does not apply by virtue of Chapter 5 (relevant IP losses) is to be disregarded.

(5) In this section “relevant accounting period” means—

- (a) the accounting period of the company in which the right is granted, and
- (b) any earlier accounting period of the company which meets the conditions in subsection (6).

(6) The conditions mentioned in subsection (5)(b) are—

- (a) that it is an accounting period for which an election made by the company under section 357A has effect,
- (b) that it is an accounting period for which the company is a qualifying company, and
- (c) that it ends on or after the relevant day.

(7) In this section “the relevant day” is the later of—

- (a) the first day of the period of 6 years ending with the day on which the right is granted, or
- (b) the day on which—
 - (i) the application for the grant of the right was filed, or

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- (ii) in the case of a company that holds an exclusive licence in respect of the right, the licence was granted.
- (8) Where the company would be a qualifying company for an accounting period but for the fact that the right had not been granted at any time during that accounting period, the company is to be treated for the purposes of this section as if it were a qualifying company for that accounting period.
- (9) Where the company would be a qualifying company for the accounting period in which the right was granted but for the fact that the company disposed of the rights or licence mentioned in subsection (1)(b) before the right was granted, the company is to be treated for the purposes of section 357A as if it were a qualifying company for that accounting period.]

Status:

Point in time view as at 17/07/2014.

Changes to legislation:

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