



Finance (No. 2) Act 2017

2017 CHAPTER 32

PART 1

DIRECT TAXES

Corporation tax

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

Status: This is the original version (as it was originally enacted).

- (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.

Status: This is the original version (as it was originally enacted).

- (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).

Status: This is the original version (as it was originally enacted).

- (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

Status: This is the original version (as it was originally enacted).

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.