



# Corporation Tax Act 2010

## 2010 CHAPTER 4

### [<sup>F1</sup>PART 8A

PROFITS ARISING FROM THE EXPLOITATION OF PATENTS ETC

### [<sup>F1</sup>CHAPTER 2

QUALIFYING COMPANIES

#### 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\(1\)](#)

#### **357B** Meaning of “qualifying company”

- (1) A company is a qualifying company for an accounting period if—
  - (a) condition A or B is met, and
  - (b) in the case of a company that is a member of a group, condition C is met.
- (2) Condition A is that, at any time during the accounting period, the company—
  - (a) holds any qualifying IP rights, or
  - (b) holds an exclusive licence in respect of any qualifying IP rights.For the meaning of “exclusive licence”, see section 357BA.
- (3) Condition B is that—
  - (a) the company has held a qualifying IP right or an exclusive licence in respect of such a right,
  - (b) the company has received income in respect of an event which occurred in relation to the right or licence, or any part of which so occurred, at a time when—

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- (i) the company was a qualifying company, and
  - (ii) an election under section 357A had effect in relation to it, and
  - (c) the income falls to be taxed in the accounting period.
- (4) A right is a qualifying IP right for the purposes of this Part if—
- (a) it is a right to which this Part applies (see section 357BB), and
  - (b) the company meets the development condition in relation to the right (see section 357BC).
- (5) Condition C is that the company meets the active ownership condition for the accounting period (see section 357BE).

### **357BA Meaning of “exclusive licence”**

- (1) In this Part “exclusive licence”, in relation to a right (“the principal right”), means a licence which—
- (a) is granted by the person who holds either the principal right or an exclusive licence in respect of the principal right (“the proprietor”), and
  - (b) confers on the person holding the licence (“the licence-holder”), or on the licence-holder and persons authorised by it, the rights in respect of the principal right that are listed in subsection (2).
- (2) The rights are—
- (a) one or more rights conferred to the exclusion of all other persons (including the proprietor) in one or more countries or territories, and
  - (b) the right—
    - (i) to bring proceedings without the consent of the proprietor or any other person in respect of any infringement of the rights within paragraph (a), or
    - (ii) to receive the whole or the greater part of any damages awarded in respect of any such infringement.
- (3) Where the licence-holder has any right within subsection (2)(b) by virtue of any enactment or rule of law, the right is to be regarded for the purposes of this section as conferred by the licence.
- (4) Where—
- (a) a company (“C”) that is a member of a group holds either a right to which this Part applies or an exclusive licence in respect of such a right, and
  - (b) C confers on another company that is a member of the group all of the rights held by C in respect of the invention,
- that other company is to be treated for the purposes of this Part as holding an exclusive licence in respect of that right.
- (5) For the purposes of subsection (4) it does not matter if the rights conferred by C do not include the right to enforce, assign or grant a licence of any of those rights.

### **357BB Rights to which this Part applies**

- (1) This Part applies to the following rights—
- (a) a patent granted under the Patents Act 1977,
  - (b) a patent granted under the European Patent Convention,

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- (c) a right of a specified description which corresponds to a right within paragraph (a) or (b) and is granted under the law of a specified EEA state,
- (d) a supplementary protection certificate,
- (e) any plant breeders' rights granted in accordance with Part 1 of the Plant Varieties Act 1997,
- (f) any Community plant variety rights granted under Council Regulation (EC) No 2100/94.

(2) Where—

- (a) directions are in force under section 22 of the Patents Act 1977 (information prejudicial to national security or safety of public) with respect to an application for a patent under that Act, and
- (b) the person making the application has been notified under section 18(4) of that Act that the application complies with the requirements of the Act and the rules,

the person is to be treated for the purposes of this Part as if the person had been granted the patent under that Act.

(3) Where—

- (a) a person holds a marketing authorisation in respect of a product in accordance with any EU legislation, and
- (b) the product benefits from marketing protection (see subsection (4)) or data protection (see subsection (5)),

the person is to be treated for the purposes of this Part as having been granted a right to which this Part applies in respect of the product.

(4) For the purposes of this section a product benefits from marketing protection if—

- (a) the product benefits from marketing protection by virtue of Article 14.11 of Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human use, or
- (b) any of the following prohibitions is in force—
  - (i) the prohibition on placing on the market a generic of the product imposed by Article 10.1 of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use,
  - (ii) the prohibition imposed by Article 8.1 of Regulation (EC) No 141/2000 of the European Parliament and of the Council of 16 December 1999 on orphan medicinal products, and
  - (iii) the prohibition on placing on the market a generic of the product imposed by Article 13.1 of Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products.

(5) For the purposes of this section a product benefits from data protection if—

- (a) the product benefits from the data exclusivity conferred by Article 10.5 of Directive 2001/83/EC of the European Parliament and of the Council,
- (b) the prohibition on referring to the results of tests or trials in relation to the product imposed by Article 74a of that Directive is in force, or
- (c) data relating to the product benefits from data protection under Article 59 of Regulation (EC) No 1107/2009 of the European Parliament and of the Council

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of 21 October 2009 concerning the placing of plant protection products on the market.

- (6) The reference to data in subsection (5)(c) does not include a study necessary for the renewal or review of a marketing authorisation granted in respect of the product in accordance with Regulation (EC) No 1107/2009.
- (7) In this section—
- “European Patent Convention” means the Convention on the Grant of European Patents,
  - “rules” means rules made under section 123 of the Patents Act 1977,
  - “specified” means specified in an order made by the Treasury, and
  - “supplementary protection certificate” means a certificate issued under—
    - (a) Council Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products, or
    - (b) Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products.
- (8) The Treasury may by order—
- (a) amend this section so as to make provision about the circumstances in which a product benefits from marketing or data protection for the purposes of this section;
  - (b) make such provision amending any reference in this section to EU legislation as appears to them appropriate in consequence of any EU legislation amending or replacing that EU legislation.
- (9) An order made under this section may make any incidental, supplemental, consequential, transitional or saving provision, including provision amending or modifying this Part.

### **357BC The development condition**

- (1) A company meets the development condition in relation to a right if condition A, B, C or D is met.
- Section 357BD (meaning of “qualifying development”) applies for the purposes of this section.
- (2) Condition A is that—
- (a) the company has at any time carried out qualifying development in relation to the right, and
  - (b) the company has not ceased to be, or become, a controlled member of a group since that time.
- (3) Condition B is that—
- (a) the company has at any time carried out qualifying development in relation to the right,
  - (b) the company has ceased to be, or become, a controlled member of a group since that time,
  - (c) the company has, for a period of 12 months beginning with the day on which it ceased to be, or became, a controlled member of the group, performed

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- activities of the same description as those that constituted the qualifying development, and
- (d) the company remains a member of that group or (as the case may be) does not become a controlled member of any other group.
- (4) Condition C is that—
- (a) the company is a member of a group,
- (b) another company that is or has been a member of the group has carried out qualifying development in relation to the right, and
- (c) that other company was a member of the group at the time it carried out the qualifying development.
- (5) Condition D is that—
- (a) the company is a member of a group,
- (b) another company that is or has been a member of the group has carried out qualifying development in relation to the right,
- (c) that other company (“T”) or, where another member of the group begins to carry on the trade which T carried on immediately before becoming a member of the group, either or both of those companies have, while carrying on that trade as a member of the group, performed activities of the same description as those that constituted the qualifying development, and
- (d) those activities of those companies, taken together, have been performed for a period of 12 months beginning with the day on which T became a member of the group.
- (6) For the purposes of conditions A and B, a company becomes a controlled member of a group at any time if—
- (a) another company (“P”) either becomes the holder of a major interest in the company, or begins to control the company, at that time, and
- (b) immediately before that time the company was not associated with P or with any company associated with P immediately before that time.
- (7) For the purposes of conditions A and B, a company ceases to be a controlled member of a group at any time if—
- (a) every other company which immediately before that time held a major interest in, or controlled, the company ceases to do so, and
- (b) as a result the company ceases to be associated with any of those companies.
- (8) Where—
- (a) a company ceases to be a controlled member of a group at any time, and
- (b) at that time the company holds a major interest in, or controls, any other company,
- that other company is to be treated for the purposes of conditions A and B as also having ceased to be a controlled member of the group at that time.
- (9) In subsections (6) and (7) “associated” is to be read in accordance with section 357GD(3).
- (10) The following provisions apply for the purposes of subsections (6) to (8)—
- section 472 of CTA 2009 (meaning of “control”), and
- sections 473 and 474 of CTA 2009 (meaning of “major interest”).

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- (11) A company that meets the development condition in relation to a right by virtue of the performance of the activities mentioned in subsection (3) or (5) for the period of 12 months so mentioned is to be regarded as meeting that condition in relation to the right during that period (as well as at any other time when the company meets the condition).

### **357BD Meaning of “qualifying development”**

- (1) A company carries out “qualifying development” in relation to a right if—
- (a) it creates, or significantly contributes to the creation of, the invention, or
  - (b) it performs a significant amount of activity for the purposes of developing the invention or any item or process incorporating the invention.
- (2) The reference in subsection (1)(b) to developing the invention includes developing ways in which the invention may be used or applied.
- (3) For the purposes of section 357BC it does not matter whether the qualifying development was carried out before or after—
- (a) the company, or
  - (b) where the company is a member of a group, any member of the group, became the holder of the right or (as the case may be) an exclusive licence in respect of the right.

### **357BE The active ownership condition**

- (1) A company meets the active ownership condition for an accounting period if all or almost all of the qualifying IP rights held by the company in that accounting period are rights in respect of which condition A or B is met.
- (2) Condition A is that during the accounting period the company performs a significant amount of management activity in relation to the rights.
- (3) In subsection (2) “management activity”, in relation to any qualifying IP rights, means formulating plans and making decisions in relation to the development or exploitation of the rights.
- (4) Condition B is that the company meets the development condition in relation to the rights by virtue of section 357BC(2) or (3).
- (5) 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.]

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