Corporation Tax Act 2010

2010 CHAPTER 4

[F1PART 8A

PROFITS ARISING FROM THE EXPLOITATION OF PATENTS ETC

CHAPTER 2

QUALIFYING COMPANIES

[F1357BB 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,

(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 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.**]**

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)**

Status:
Point in time view as at 17/07/2012. This version of this provision has been superseded.

Changes to legislation:
There are currently no known outstanding effects for the Corporation Tax Act 2010, Section 357BB.