



# Corporation Tax Act 2010

## 2010 CHAPTER 4

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

TRADING PROFITS TAXABLE AT THE NORTHERN IRELAND RATE

### [<sup>F1</sup>CHAPTER 4

BASIC DEFINITIONS

#### Textual Amendments

- F1** Pt. 8B inserted (with effect in accordance with s. 5 of the amending Act) by [Corporation Tax \(Northern Ireland\) Act 2015 \(c. 21\), s. 1](#)

#### *Application of Chapter*

#### **357K Application of Chapter**

The definitions in this Chapter apply for the purposes of this Part.

#### *Meaning of “Northern Ireland company”*

#### **357KA “Northern Ireland company”**

- (1) A company is a “Northern Ireland company” in an accounting period if—
  - (a) the company carries on a qualifying trade in the period, and
  - (b) [<sup>F2</sup>the SME (Northern Ireland employer) condition, the SME (election) condition] or the large company condition is met.
- (2) The “ [<sup>F3</sup>SME (Northern Ireland employer) condition] ” is that the company—
  - (a) is an SME in relation to the period, and

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(b) is a Northern Ireland employer in relation to the period.

[ The “SME (election) condition” is that—

- <sup>F4</sup>(2A) (a) the company is an SME in relation to the period,  
 (b) the company is not a Northern Ireland employer in relation to the period,  
 (c) the company has a NIRE in the period,  
 (d) the company is not a disqualified close company in relation to the period, and  
 (e) an election by the company for the purposes of this subsection has effect in relation to the period.]

(3) The “large company condition” is that the company—

- (a) is not an SME in relation to the period, and  
 (b) has a NIRE in the period.

[ An election for the purposes of subsection (2A)—

- <sup>F5</sup>(3A) (a) must be made by notice to an officer of Revenue and Customs,  
 (b) must specify the accounting period in relation to which it is to have effect (“the specified accounting period”),  
 (c) must be made before the end of the period of 12 months beginning with the end of the specified accounting period, and  
 (d) if made in accordance with paragraphs (a) to (c) has effect in relation to the specified accounting period.]

(4) For the meaning of—

- “qualifying trade”, see section 357KB;  
 “SME”, see section 357KC;  
 “Northern Ireland employer”, see section 357KD;  
 [<sup>F6</sup>“disqualified close company”, see section 357KEA;]  
 “NIRE”, see Chapter 5.

#### Textual Amendments

- F2** Words in s. 357KA(1)(b) substituted (16.11.2017) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 7 para. 3\(2\)](#)  
**F3** Words in s. 357KA(2) substituted (16.11.2017) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 7 para. 3\(3\)](#)  
**F4** S. 357KA(2A) inserted (16.11.2017) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 7 para. 3\(4\)](#)  
**F5** S. 357KA(3A) inserted (16.11.2017) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 7 para. 3\(6\)](#)  
**F6** Words in s. 357KA(4) inserted (16.11.2017) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 7 para. 3\(5\)](#)

#### *Meaning of “qualifying trade”*

#### **357KB “Qualifying trade”**

- (1) “Qualifying trade” means a trade carried on by a company (otherwise than in partnership) where—  
 (a) the company is within the charge to corporation tax in relation to the trade, and  
 (b) the trade is not an excluded trade.

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- (2) If an election by a company for the purposes of this subsection has effect, “qualifying trade” also includes a trade carried on by the company (otherwise than in partnership) where—
  - (a) the trade is an excluded trade within—
    - (i) section 357XB (lending and investment),
    - (ii) section 357XC (investment management), or
    - (iii) section 357XE (re-insurance trade), and
  - (b) the trade includes any back-office activities.
- (3) An election for the purposes of subsection (2)—
  - (a) must be made by notice to an officer of Revenue and Customs,
  - (b) must specify the first accounting period (“the specified accounting period”) in relation to which it is to have effect,
  - (c) must be made before the end of the period of 12 months beginning with the end of the specified accounting period, and
  - (d) if made in accordance with paragraphs (a) to (c)—
    - (i) has effect in relation to the specified accounting period and subsequent accounting periods, and
    - (ii) is irrevocable.
- (4) For the meaning of “excluded trade”, and for power to make provision about the meaning of “back-office activities”, see Chapter 17.

#### *Meaning of “SME”*

#### **357KC “SME”**

- (1) A company is an “SME” in relation to an accounting period if the company is a micro, small or medium-sized enterprise as defined in the Annex—
  - (a) in that accounting period, or
  - (b) in each accounting period any part of which falls within the period of 12 months preceding that accounting period.
- (2) In this section “the Annex” means the Annex to Commission Recommendation No 2003/361/EC of 6 May 2003.
- (3) For the purposes of this Part the Annex has effect with the following modifications.
- (4) Where any enterprise is in liquidation or administration, the rights of the liquidator or administrator (in that capacity) are to be left out of account when applying Article 3(3)(b) in determining for the purposes of this Part whether—
  - (a) that enterprise, or
  - (b) any other enterprise (including that of the liquidator or administrator),is an SME.
- (5) Article 3 has effect as if paragraph 5 (declaration in good faith where control cannot be determined etc) were omitted.
- (6) In Article 4, the first sentence of paragraph 1 has effect as if the data to apply to—
  - (a) the headcount of staff, and
  - (b) the financial amounts,

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were the data relating to the accounting period or periods mentioned in subsection (1) above (instead of the period referred to in that sentence) and calculated on an annual basis.

- (7) Article 4 has effect as if the following provisions were omitted—
- (a) in paragraph 1, the second sentence (data to be taken into account from date of closure of accounts);
  - (b) paragraph 2 (no change of status unless enterprise's change of size sustained over two consecutive periods);
  - (c) paragraph 3 (genuine estimate in case of newly established enterprise).

*Meaning of “Northern Ireland employer”*

**357KD “Northern Ireland employer”**

A company is a “Northern Ireland employer” in relation to an accounting period if the Northern Ireland workforce conditions are met—

- (a) in relation to that accounting period, or
- (b) in relation to the period of 12 months preceding that accounting period.

**357KE Northern Ireland workforce conditions**

- (1) The Northern Ireland workforce conditions, in relation to a period, are—
  - (a) that 75% or more of the working time that is spent in the United Kingdom during the period by members of the company's workforce is spent in Northern Ireland, and
  - (b) that 75% or more of the company's workforce expenses that are attributable to working time spent in the United Kingdom during the period by members of the company's workforce are attributable to time spent in Northern Ireland.
- (2) References in this section to members of the company's workforce are to—
  - (a) directors of the company,
  - (b) employees of the company,<sup>F7</sup>...
  - (c) externally provided workers in relation to the company<sup>F8</sup>, and
  - (d) in the case of a close company, or of a company which would be a close company if it were UK resident, individuals who are participators in the company.]
- (3) In subsection (2) “externally provided worker”, in relation to a company, has the same meaning as in Part 13 of CTA 2009 (see section 1128 of that Act).
- (4) References in this section to the working time spent by members of the company's workforce in a place are to the total time spent by those persons in that place while providing services to the company.
- (5) The reference in subsection (1)(b) to “the company's workforce expenses” is, where the period is an accounting period of the company, to the total of the deductions made by the company in the period in respect of members of the workforce in calculating the profits of any trade carried on by the company.
- (6) The reference in subsection (1)(b) to “the company's workforce expenses” is, where the period is not an accounting period of the company, to the total of—

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- (a) the deductions made by the company in any accounting period falling wholly within the period, and
  - (b) the appropriate proportion of the deductions made by the company in any accounting period falling partly within the period,
- in respect of members of the workforce in calculating the profits of any trade carried on by the company.
- (7) For the purposes of subsection (6)(b), “the appropriate proportion” is to be determined by reference to the number of days in the periods concerned.
- [ In this section “participator” has the same meaning as in sections 1064 to 1067 (see <sup>F9</sup>(7A) sections 1068 and 1069).
- (7B) In determining for the purposes of this section the amount of working time that is spent in any place by a participator in the company, time spent by the participator in that place is to be included where—
- (a) the time is spent by the participator in providing services to a person other than the company (“the third party”), and
  - (b) condition A or B is met.
- (7C) Condition A is that the provision of the services results in a payment being made (whether directly or indirectly) to the company by—
- (a) the third party, or
  - (b) a person connected with the third party.
- (7D) Condition B is that—
- (a) the company holds a right that it acquired (whether directly or indirectly) from the participator, and
  - (b) any payment in connection with that right is made (whether directly or indirectly) to the company by—
    - (i) the third party, or
    - (ii) a person connected with the third party.
- (7E) Section 1122 (connected persons) applies for the purposes of this section.]
- (8) The Commissioners for Her Majesty's Revenue and Customs may by regulations specify descriptions of deduction that are, or are not, to be regarded for the purposes of this section as made in respect of members of a company's workforce.
- (9) Regulations under this section—
- (a) may make different provision for different purposes;
  - (b) may make incidental, supplemental, consequential and transitional provision and savings.]

#### Textual Amendments

- F7** Word in s. 357KE(2)(b) omitted (16.11.2017) by virtue of [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 7 para. 4\(2\)\(a\)](#)
- F8** S. 357KE(2)(d) and word inserted (16.11.2017) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 7 para. 4\(2\)\(b\)](#)
- F9** S. 357KE(7A)-(7E) inserted (16.11.2017) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 7 para. 4\(3\)](#)

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*[<sup>F10</sup>Meaning of “disqualified close company”*

**Textual Amendments**

**F10** S. 357KEA and cross-heading inserted (16.11.2017) by Finance (No. 2) Act 2017 (c. 32), Sch. 7 para. 5

**357KEA “Disqualified close company”**

- (1) A company is a “disqualified close company” in relation to a period if—
  - (a) the company is a close company, or would be a close company if it were UK resident, at any time in the period, and
  - (b) conditions A and B are met.
- (2) Condition A is that the company has a NIRE in the period as a result of tax-avoidance arrangements.
- (3) Condition B is that—
  - (a) 50% or more of the working time that is spent in the United Kingdom during the period by members of the company's workforce is working time spent by participators in the company otherwise than in Northern Ireland, or
  - (b) 50% or more of the company's workforce expenses that are attributable to working time spent in the United Kingdom during the period by members of the company's workforce are attributable to working time spent by participators in the company otherwise than in Northern Ireland.
- (4) For the purposes of this section “tax avoidance arrangements” means arrangements the sole or main purpose of which is to secure that any profits or losses of the company for the period are Northern Ireland profits or losses.
- (5) In subsection (4) “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
- (6) The following provisions apply for the purposes of this section as they apply for the purposes of section 357KE (Northern Ireland workforce conditions)—
  - (a) subsections (2) to (5) and (7A) to (7E) of that section;
  - (b) regulations made under that section.
- (7) In its application by virtue of subsection (6), subsection (5) of section 357KE has effect as if the reference in it to subsection (1)(b) of that section were to subsection (3) (b) of this section.]

**Changes to legislation:**

There are currently no known outstanding effects for the Corporation Tax Act 2010, CHAPTER 4.