



Corporation Tax Act 2010

2010 CHAPTER 4

[^{F1}PART 8A

PROFITS ARISING FROM THE EXPLOITATION OF PATENTS ETC

[^{F2}CHAPTER 2A

RELEVANT IP PROFITS: CASES MENTIONED IN SECTION 357A(6)

[^{F1}[^{F2}R&D fraction

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\(1\)](#)
- F2** Pt. 8A Chs. 2A, 2B inserted (with effect in accordance with s. 64(7) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 64\(3\)](#)

357BL Introduction

- (1) Sections 357BLA to 357BLH apply for the purpose of determining the R&D fraction for a relevant IP income sub-stream established at Step 2 in section 357BF(2) in determining the relevant IP profits of a trade of a company for an accounting period.
- (2) In sections 357BLA to 357BLH, references to “the sub-stream”, “the trade”, “the company” and “the accounting period” are to the relevant IP income sub-stream, the trade, the company and the accounting period referred to in subsection (1).

357BLA The R&D fraction

- (1) The R&D fraction for the sub-stream is the lesser of 1 and—

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$$\frac{(D + S1) \times 1.3}{D + S1 + S2 + A}$$

where—

D is the company's qualifying expenditure on relevant R&D undertaken in-house (see section 357BLB),

S1 is the company's qualifying expenditure on relevant R&D sub-contracted to unconnected persons (see section 357BLC),

S2 is the company's qualifying expenditure on relevant R&D sub-contracted to connected persons (see section 357BLD), and

A is the company's qualifying expenditure on the acquisition of relevant qualifying IP rights (see section 357BLE).

- (2) This section is subject to section 357BLH (R&D fraction: increase for exceptional circumstances).

357BLB Qualifying expenditure on relevant R&D undertaken in-house

- (1) In section 357BLA, the company's “qualifying expenditure on relevant R&D undertaken in-house” means the expenditure incurred by the company during the relevant period which meets conditions A and B.

- (2) Condition A is that the expenditure is—

- (a) incurred on staffing costs,
- (b) incurred on software [^{F3}, data licences, cloud computing services] or consumable items,
- (c) qualifying expenditure on externally provided workers, or
- (d) incurred on relevant payments to the subjects of clinical trials.

- (3) Condition B is that the expenditure is attributable to relevant research and development undertaken by the company itself.

- (4) If an election made by the company under section 18A of CTA 2009 (election for exemption for profits or losses of company's foreign permanent establishments) applies to the relevant period, expenditure incurred by the company during the period which meets conditions A and B—

- (a) is not “qualifying expenditure on relevant R&D undertaken in-house”, but
- (b) is “qualifying expenditure on relevant R&D sub-contracted to connected persons”,

so far as it is expenditure brought into account in calculating a relevant profits amount, or a relevant losses amount, aggregated at section 18A(4)(a) or (b) of CTA 2009 in calculating the company's foreign permanent establishments amount for the period.

- (5) In this section and sections 357BLC and 357BLD, “relevant research and development” means research and development (within the meaning of section 1138) which—

- (a) in a case where the sub-stream is an individual IP right sub-stream, relates to the qualifying IP right to which the income in the sub-stream is attributable,

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- (b) in a case where the sub-stream is a product sub-stream, relates to a qualifying IP right granted in respect of any item—
 - (i) to which income in the sub-stream is attributable, or
 - (ii) which is incorporated in an item to which income in the sub-stream is attributable, or
 - (c) in a case where the sub-stream is a process sub-stream, relates to a qualifying IP right granted in respect of any process—
 - (i) to which income in the sub-stream is attributable, or
 - (ii) which is incorporated in a process to which income in the sub-stream is attributable.
- (6) Research and development “relates” to a qualifying IP right for the purposes of subsection (5) 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.
- (7) The following provisions of CTA 2009 apply for the purposes of this section—
- (a) section 1123 (meaning of “staffing costs”),
 - (b) section 1124 (when staffing costs are attributable to relevant research and development),
 - (c) section 1125 (meaning of “software [^{F4}, data licences, cloud computing services] or consumable items”),
 - (d) sections 1126 to 1126B (when software [^{F5}, data licences, cloud computing services] or consumable items are attributable to relevant research and development),
 - (e) sections 1127 to 1131 (meaning of “qualifying expenditure on externally provided workers”),
 - (f) section 1132 (when qualifying expenditure on externally provided workers is attributable to relevant research and development), and
 - (g) section 1140 (meaning of “relevant payments to the subjects of clinical trials”),

and in the application of those provisions for the purposes of this section any reference to “relevant research and development” is to be read as a reference to relevant research and development within the meaning given by subsection (5).

Textual Amendments

- F3** Words in s. 357BLB(2)(b) inserted (with effect in relation to accounting periods beginning on or after 1.4.2023) by [Finance \(No. 2\) Act 2023 \(c. 30\), Sch. 1 para. 9\(a\), 20](#)
- F4** Words in s. 357BLB(7)(c) inserted (with effect in relation to accounting periods beginning on or after 1.4.2023) by [Finance \(No. 2\) Act 2023 \(c. 30\), Sch. 1 para. 9\(b\)\(i\), 20](#)
- F5** Words in s. 357BLB(7)(d) inserted (with effect in relation to accounting periods beginning on or after 1.4.2023) by [Finance \(No. 2\) Act 2023 \(c. 30\), Sch. 1 para. 9\(b\)\(ii\), 20](#)

Changes to legislation: There are currently no known outstanding effects for the Corporation Tax Act 2010, Cross Heading: R&D fraction. (See end of Document for details)

357BLC Qualifying expenditure on relevant R&D sub-contracted to unconnected persons

- (1) In section 357BLA, the company's "qualifying expenditure on relevant R&D sub-contracted to unconnected persons" means the expenditure incurred by the company during the relevant period in making payments within subsection (2).
- (2) A payment is within this subsection if—
 - (a) it is made to a person in respect of relevant research and development contracted out by the company to the person, and
 - (b) the company and the person are not connected (within the meaning given by section 1122).
- (3) If an election made by the company under section 18A of CTA 2009 (election for exemption for profits or losses of company's foreign permanent establishments) applies to the relevant period, expenditure incurred by the company during the period in making payments within subsection (2)—
 - (a) is not "qualifying expenditure on relevant R&D sub-contracted to unconnected persons", but
 - (b) is "qualifying expenditure on relevant R&D sub-contracted to connected persons",

so far as it is expenditure brought into account in calculating a relevant profits amount, or a relevant losses amount, aggregated at section 18A(4)(a) or (b) of CTA 2009 in calculating the company's foreign permanent establishments amount for the period.
- (4) Where a payment is made to a person in respect of relevant research and development contracted out to the person and in respect of other matters, so much of the payment as is properly attributable to other matters is to be disregarded for the purposes of this section.

357BLD Qualifying expenditure on relevant R&D sub-contracted to connected persons

- (1) In section 357BLA, the company's "qualifying expenditure on relevant R&D sub-contracted to connected persons" means the total of—
 - (a) any expenditure which is "qualifying expenditure on relevant R&D sub-contracted to connected persons" as a result of section 357BLB(4) or 357BLC(3) (certain expenditure attributed to company's foreign permanent establishments), and
 - (b) the expenditure incurred by the company during the relevant period in making payments within subsection (2).
- (2) A payment is within this subsection if—
 - (a) it is made to a person in respect of relevant research and development contracted out by the company to the person, and
 - (b) the company and the person are connected (within the meaning given by section 1122).
- (3) Where a payment is made to a person in respect of relevant research and development contracted out to the person and in respect of other matters, so much of the payment as is properly attributable to other matters is to be disregarded for the purposes of this section.

Changes to legislation: There are currently no known outstanding effects for the Corporation Tax Act 2010, Cross Heading: R&D fraction. (See end of Document for details)

357BLE Qualifying expenditure on acquisition of relevant qualifying IP rights

- (1) In section 357BLA, the company's “qualifying expenditure on the acquisition of relevant qualifying IP rights” means the expenditure incurred by the company in making during the relevant period payments within any of subsections (2), (3) and (4).
- (2) A payment is within this subsection if it is made to a person in respect of the assignment by that person to the company of a relevant qualifying IP right.
- (3) A payment is within this subsection if it is made to a person in respect of the grant or transfer by that person to the company of an exclusive licence in respect of a relevant qualifying IP right.
- (4) A payment is within this subsection if—
 - (a) it is made to a person in respect of the disclosure by that person to the company of any item or process, and
 - (b) the company applies for and is granted a relevant qualifying IP right in respect of that item or process (or any item or process derived from it).
- (5) Where the company has incurred expenditure in making a series of payments to a person in respect of a single assignment, grant, transfer or disclosure, each of the payments in the series is to be treated for the purposes of this section as having been made on the date on which the first payment in the series was made.
- (6) “Relevant qualifying IP right” means—
 - (a) in a case where the sub-stream is an individual IP right sub-stream, the qualifying IP right to which the income in the sub-stream is attributable,
 - (b) in a case where the sub-stream is a product sub-stream, a qualifying IP right granted in respect of an item—
 - (i) to which income in the sub-stream is attributable, or
 - (ii) which is incorporated in an item to which income in the sub-stream is attributable, or
 - (c) in a case where the sub-stream is a process sub-stream, a qualifying IP right granted in respect of a process—
 - (i) to which income in the sub-stream is attributable, or
 - (ii) which is incorporated in a process to which income in the sub-stream is attributable.

1^{f6}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—

Changes to legislation: There are currently no known outstanding effects for the Corporation Tax Act 2010, Cross Heading: R&D fraction. (See end of Document for details)

- (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
 - (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.]

Textual Amendments

F6 S. 357BLEA inserted (with effect in accordance with s. 23(5) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 23\(2\)](#)

357BLF Meaning of the “relevant period” etc

- (1) Subsections (2) to (6) define “the relevant period” for the purposes of sections 357BLB to 357BLE.
- (2) The “relevant period” is the period which—
- (a) ends with the last day of the accounting period, and
 - (b) begins on the relevant day or such earlier day as the company may elect.
- This is subject to subsection (6).
- (3) The “relevant day” is 1 July 2013 in a case where—
- (a) the accounting period begins before 1 July 2021, and
 - (b) the company is a new entrant (see section 357A(11)).
- (4) The “relevant day” is 1 July 2016 in any other case.
- (5) A day elected under subsection (2)(b) must not be more than 20 years before the last day of the accounting period.
- (6) If the last day of the accounting period is, or is after, 1 July 2036 the “relevant period” is the period of 20 years ending with that day.
- (7) Expenditure incurred by the company is to be treated for the purposes of sections 357BLB to 357BLD as incurred during the relevant period if (and only if) the expenditure is allowable as a deduction in calculating for corporation tax purposes the

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profits of the trade for an accounting period which falls, in whole or in part, within the relevant period.

357BLG Cases where the company is a new entrant with insufficient information about pre-enactment expenditure

- (1) This section applies if—
 - (a) the accounting period begins before 1 July 2021 and the company is a new entrant (so that subsection (3) of section 357BLF applies), and
 - (b) the company has insufficient information about its expenditure in the period which begins with 1 July 2013 and ends with 30 June 2016 to be able to calculate the R&D fraction for the sub-stream.
- (2) If the accounting period begins on or after 1 July 2019, the company may elect that, for the purposes of enabling it to determine the R&D fraction for the sub-stream, section 357BLF is to have effect as if in subsection (3) for “1 July 2013” there were substituted “1 July 2016”.
- (3) If the accounting period begins before 1 July 2019 the company may elect that, for the purposes of enabling it to determine the R&D fraction for the sub-stream, sections 357BL to 357BLE are to have effect as if—
 - (a) any reference in those sections to the relevant period were to the period of three years ending with the last day of the accounting period,
 - (b) in section 357BLB, for subsections (5) and (6) there were substituted—

“(5) In this section and sections 357BLC and 357BLD, “relevant research and development” means research and development (within the meaning of section 1138) which relates to the trade.”, and
 - (c) in section 357BLE—
 - (i) in each of subsections (2), (3) and (4) the word “relevant” were omitted, and
 - (ii) subsection (6) were omitted.

357BLH R&D fraction: increase for exceptional circumstances

- (1) The company may elect to increase the R&D fraction for the sub-stream by the amount mentioned in subsection (2) if (but for the increase)—
 - (a) it would not be less than 0.325, and
 - (b) it would, because of exceptional circumstances, be less than the value fraction for the sub-stream (see subsection (3)).
- (2) The amount of the increase referred to in subsection (1) is the amount which is equal to the difference between the R&D fraction (before the increase) and the value fraction.
- (3) The “value fraction” for the sub-stream is the fraction which, on a just and reasonable assessment, represents the proportion of the value of the relevant qualifying IP rights which is properly attributable to research and development undertaken at any time—
 - (a) by the company itself, or
 - (b) on behalf of the company by persons not connected with it.
- (4) An election under subsection (1) is made by the company giving notice to an officer of Revenue and Customs.

Changes to legislation: *There are currently no known outstanding effects for the Corporation Tax Act 2010, Cross Heading: R&D fraction. (See end of Document for details)*

- (5) The notice must be given on or before the last day on which an amendment of the company's tax return for the accounting period could be made under paragraph 15 of Schedule 18 to FA 1998.
- (6) In this section—
 “relevant qualifying IP rights” has the same meaning as in section 357BLE,
 and
 “research and development” has the meaning given by section 1138.
- (7) Section 1122 (meaning of “connected” persons”) applies for the purposes of this section.]]

Changes to legislation:

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