



Corporation Tax Act 2010

2010 CHAPTER 4

[^{F1}PART 8A

PROFITS ARISING FROM THE EXPLOITATION OF PATENTS ETC

[^{F1}CHAPTER 7

SUPPLEMENTARY

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\(1\)](#)

Elections under section 357A

357G Making of election under [^{F2}section 357A(1) or (11)(b)]

- (1) An election made by a company under [^{F3}section 357A(1) or (11)(b)] is made by giving notice to an officer of Revenue and Customs.
- (2) The notice must specify the first accounting period of the company for which the election is to have effect.
- (3) The notice must be given on or before the last day on which an amendment of the company's tax return for that accounting period could be made under paragraph 15 of Schedule 18 to FA 1998.
- (4) The election has effect in relation to each trade carried on by the company.
- (5) Subject to section 357GA, the election has effect for the accounting period specified in the notice and all subsequent accounting periods of the company.

Status: Point in time view as at 15/09/2016.

Changes to legislation: There are currently no known outstanding effects for the Corporation Tax Act 2010, CHAPTER 7. (See end of Document for details)

Textual Amendments

- F2** Words in s. 357G heading substituted (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), [Sch. 9 para. 19\(2\)](#)
F3 Words in s. 357G(1) substituted (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), [Sch. 9 para. 19\(3\)](#)

357GA Revocation of election made under ^{F4}section 357A(1)]

- (1) A company may revoke an election made by it under ^{F5}section 357A(1)] by giving notice to an officer of Revenue and Customs.
- (2) The notice must specify the first accounting period of the company for which the revocation is to have effect.
- (3) The notice must be given on or before the last day on which an amendment of the company's tax return for that accounting period could be made under paragraph 15 of Schedule 18 to FA 1998.
- (4) The revocation has effect in relation to the accounting period specified in the notice and all subsequent accounting periods of the company.
- (5) An election made under ^{F6}section 357A(1)] by a company that has given notice under this section does not have effect in relation to any accounting period of the company that begins before the end of the period of 5 years beginning with the day after the last day of the accounting period specified in the notice.

Textual Amendments

- F4** Words in s. 357GA heading substituted (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), [Sch. 9 para. 20\(2\)](#)
F5 Words in s. 357GA(1) substituted (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), [Sch. 9 para. 20\(3\)](#)
F6 Words in s. 357GA(5) substituted (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), [Sch. 9 para. 20\(4\)](#)

Partnerships

357GB Application of this Part in relation to partnerships

- (1) This section applies if a firm (within the meaning of CTA 2009) carries on a trade and any partner in the firm is a company within the charge to corporation tax.
 Such a partner is referred to in this section as a “corporate partner”.
- (2) Subject to the following provisions of this section, this Part applies in relation to the firm as it applies in relation to a company.
- (3) Any election under this Part—
 - (a) may be made or revoked not by the firm but instead by any one or more of the corporate partners (whether jointly or otherwise), and
 - (b) has effect in relation to each corporate partner making or revoking it as if made or revoked by the firm.
- (4) Accordingly, any reference in section 357G(3) or 357GA(3) (time limit for making or revoking elections under section 357A) to the company making or revoking the election is to be read as a reference to the corporate partner so doing.

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- (5) Section 1261 of CTA 2009 (accounting periods of firms) applies for the purposes of this Part as it applies for the purposes of Part 17 of that Act.
- (6) Section 357B (meaning of “qualifying company”) has effect as if in subsection (1) the words “in the case of a company that is a member of a group” were omitted.
- (7) For the purposes of this Part the firm meets the development condition in relation to a right to which this Part applies if—
 - (a) the firm has at any time carried out qualifying development in relation to the right, or
 - (b) there is a relevant corporate partner in the firm who meets the development condition in relation to the right.
- (8) A “relevant corporate partner” is a corporate partner who is entitled to a share of at least 40% of the profits or losses of the firm for any accounting period of the firm.
- (9) Section 357BD applies for the purposes of subsection (7)(a) of this section as it applies for the purposes of section 357BC.
- (10) Section 357BE (active ownership condition) has effect as if the reference in subsection (4) to section 357BC(2) or (3) included a reference to subsection (7)(a) of this section.
- (11) Sections [^{F7}357BK, 357BKA] 357CL and 357CM (election for small claims treatment) have effect as if—
 - (a) any reference to a company having one or more associated companies were a reference to any corporate partner in relation to which an election under section [^{F8}357BK or] 357CL has effect having one or more associated companies, and
 - (b) any reference to a company having no associated company were a reference to each such corporate partner having no associated company.
- (12) Subsection (13) applies where a corporate partner is a party to an arrangement at any time during an accounting period of the firm which produces for the corporate partner a return within [^{F9}section 357BG(1)(c)] .
- (13) For the accounting period of the firm the corporate partner's share of a profit or loss of a trade carried on by the firm is determined for corporation tax purposes as if no election under section 357A had effect in relation to the trade.

Textual Amendments

- F7** Words in s. 357GB(11) inserted (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), [Sch. 9 para. 21\(2\)\(a\)](#)
F8 Words in s. 357GB(11)(a) inserted (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), [Sch. 9 para. 21\(2\)\(b\)](#)
F9 Words in s. 357GB(12) substituted (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), [Sch. 9 para. 21\(3\)](#)

Cost-sharing arrangements

357GC Application of this Part in relation to cost-sharing arrangements

- (1) This section applies where a company is a party to an arrangement under which—

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- (a) one of the parties to the arrangement holds a qualifying IP right or an exclusive licence in respect of such a right,
 - (b) each of the parties to the arrangement is required to contribute to the cost of, or perform activities for the purpose of, creating or developing the invention or any item or process incorporating the invention,
 - (c) under the arrangement each of those parties—
 - (i) is entitled to a share of any income attributable to the right or licence, or
 - (ii) has one or more rights in respect of the invention, and
 - (d) the amount of any income received by each of those parties is proportionate to its participation in the arrangement as described in paragraph (b).
- (2) The company is to be treated for the purposes of this Part as if it held the qualifying IP right or (as the case may be) the exclusive licence in respect of the qualifying IP right.
- (3) But this section does not apply where the arrangement produces for the company a return within [F10section 357BG(1)(c)] .
- (4) The reference in subsection (1)(b) to developing the invention includes developing ways in which the invention may be used or applied.

Textual Amendments

F10 Words in s. 357GC(3) substituted (15.9.2016) by Finance Act 2016 (c. 24), Sch. 9 para. 22

[F11] Transferred trades

Textual Amendments

F11 S. 357GCA and cross-heading inserted (with effect in accordance with s. 64(7) of the amending Act) by Finance Act 2016 (c. 24), s. 64(5)

357GCA Application of this Part in relation to transferred trades

- (1) Where—
- (a) a company (“the transferor”) ceases to carry on a trade which involves the exploitation of a qualifying IP right (“the relevant qualifying IP right”),
 - (b) the transferor assigns the relevant qualifying IP right, or grants or transfers an exclusive licence in respect of it, to another company (“the transferee”), and
 - (c) the transferee begins to carry on the trade,
- the following provisions apply in determining under this Part the relevant IP profits of the trade carried on by the transferee.
- (2) The transferee is to be treated as not being a new entrant if—
- (a) an election under section 357A(1) has effect in relation to the transferor on the date of the assignment, grant or transfer mentioned in subsection (1)(b) (“the transfer date”), and
 - (b) the first accounting period of the transferor for which that election had effect began before 1 July 2016.

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- (3) The relevant qualifying IP right is to be treated as being an old qualifying IP right in relation to the transferee if by reason of section 357BP it is an old qualifying IP right in relation to the transferor.
- (4) Expenditure incurred prior to the transfer date by the transferor which is attributable to relevant research and development undertaken by the transferor is to be treated for the purposes of section 357BLB as if it is expenditure incurred by the transferee which is attributable to relevant research and development undertaken by the transferee.
- (5) Expenditure incurred prior to the transfer date by the transferor in making a payment to a person in respect of relevant research and development contracted out by the transferor to that person is to be treated for the purposes of sections 357BLC and 357BLD as if it is expenditure incurred by the transferee in making a payment to that person in respect of relevant research and development contracted out by the transferee to that person.
- (6) Expenditure incurred prior to the transfer date by the transferor in making a payment in connection with the relevant qualifying IP right which is within subsection (2), (3) or (4) of section 357BLE is to be treated for the purposes of that section as if it is expenditure incurred by the transferee in making a payment in connection with that right which is within one of those subsections.
- (7) Expenditure incurred by the transferee in making a payment to the transferor in respect of the assignment, grant or transfer mentioned in subsection (1)(b) is to be ignored for the purposes of section 357BLE.
- (8) In this section—
 - “trade” includes part of a trade, and
 - “relevant research and development” means research and development which relates to the relevant qualifying IP right.
- (9) For the purposes of this section research and development “relates” to the relevant qualifying IP right if—
 - (a) it creates, or contributes to the creation of the invention,
 - (b) it is undertaken for the purpose of developing the invention,
 - (c) it is undertaken for the purpose of developing ways in which the invention may be used or applied, or
 - (d) it is undertaken for the purpose of developing any item or process incorporating the invention.]

Interpretation

357GD Meaning of “group”

- (1) For the purposes of this Part a company (“company A”) is a member of a group at any time if any other company is at that time associated with company A.
- (2) The group consists of company A and each company in relation to which the condition in subsection (1) is met.
- (3) For the purposes of this section a company (“company B”) is associated with company A at a time (“the relevant time”) if any of the following five conditions is met.

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- (4) The first condition is that the financial results of company A and company B, for a period that includes the relevant time, meet the consolidation condition.
- (5) The second condition is that there is a connection between company A and company B for the accounting period of company A in which the relevant time falls.
- (6) The third condition is that, at the relevant time, company A has a major interest in company B or company B has a major interest in company A.
- (7) The fourth condition is that—
 - (a) the financial results of company A and a third company, for a period that includes the relevant time, meet the consolidation condition, and
 - (b) at the relevant time the third company has a major interest in company B.
- (8) The fifth condition is that—
 - (a) there is a connection between company A and a third company for the accounting period of company A in which the relevant time falls, and
 - (b) at the relevant time the third company has a major interest in company B.
- (9) In this section, the financial results of any two companies for any period meet “the consolidation condition” if—
 - (a) they are required to be fully comprised in group accounts,
 - (b) they would be required to be fully comprised in such accounts but for the application of an exemption, or
 - (c) they are in fact fully comprised in such accounts.
- (10) In subsection (9) “group accounts” means accounts prepared under—
 - (a) section 399 of the Companies Act 2006, or
 - (b) any corresponding provision of the law of a country or territory outside the United Kingdom.
- (11) The following provisions apply for the purposes of this section—

sections 466 to 471 of CTA 2009 (companies connected for accounting period),
 and
 sections 473 and 474 of CTA 2009 (meaning of “major interest”).

357GE Other interpretation

- (1) In this Part—

“invention”, in relation to a right to which this Part applies, means the item or process in respect of which the right is granted,
 “item” includes any substance,
 “the OECD Model Tax Convention” means—

 - (a) the version of the Model Tax Convention on Income and on Capital published in July 2010 by the Organisation for Economic Co-operation and Development (“the OECD”), or
 - (b) such other document approved and published by the OECD in place of that (or a later) version or in place of that Convention as is designated for the time being by order made by the Treasury,

“the OECD transfer pricing guidelines” [^{F12}has the same meaning as “the transfer pricing guidelines” in section 164 of TIOPA 2010]

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[^{F13cc} payment ” includes payment in money's worth.]

^{F14}
...

[In Chapters 3 and 4 of this Part “qualifying residual profit” of a trade, in relation to ^{F15}(1A) any accounting period, is the amount obtained by the application of Steps 1 to 4 in section 357C or (as the case may be) section 357DA in relation to the trade for the accounting period.]

(2) Any reference in this Part to calculating the profits of a trade of a company for an accounting period is a reference to calculating those profits for corporation tax purposes (and any reference to the profits or losses of a trade of a company for an accounting period is to be read accordingly).]

Textual Amendments

F12 Words in s. 357GE(1) substituted (with effect in accordance with s. 75(4) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 75\(2\)](#)

F13 Words in s. 357GE(1) inserted (15.9.2016) by [Finance Act 2016 \(c. 24\), Sch. 9 para. 23\(2\)\(a\)](#)

F14 Words in s. 357GE(1) omitted (15.9.2016) by virtue of [Finance Act 2016 \(c. 24\), Sch. 9 para. 23\(2\)\(b\)](#)

F15 S. 357GE(1A) inserted (15.9.2016) by [Finance Act 2016 \(c. 24\), Sch. 9 para. 23\(3\)](#)

Status:

Point in time view as at 15/09/2016.

Changes to legislation:

There are currently no known outstanding effects for the Corporation Tax Act 2010, CHAPTER 7.