



# Corporation Tax Act 2010

## 2010 CHAPTER 4

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

PROFITS ARISING FROM THE EXPLOITATION OF PATENTS ETC

### [<sup>F1</sup>CHAPTER 6

ANTI-AVOIDANCE

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

#### *Licences conferring exclusive rights*

#### **357F Licences conferring exclusive rights**

A licence that confers any right in respect of a qualifying IP right to the exclusion of all other persons is not to be regarded as an exclusive licence if the main purpose, or one of the main purposes, of conferring the right is to secure that the licence is an exclusive licence for the purposes of this Part.

#### *Incorporation of qualifying items*

#### **357FA Incorporation of qualifying items**

- (1) Income arising from the sale of any item that incorporates a qualifying item is not relevant IP income if the main purpose, or one of the main purposes, of incorporating the qualifying item is to secure that income arising from any such sale is relevant IP income.

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*Changes to legislation: There are currently no known outstanding effects for the Corporation Tax Act 2010, CHAPTER 6. (See end of Document for details)*

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(2) “Qualifying item” has the same meaning as in section [F2357BH(2)] .

**Textual Amendments**

**F2** Word in s. 357FA(2) substituted (15.9.2016) by Finance Act 2016 (c. 24), Sch. 9 para. 17

*Tax advantage schemes*

**357FB Tax advantage schemes**

- (1) This section applies where—
- (a) a company is entitled to make a deduction under section 357A(2) in calculating the profits of a trade of the company for an accounting period,
  - (b) the company is or has at any time been a party to a scheme, and
  - (c) the main purpose, or one of the main purposes, of the company or, where the company is a member of a group, any member of the group in being a party to the scheme is (or was) to obtain the chance of securing a relevant tax advantage.
- (2) There is a “relevant tax advantage” for the purposes of this section if—
- (a) (apart from this section) there would be an increase in the amount of any deduction made under section 357A(2) in calculating the profits of a trade of the company or (as the case may be) any other member of the group for any accounting period, and
  - (b) the increase would arise from—
    - (i) the avoidance of the operation of any provision of this Part,
    - (ii) artificially inflating the amount of relevant IP income brought into account in calculating those profits (see subsection (3)),<sup>F3</sup> ...
    - (iii) a mismatch between relevant IP income and expenditure (see subsection (4))<sup>F4</sup>, or
    - (iv) an R&D fraction (see subsection (4A)) being greater than it would be but for the scheme.]
- (3) The reference in subsection (2)(b) to artificially inflating the amount of relevant IP income brought into account in calculating the profits mentioned in subsection (2)(a) is a reference to doing any of the following—
- (a) bringing into account in calculating those profits an amount of relevant IP income that wholly or substantially corresponds to an increase in the amounts brought into account as debits in calculating those profits;
  - (b) bringing into account in calculating those profits an additional amount of relevant IP income that wholly or substantially corresponds to a decrease in the amount of income that is not relevant IP income which is brought into account in calculating those profits.
- (4) For the purposes of this section there is a mismatch between relevant IP income and expenditure if—
- (a) any relevant IP income brought into account in calculating the profits mentioned in subsection (2)(a) is attributable to any qualifying IP right or an exclusive licence in respect of any such right, and

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- (b) any expenditure incurred in relation to that right is brought into account in calculating the profits of a trade of the company or (as the case may be) any other member of the group for an accounting period for which an election under <sup>F5</sup>section 357A(1)] did not have effect.

[ The reference in subsection (2)(b)(iv) to an R&D fraction is a reference to such a <sup>F6</sup>(4A) fraction as is mentioned at Step 6 of section 357BF(2).]

- (5) The amount of the deduction which may be made by the company for the accounting period mentioned in subsection (1)(a) is the amount that would secure that no relevant tax advantage arises (and may be nil).
- (6) In this section “scheme” includes any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions.]

#### Textual Amendments

- F3** Word in s. 357FB(2)(b)(ii) omitted (with effect in accordance with s. 64(7) of the amending Act) by virtue of [Finance Act 2016 \(c. 24\), s. 64\(4\)\(a\)\(i\)](#)
- F4** S. 357FB(2)(b)(iv) and word inserted (with effect in accordance with s. 64(7) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 64\(4\)\(a\)\(ii\)](#)
- F5** Words in s. 357FB(4)(b) substituted (15.9.2016) by [Finance Act 2016 \(c. 24\), Sch. 9 para. 18](#)
- F6** S. 357FB(4A) inserted (with effect in accordance with s. 64(7) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 64\(4\)\(b\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Corporation Tax Act 2010, CHAPTER 6.