



# Finance Act 2016

## 2016 CHAPTER 24

### PART 2

#### CORPORATION TAX

##### *Exploitation of patents etc*

#### **64 Profits from the exploitation of patents etc**

- (1) Part 8A of CTA 2010 (profits arising from the exploitation of patents etc) is amended as follows.
- (2) In section 357A (election for special treatment of profits from patents etc)—
  - (a) for subsections (6) and (7) substitute—
    - “(6) Chapter 2A makes provision for determining the relevant IP profits or relevant IP losses of a trade of a company for an accounting period in a case where—
      - (a) the accounting period begins on or after 1 July 2021, or
      - (b) the company is a new entrant (see subsection (11)).
    - (7) Chapters 2B, 3 and 4 make provision for determining the relevant IP profits or relevant IP losses of a trade of a company for an accounting period in various cases where—
      - (a) the accounting period begins before 1 July 2021, and
      - (b) the company is not a new entrant.”, and
  - (b) after subsection (10) insert—
    - “(11) A company is a “new entrant” for the purposes of this Part if—
      - (a) the first accounting period for which the company's election (or most recent election) under subsection (1) has effect begins on or after 1 July 2016, or
      - (b) the company elects to be treated as a new entrant for the purposes of this Part.”

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(3) After section 357BE insert—

## “CHAPTER 2A

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

#### *Steps for calculating relevant IP profits of a trade*

#### **357BF Relevant IP profits**

- (1) This section applies for the purposes of determining the relevant IP profits of a trade of a company for an accounting period in a case where—
- (a) the accounting period begins on or after 1 July 2021, or
  - (b) the company is a new entrant (see section 357A(11)).

- (2) To determine the relevant IP profits—

*Step 1* Take any amounts which are brought into account as credits in calculating the profits of the trade for the accounting period, other than any amounts of finance income (see section 357BG), and divide them into two “streams”, amounts of relevant IP income (see sections 357BH to 357BHC) and amounts that are not amounts of relevant IP income. The stream consisting of relevant IP income is “the relevant IP income stream”; the other stream is the “standard income stream”.

*Step 2* Divide the relevant IP income stream into “relevant IP income sub-streams” so that each sub-stream is—

- (a) a sub-stream consisting of income properly attributable to a particular qualifying IP right (an “individual IP right sub-stream”),
- (b) a sub-stream consisting of income properly attributable to a particular kind of IP item (a “product sub-stream”), or
- (c) a sub-stream consisting of income properly attributable to a particular kind of IP process (a “process sub-stream”).

See subsection (5) for the meaning of “IP item” and “IP process” and see subsections (6) and (7) for further provision in connection with product sub-streams and process sub-streams.

*Step 3* Take any amounts which are brought into account as debits in calculating the profits of the trade for the accounting period, other than any excluded debits (see section 357BI), and allocate them on a just and reasonable basis between the standard income stream and each of the relevant IP income sub-streams.

*Step 4* Deduct from each relevant IP income sub-stream—

- (a) the amounts allocated to the sub-stream at Step 3, and
- (b) the routine return figure for the sub-stream (see section 357BJ).

But see section 357BIA (which provides that certain amounts allocated to a relevant IP income sub-stream at Step 3 are not to be deducted from the sub-stream at this Step).

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*Step 5* Deduct from each relevant IP income sub-stream which is greater than nil following Step 4 the marketing assets return figure for the sub-stream (see section 357BK).

*Step 6* Multiply the amount of each relevant IP income sub-stream (following the deductions required at Steps 4 and 5) by the R&D fraction for the sub-stream (see section 357BL).

*Step 7* Add together the amounts of the relevant IP income sub-streams (following Step 6).

*Step 8* If the company has made an election under section 357BM (which provides in certain circumstances for profits arising before the grant of a right to be treated as relevant IP profits), add to the amount given by Step 7 any amount determined in accordance with subsection (3) of that section.

- (3) If the amount given by subsection (2) is greater than nil, that amount is the relevant IP profits of the trade for the accounting period.
- (4) If the amount given by subsection (2) is less than nil, that amount is the relevant IP losses of the trade for the accounting period (see Chapter 5).
- (5) In this section—
  - “IP item” means—
    - (a) an item in respect of which a qualifying IP right held by the company has been granted, or
    - (b) an item which incorporates one or more items within paragraph (a);
  - “IP process” means—
    - (a) a process in respect of which a qualifying IP right held by the company has been granted, or
    - (b) a process which incorporates one or more processes within paragraph (a).
- (6) For the purposes of this section two or more IP items, or two or more IP processes, may be treated as being of a particular kind if they are intended to be, or are capable of being, used for the same or substantially the same purposes.
- (7) Income may be allocated at Step 2 of subsection (2) to a product sub-stream or process sub-stream only if—
  - (a) it would not be reasonably practicable to apportion the income between individual IP right sub-streams, or
  - (b) it would be reasonably practicable to do that but doing so would result in it not being reasonably practicable to apply any of the remaining steps in subsection (2).
- (8) Any reference in this section to a qualifying IP right held by the company includes a reference to a qualifying IP right in respect of which the company holds an exclusive licence.

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## *Finance income*

### **357BG Finance income**

- (1) For the purposes of this Part “finance income”, in relation to a trade of a company, means—
- (a) any credits which are treated as receipts of the trade by virtue of—
    - (i) section 297 of CTA 2009 (credits in respect of loan relationships), or
    - (ii) section 573 of CTA 2009 (credits in respect of derivative contracts),
  - (b) any amount which in accordance with generally accepted accounting practice falls to be recognised as arising from a financial asset, and
  - (c) any return, in relation to an amount, which—
    - (i) is produced for the company by an arrangement to which it is a party, and
    - (ii) is economically equivalent to interest.
- (2) In subsection (1)—
- “economically equivalent to interest” is to be construed in accordance with section 486B(2) and (3) of CTA 2009, and
  - “financial asset” means a financial asset as defined for the purposes of generally accepted accounting practice.
- (3) For the purposes of subsection (1)(c), the amount of a return is the amount which by virtue of the return would, in calculating the company's chargeable profits, be treated under section 486B of CTA 2009 (disguised interest to be regarded as profit from loan relationship) as profit arising to the company from a loan relationship.

But, in calculating that profit for the purposes of this subsection, sections 486B(7) and 486C to 486E of that Act are to be ignored.

## *Relevant IP income*

### **357BH Relevant IP income**

- (1) For the purposes of this Part “relevant IP income” means income falling within any of the Heads set out in—
- (a) subsection (2) (sales income),
  - (b) subsection (6) (licence fees),
  - (c) subsection (7) (proceeds of sale etc),
  - (d) subsection (8) (damages for infringement), and
  - (e) subsection (9) (other compensation).

This is subject to section 357BHB (excluded income).

- (2) Head 1 is income arising from the sale by the company of any of the following items—

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- (a) items in respect of which a qualifying IP right held by the company has been granted (“qualifying items”);
    - (b) items incorporating one or more qualifying items;
    - (c) items that are wholly or mainly designed to be incorporated into items within paragraph (a) or (b).
  - (3) For the purposes of this Part an item and its packaging are not to be treated as a single item, unless the packaging performs a function that is essential for the use of the item for the purposes for which it is intended to be used.
  - (4) In subsection (3) “packaging”, in relation to an item, means any form of container or other packaging used for the containment, protection, handling, delivery or presentation of the item, including by way of attaching the item to, or winding the item round, some other article.
  - (5) In a case where a qualifying item and an item that is designed to incorporate that item (“the parent item”) are sold together as, or as part of, a single unit for a single price, the reference in subsection (2)(b) to an item incorporating a qualifying item includes a reference to the parent item.
  - (6) Head 2 is income consisting of any licence fee or royalty which the company receives under an agreement granting another person any of the following rights only—
    - (a) a right in respect of any qualifying IP right held by the company,
    - (b) any other right in respect of a qualifying item or process, and
    - (c) in the case of an agreement granting any right within paragraph (a) or (b), a right granted for the same purposes as those for which that right was granted.
- In this subsection “qualifying process” means a process in respect of which a qualifying IP right held by the company has been granted.
- (7) Head 3 is any income arising from the sale or other disposal of a qualifying IP right or an exclusive licence in respect of such a right.
  - (8) Head 4 is any amount received by the company in respect of an infringement, or alleged infringement, of a qualifying IP right held by the company at the time of the infringement or alleged infringement.
  - (9) Head 5 is any amount of damages, proceeds of insurance or other compensation, other than an amount in respect of an infringement or alleged infringement of a qualifying IP right, which is received by the company in respect of an event and—
    - (a) is paid in respect of any items that fell within subsection (2) at the time of that event, or
    - (b) represents a loss of income which would, if received by the company at the time of that event, have been relevant IP income.
  - (10) But income is not relevant IP income by virtue of subsection (8) or (9) unless the event in respect of which the income is received, or any part of that event, occurred at a time when—
    - (a) the company was a qualifying company, and
    - (b) an election under section 357A(1) had effect in relation to it.

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- (11) In a case where the whole of that event does not occur at such a time, subsection (8) or (9) (as the case may be) applies only to so much of the amount received by the company in respect of the event as on a just and reasonable apportionment is properly attributable to such a time.
- (12) Any reference in this section to a qualifying IP right held by the company includes a reference to a qualifying IP right in respect of which the company holds an exclusive licence.

### **357BHA Notional royalty**

- (1) This section applies where—
  - (a) a company holds a qualifying IP right or an exclusive licence in respect of a qualifying IP right,
  - (b) the qualifying IP right falls within paragraph (a), (b) or (c) of section 357BB(1), and
  - (c) the income of a trade of the company for an accounting period includes income (“IP-derived income”) which—
    - (i) arises from things done by the company that involve the exploitation by the company of the qualifying IP right, and
    - (ii) is not relevant IP income, finance income or excluded income.
- (2) The company may elect that the appropriate percentage of the IP-derived income is to be treated for the purposes of this Part as if it were relevant IP income.
- (3) The “appropriate percentage” is the proportion of the IP-derived income which the company would pay another person (“P”) for the right to exploit the qualifying IP right in the accounting period concerned if the company were not otherwise able to exploit it.
- (4) For the purposes of determining the appropriate percentage under this section, assume that—
  - (a) the company and P are dealing at arm's length,
  - (b) the company, or the company and persons authorised by it, will have the right to exploit the qualifying IP right to the exclusion of any other person (including P),
  - (c) the company will have the same rights in relation to the qualifying IP right as it actually has,
  - (d) the right to exploit the qualifying IP right is conferred on the relevant day,
  - (e) the appropriate percentage is determined at the beginning of the accounting period concerned,
  - (f) the appropriate percentage will apply for each succeeding accounting period for which the company will have the right to exploit the qualifying IP right, and
  - (g) no income other than IP-derived income will arise from anything done by the company that involves the exploitation by the company of the qualifying IP right.
- (5) In subsection (4)(d) “the relevant day” means—

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- (a) the first day of the accounting period concerned, or
  - (b) if later, the day on which the company first began to hold the qualifying IP right or licence.
- (6) In determining the appropriate percentage, the company must act in accordance with—
  - (a) Article 9 of the OECD Model Tax Convention, and
  - (b) the OECD transfer pricing guidelines.
- (7) In this section “excluded income” means any income falling within either of the Heads in section 357BHB.

### **357BHB Excluded income**

- (1) For the purposes of this Part income falling within either of the Heads set out in the following subsections is not relevant IP income—
  - (a) subsection (2) (ring fence income),
  - (b) subsection (3) (income attributable to non-exclusive licences).
- (2) Head 1 is income arising from oil extraction activities or oil rights.  
 In this subsection “oil extraction activities” and “oil rights” have the same meaning as in Part 8 (see sections 272 and 273).
- (3) Head 2 is income which on a just and reasonable apportionment is properly attributable to a licence (a “non-exclusive licence”) held by the company which—
  - (a) is a licence in respect of an item or process, but
  - (b) is not an exclusive licence in respect of a qualifying IP right.
- (4) In a case where—
  - (a) a company holds an exclusive licence in respect of a qualifying IP right, and
  - (b) the licence also confers on the company (or on the company and persons authorised by it) any right in respect of the invention otherwise than to the exclusion of all other persons,
 the licence is to be treated for the purposes of this Part as if it were two separate licences, one an exclusive licence that does not confer any such rights, and the other a non-exclusive licence conferring those rights.

### **357BHC Mixed sources of income**

- (1) This section applies to any income that—
  - (a) is mixed income, or
  - (b) is paid under a mixed agreement.
- (2) “Mixed income” means the proceeds of sale where an item falling within subsection (2) of section 357BH and an item not falling within that subsection are sold together as, or as part of, a single unit for a single price.
- (3) A “mixed agreement” is an agreement providing for—
  - (a) one or more of the matters in paragraphs (a) to (c) of subsection (4), and

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- (b) one or more of the matters in paragraphs (d) to (g) of that subsection.
- (4) The matters are—
  - (a) the sale of an item falling within section 357BH(2),
  - (b) the grant of any right falling within paragraph (a), (b) or (c) of section 357BH(6),
  - (c) a sale or disposal falling within section 357BH(7),
  - (d) the sale of any other item,
  - (e) the grant of any other right,
  - (f) any other sale or disposal,
  - (g) the provision of any services.
- (5) So much of the income as on a just and reasonable apportionment is properly attributable to—
  - (a) the sale of an item falling within section 357BH(2),
  - (b) the grant of any right falling within paragraph (a), (b) or (c) of section 357BH(6), or
  - (c) a sale or disposal falling within section 357BH(7),
 is to be regarded for the purposes of this Part as relevant IP income.
- (6) But where the amount of income that on such an apportionment is properly attributable to any of the matters in paragraphs (d) to (g) of subsection (4) is a trivial proportion of the income to which this section applies, all of that income is to be regarded for the purposes of this Part as relevant IP income.

#### *Excluded debits etc*

### **357BI Excluded debits**

For the purposes of this Part “excluded debits” means—

- (a) the amount of any debits which are treated as expenses of a trade by virtue of—
  - (i) section 297 of CTA 2009 (debts in respect of loan relationships), or
  - (ii) section 573 of CTA 2009 (debts in respect of derivative contracts),
- (b) the amount of any additional deduction for an accounting period obtained by a company under Part 13 of CTA 2009 for expenditure on research and development in relation to a trade,
- (c) the amount of any additional deduction for an accounting period obtained by a company under Part 15A of CTA 2009 in respect of qualifying expenditure on a television programme,
- (d) the amount of any additional deduction for an accounting period obtained by a company under Part 15B of CTA 2009 in respect of qualifying expenditure on a video game, and
- (e) the amount of any additional deduction for an accounting period obtained by a company under Part 15C of CTA 2009 in respect of qualifying expenditure on a theatrical production.



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### **357BIA Certain amounts not to be deducted from sub-streams at Step 4 of section 357BF**

- (1) This section applies where a company enters into an arrangement with a person under which—
  - (a) the person assigns to the company a qualifying IP right or grants or transfers to the company an exclusive licence in respect of a qualifying IP right, and
  - (b) the company makes to the person an income-related payment.
- (2) A payment is an “income-related payment” for the purposes of subsection (1) if—
  - (a) the obligation to make the payment arises under the arrangement by reason of the amount of income the company has accrued which is properly attributable to the right or licence, or
  - (b) the amount of the payment is determined under the arrangement by reference to the amount of income the company has accrued which is so attributable.
- (3) If the amount of the income-related payment is allocated to a relevant IP income sub-stream at Step 3 of section 357BF(2), the amount is not to be deducted from the sub-stream at Step 4 of section 357BF(2) unless the payment will not affect the R&D fraction for the sub-stream.”

### *Routine return figure*

#### **357BJ Routine return figure**

- (1) This section applies for the purpose of calculating the routine return figure 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) The routine return figure for the sub-stream is 10% of the aggregate of any routine deductions which—
  - (a) have been made by the company in calculating the profits of the trade for the accounting period, and
  - (b) have been allocated to the sub-stream at Step 3 in section 357BF(2).

For the meaning of “routine deductions”, see sections 357BJA and 357BJB.

- (3) In a case where—
  - (a) the company (“C”) is a member of a group,
  - (b) another member of the group has incurred expenses on behalf of C,
  - (c) had they been incurred by C, C would have made a deduction in respect of the expenses in calculating the profits of the trade for the accounting period,
  - (d) the deduction would have been a routine deduction, and
  - (e) the deduction would have been allocated to the sub-stream at Step 3 in section 357BF(2),

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C is to be treated for the purposes of subsection (2) as having made such a routine deduction and as having allocated the deduction to the sub-stream.

- (4) Where expenses have been incurred by any member of the group on behalf of C and any other member of the group, subsection (3) applies in relation to so much of the amount of the expenses as on a just and reasonable apportionment may properly be regarded as incurred on behalf of C.

### **357BJA Routine deductions**

- (1) For the purposes of this Part, “routine deductions” means deductions falling within any of the Heads set out in—
- (a) subsection (2) (capital allowances),
  - (b) subsection (3) (costs of premises),
  - (c) subsection (4) (personnel costs),
  - (d) subsection (5) (plant and machinery costs),
  - (e) subsection (6) (professional services), and
  - (f) subsection (7) (miscellaneous services).

This is subject to section 357BJB (deductions that are not routine deductions).

- (2) Head 1 is any allowances under CAA 2001.
- (3) Head 2 is any deductions made by the company in respect of any premises occupied by the company.
- (4) Head 3 is any deductions made by the company in respect of—
- (a) any director or employee of the company, or
  - (b) any externally provided workers.
- (5) Head 4 is any deductions made by the company in respect of any plant or machinery used by the company.
- (6) Head 5 is any deductions made by the company in respect of any of the following services—
- (a) legal services, other than IP-related services;
  - (b) financial services, including—
    - (i) insurance services, and
    - (ii) valuation or actuarial services;
  - (c) services provided in connection with the administration or management of the company's directors and employees;
  - (d) any other consultancy services.
- (7) Head 6 is any deductions made by the company in respect of any of the following services—
- (a) the supply of water, fuel or power;
  - (b) telecommunications services;
  - (c) computing services, including computer software;
  - (d) postal services;
  - (e) the transportation of any items;
  - (f) the collection, removal and disposal of refuse.

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(8) In this section—

“externally provided worker” has the same meaning as in Part 13 of CTA 2009 (see section 1128 of that Act),

“IP-related services” means services provided in connection with—

- (a) any application for a right to which this Part applies, or
  - (b) any proceedings relating to the enforcement of any such right,
- “premises” includes any land,

“telecommunications service” means any service that consists in the provision of access to, and of facilities for making use of, any telecommunication system (whether or not one provided by the person providing the service), and

“telecommunication system” means any system (including the apparatus comprised in it) which exists for the purpose of facilitating the transmission of communications by any means involving the use of electrical or electromagnetic energy.

(9) The Treasury may by regulations amend this section.

### **357BJB Deductions that are not routine deductions**

(1) For the purposes of this Part a deduction is not a “routine deduction” if it falls within any of the Heads set out in—

- (a) subsection (2) (loan relationships and derivative contracts),
- (b) subsection (3) (R&D expenses),
- (c) subsection (4) (capital allowances for R&D or patents),
- (d) subsection (5) (R&D-related employee share acquisitions),
- (e) subsection (8) (television production expenditure),
- (f) subsection (9) (video games development expenditure).

(2) Head 1 is any debits which are treated as expenses of the trade by virtue of—

- (a) section 297 of CTA 2009 (debts in respect of loan relationships), or
- (b) section 573 of CTA 2009 (debts in respect of derivative contracts).

(3) Head 2 is—

- (a) the amount of any expenditure on research and development in relation to the trade—
  - (i) for which an additional deduction for the accounting period is obtained by the company under Part 13 of CTA 2009, or
  - (ii) in respect of which the company is entitled to an R&D expenditure credit for the accounting period under Chapter 6A of Part 3 of CTA 2009, and
- (b) where the company obtains an additional deduction as mentioned in paragraph (a)(i), the amount of that additional deduction.

(4) Head 3 is any allowances under—

- (a) Part 6 of CAA 2001 (research and development allowances), or
- (b) Part 8 of CAA 2001 (patent allowances).

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- (5) Head 4 is the appropriate proportion of any deductions allowed under Part 12 of CTA 2009 (relief for employee share acquisitions) in a case where—
  - (a) shares are acquired by an employee or another person because of the employee's employment by the company, and
  - (b) the employee is wholly or partly engaged directly and actively in relevant research and development (within the meaning of section 1042 of CTA 2009).
- (6) In subsection (5) “the appropriate proportion”, in relation to a deduction allowed in respect of an employee, is the proportion of the staffing costs in respect of the employee which are attributable to relevant research and development for the purposes of Part 13 of CTA 2009 (see section 1124 of that Act).
 

“Staffing costs” has the same meaning as in that Part (see section 1123 of that Act).
- (7) Subsections (5) and (6) of section 1124 of CTA 2009 apply for the purposes of subsection (5)(b) as they apply for the purposes of that section.
- (8) Head 5 is—
  - (a) the amount of any qualifying expenditure on a television programme for which an additional deduction for the accounting period is obtained by the company under Part 15A of CTA 2009, and
  - (b) the amount of that additional deduction.
- (9) Head 6 is—
  - (a) the amount of any qualifying expenditure on a video game for which an additional deduction for the accounting period is obtained by the company under Part 15B of CTA 2009, and
  - (b) the amount of that additional deduction.
- (10) The Treasury may by regulations amend this section.

### *Marketing assets return figure*

#### **357BK Marketing assets return figure**

- (1) The marketing assets return figure for a relevant IP income sub-stream is—

$$\text{NMR} - \text{AMR}$$

where—

NMR is the notional marketing royalty in respect of the sub-stream (see section 357BKA), and

AMR is the actual marketing royalty in respect of the sub-stream (see section 357BKB).

- (2) Where—
  - (a) AMR is greater than NMR, or

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- (b) the difference between NMR and AMR is less than 10% of the amount of the relevant IP income sub-stream following the deductions required by Step 4 in section 357BF(2),  
the marketing assets return figure for the sub-stream is nil.

### **357BKA Notional marketing royalty**

- (1) The notional marketing royalty in respect of a relevant IP income sub-stream is the appropriate percentage of the income allocated to that sub-stream at Step 2 in section 357BF(2).
- (2) The “appropriate percentage” is the proportion of that income which the company would pay another person (“P”) for the right to exploit the relevant marketing assets in the accounting period concerned if the company were not otherwise able to exploit them.
- (3) For the purposes of this section a marketing asset is a “relevant marketing asset” in relation to a relevant IP income sub-stream if the sub-stream includes any income arising from things done by the company that involve the exploitation by the company of that marketing asset.
- (4) For the purpose of determining the appropriate percentage under this section, assume that—
  - (a) the company and P are dealing at arm's length,
  - (b) the company, or the company and persons authorised by it, will have the right to exploit the relevant marketing assets to the exclusion of any other person (including P),
  - (c) the company will have the same rights in relation to the relevant marketing assets as it actually has,
  - (d) the right to exploit the relevant marketing assets is conferred on the relevant day,
  - (e) the appropriate percentage is determined at the beginning of the accounting period concerned,
  - (f) the appropriate percentage will apply for each succeeding accounting period for which the company will have the right to exploit the relevant marketing assets, and
  - (g) no income other than income within the relevant IP income sub-stream will arise from anything done by the company that involves the exploitation by the company of the relevant marketing assets.
- (5) In subsection (4)(d) “the relevant day”, in relation to a relevant marketing asset, means—
  - (a) the first day of the accounting period concerned, or
  - (b) if later, the day on which the company first acquired the relevant marketing asset or the right to exploit the asset.
- (6) In determining the appropriate percentage, the company must act in accordance with—
  - (a) Article 9 of the OECD Model Tax Convention, and
  - (b) the OECD transfer pricing guidelines.

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- (7) In this section “marketing asset” means any of the following (whether or not capable of being transferred or assigned)—
- (a) anything in respect of which proceedings for passing off could be brought, including a registered trade mark (within the meaning of the Trade Marks Act 1994),
  - (b) anything that corresponds to a marketing asset within paragraph (a) and is recognised under the law of a country or territory outside the United Kingdom,
  - (c) any signs or indications (so far as not falling within paragraph (a) or (b)) which may serve, in trade, to designate the geographical origin of goods or services, and
  - (d) any information which relates to customers or potential customers of the company, or any other member of a group of which the company is a member, and is intended to be used for marketing purposes.

### **357BKB Actual marketing royalty**

- (1) The actual marketing royalty for a relevant IP income sub-stream is the aggregate of any sums which—
- (a) were paid by the company for the purposes of acquiring any relevant marketing assets or the right to exploit any such assets, and
  - (b) have been allocated to the sub-stream at Step 3 in section 357BF(2).
- (2) In this section “relevant marketing asset” has the same meaning as in section 357BKA.

### *R&D fraction*

### **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—

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

where—

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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 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,
- (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

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- (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 or consumable items”),
  - (d) sections 1126 to 1126B (when software 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).

### **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



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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.

### **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.

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- (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.

### **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.

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- (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 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

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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.
- (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.

### *Profits arising before grant of right*

#### **357BM Profits arising before grant of right**

- (1) This section applies where a company—
  - (a) holds a right mentioned in paragraph (a), (b) or (c) of section 357BB(1) (rights to which this Part applies) or an exclusive licence in respect of such a right, or
  - (b) would hold such a right or licence but for the fact that the company disposed of any rights in the invention or (as the case may be) the licence before the right was granted.
- (2) The company may elect that, for the purposes of determining the relevant IP profits of a trade of the company for the accounting period in which the right is granted, there is to be added the amount determined in accordance with subsection (3) (the “additional amount”).
- (3) The additional amount is the difference between—
  - (a) the aggregate of the relevant IP profits of the trade for each relevant accounting period, and
  - (b) the aggregate of what the relevant IP profits of the trade for each relevant accounting period would have been if the right had been granted on the relevant day.
- (4) For the purposes of determining the additional amount, the amount of any relevant IP profits to which section 357A does not apply by virtue of Chapter 5 (relevant IP losses) is to be disregarded.
- (5) In this section “relevant accounting period” means—
  - (a) the accounting period of the company in which the right is granted, and

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- (b) any earlier accounting period of the company which meets the conditions in subsection (6).
- (6) The conditions mentioned in subsection (5)(b) are—
  - (a) that it is an accounting period for which an election made by the company under section 357A(1) has effect,
  - (b) that it is an accounting period for which the company is a qualifying company, and
  - (c) that it ends on or after the relevant day.
- (7) In this section “the relevant day” is the later of—
  - (a) the first day of the period of 6 years ending with the day on which the right is granted, and
  - (b) the day on which—
    - (i) the application for the grant of the right was filed, or
    - (ii) in the case of a company that holds an exclusive licence in respect of the right, the licence was granted.
- (8) Where the company would be a qualifying company for an accounting period but for the fact that the right had not been granted at any time during that accounting period, the company is to be treated for the purposes of this section as if it were a qualifying company for that accounting period.
- (9) Where the company would be a qualifying company for the accounting period in which the right was granted but for the fact that the company disposed of the rights or licence mentioned in subsection (1)(b) before the right was granted, the company is to be treated for the purposes of section 357A as if it were a qualifying company for that accounting period.

### *Small claims treatment*

#### **357BN Small claims treatment**

- (1) This section applies where—
  - (a) a company carries on only one trade during an accounting period,
  - (b) section 357BF applies for the purposes of determining the relevant IP profits of the trade for the accounting period, and
  - (c) the qualifying residual profit of the trade for the accounting period does not exceed whichever is the greater of—
    - (i) £1,000,000, and
    - (ii) the relevant maximum for the accounting period.
- (2) The company may make any of the following elections for the accounting period—
  - (a) a notional royalty election (see section 357BNA),
  - (b) a small claims figure election (see section 357BNB), and
  - (c) a global streaming election (see section 357BNC).

This is subject to subsections (3) and (4).

- (3) The company may not make a notional royalty election, a small claims figure election or a global streaming election for the accounting period if—

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- (a) the qualifying residual profit of the trade for the accounting period exceeds £1,000,000,
  - (b) section 357BF applied for the purposes of determining the relevant IP profits of the trade for any previous accounting period beginning within the relevant 4-year period, and
  - (c) the company did not make a notional royalty election, a small claims figure election or (as the case may be) a global streaming election for that previous accounting period.
- (4) The company may not make a small claims figure election for the accounting period if—
  - (a) the qualifying residual profit of the trade for the accounting period exceeds £1,000,000,
  - (b) section 357C or 357DA applied for the purposes of determining the relevant IP profits of the trade for any previous accounting period beginning within the relevant 4-year period, and
  - (c) the company did not make an election under section 357CL for small claims treatment for that previous accounting period.
- (5) In subsections (3) and (4) “the relevant 4-year period” means the period of 4 years ending with the beginning of the accounting period mentioned in subsection (1)(a).
- (6) For the purposes of this section, the “qualifying residual profit” of a trade of a company for an accounting period is the amount which (assuming the company did not make an election under this section) would be equal to the aggregate of the relevant IP income sub-streams established at Step 2 in section 357BF(2) in determining the relevant IP profits of the trade for the accounting period, following the deductions from those sub-streams required by Step 4 in section 357BF(2) (ignoring the amount of any sub-stream which is not greater than nil following those deductions).
- (7) For the purposes of this section, the “relevant maximum” for an accounting period of a company is—
  - (a) in a case where no company is a related 51% group company of the company in the accounting period, £3,000,000;
  - (b) in a case where one or more companies are related 51% group companies of the company in the accounting period, the amount given by the formula—

$$\frac{\pounds 3,000,000}{(1 + N)}$$

where N is the number of those related 51% group companies in relation to which an election under section 357A(1) has effect for the accounting period.

- (8) For an accounting period of less than 12 months, the relevant maximum is proportionally reduced.

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### 357BNA Notional royalty election

- (1) Subsection (2) applies where a company has made a notional royalty election for an accounting period under section 357BN(2)(a).
- (2) In its application for the purposes of determining the relevant IP profits of the trade of the company for the accounting period, section 357BHA (notional royalty) has effect as if—
  - (a) in subsection (2) for “the appropriate percentage” there were substituted “ 75% ”, and
  - (b) subsections (3) to (6) were omitted.

### 357BNB Small claims figure election

- (1) Subsection (2) applies where a company has made a small claims figure election for an accounting period under section 357BN(2)(b).
- (2) In its application for the purposes of determining the relevant IP profits of the trade of the company for the accounting period, section 357BF(2) (steps for calculating relevant IP profits) has effect as if in Step 5—
  - (a) for “marketing assets return figure” there was substituted “ small claims figure ”, and
  - (b) for “(see section 357BK)” there was substituted “ (see section 357BNB(3)) ”.
- (3) Subsections (4) to (9) apply for the purpose of calculating the small claims figure 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.
- (4) If 75% of the qualifying residual profit of the trade for the accounting period is lower than the small claims threshold, the small claims figure for the sub-stream is 25% of the amount of the sub-stream following Step 4 in section 357BF(2).
- (5) If 75% of the qualifying residual profit of the trade for the accounting period is higher than the small claims threshold, the small claims figure for the sub-stream is the amount given by—

$$A - \left( \frac{A}{QRP} \times SCT \right)$$

where—

A is the amount of the sub-stream following the deductions required by Step 4 in section 357BF(2),

QRP is the qualifying residual profit of the trade of the company for the accounting period, and

SCT is the small claims threshold.

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- (6) If no company is a related 51% group company of the company in the accounting period, the small claims threshold is £1,000,000.
- (7) If one or more companies are related 51% group companies of the company in the accounting period, the small claims threshold is—

$$\frac{\pounds 1,000,000}{(1 + N)}$$

where N is the number of those related 51% group companies in relation to which an election under section 357A(1) has effect for the accounting period.

- (8) For an accounting period of less than 12 months, the small claims threshold is proportionately reduced.
- (9) Subsection (6) of section 357BN (meaning of “qualifying residual profit”) applies for the purposes of subsection (4) and (5) of this section.

### **357BNC Global streaming election**

- (1) Subsection (2) applies where a company has made a global streaming election for an accounting period under section 357BN(2)(c).
- (2) In its application for the purpose of determining the relevant IP profits of the trade of the company for the accounting period, this Chapter has effect with the following modifications.
- (3) In subsection (2) of section 357BF (relevant IP profits)—
  - (a) omit Step 2,
  - (b) in Step 3 for “each of the relevant IP income sub-streams” substitute “the relevant IP income stream”,
  - (c) in Step 4—
    - (i) in the words before paragraph (a), for “each” substitute “the”,
    - (ii) for “sub-stream”, in each place it occurs, substitute “stream”,
  - (d) in Step 5—
    - (i) at the beginning insert “If the relevant IP income stream is greater than nil following Step 4,”,
    - (ii) for the words from “each” to “Step 4” substitute “the stream”,
    - (iii) for “sub-stream”, in the second place it occurs, substitute “stream”,
  - (e) in Step 6—
    - (i) for “each relevant IP income sub-stream” substitute “the relevant IP income stream”,
    - (ii) for “sub-stream”, in the second place it occurs, substitute “stream”,
  - (f) omit Step 7, and



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- (g) in Step 8 for “given by Step 7” substitute “ of the relevant IP income stream following Step 6 ”.
- (4) In subsection (3) of that section for “given by” substitute “ of the relevant IP income stream following the Steps in ”.
- (5) In subsection (4) of that section for “given by” substitute “ of the relevant IP income stream following the Steps in ”.
- (6) Omit subsections (5) to (7) of that section.
- (7) In section 357BIA(3) (certain amounts not to be deducted from sub-streams at Step 4 of section 357BF)—
  - (a) for “a relevant IP income sub-stream” substitute “ the relevant IP income stream ”;
  - (b) for “sub-stream”, in the second and third places it occurs, substitute “ stream ”.
- (8) In section 357BJ (routine return figure)—
  - (a) for “sub-stream”, in each place it occurs, substitute “ stream ”, and
  - (b) in subsection (1) for “Step 2” substitute “ Step 1 ”.
- (9) In section 357BK (marketing asset return figure) for “sub-stream”, in each place it occurs, substitute “ stream ”.
- (10) In section 357BKA (notional marketing royalty)—
  - (a) for “sub-stream”, in each place it occurs, substitute “ stream ”, and
  - (b) in subsection (1) for “Step 2” substitute “ Step 1 ”.
- (11) In section 357BKB (actual marketing royalty) for “sub-stream”, in each place it occurs, substitute “ stream ”.
- (12) In section 357BL (R&D fraction: introduction)—
  - (a) for “sub-stream” (in each place it occurs) substitute “ stream ”, and
  - (b) in subsection (1) for “Step 2” substitute “ Step 1 ”.
- (13) In section 357BLA(1) (R&D fraction) for “sub-stream” substitute “ stream ”.
- (14) In section 357BLB(5) (qualifying expenditure on relevant R&D undertaken in-house) for the words after “1138” substitute “ which relates to a qualifying IP right to which income in the stream is attributable ”.
- (15) In section 357BLE(6) (qualifying expenditure on acquisition of relevant qualifying IP rights) for the words from “means” to the end substitute “ means a qualifying IP right to which income in the stream is attributable ”.
- (16) In section 357BLG (cases where the company is a new entrant with insufficient information about pre-enactment expenditure) for “sub-stream”, in each place it occurs, substitute “ stream ”.
- (17) In section 357BLH (R&D fraction: increase for exceptional circumstances) for “sub-stream”, in each place it occurs, substitute “ stream ”.
- (18) In section 357BNB (small claims figure election)—
  - (a) for “sub-stream”, in each place it occurs, substitute “ stream ”, and
  - (b) in subsection (3) for “Step 2” substitute “ Step 1 ”.

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## CHAPTER 2B

### RELEVANT IP PROFITS: CASES MENTIONED IN SECTION 357A(7): INCOME FROM NEW IP

#### **357BO Relevant IP profits**

- (1) Section 357BF applies, with the modifications set out in section 357BQ, for the purposes of determining the relevant IP profits of a trade of a company for an accounting period in a case where—
  - (a) the accounting period begins before 1 July 2021,
  - (b) the company is not a new entrant (see section 357A(11)), and
  - (c) any amount of relevant IP income brought into account as a credit in calculating the profits of the trade for the accounting period is properly attributable to a new qualifying IP right (see section 357BP).
- (2) Where it is necessary for the purposes of section 357BF, as applied by this section, to determine the R&D fraction for a relevant IP income sub-stream, the company concerned is to be treated for the purposes of sections 357BLF and 357BLG as if it were a new entrant.
- (3) Where section 357BF applies by reason of this section for the purposes of determining the relevant IP profits of a trade of a company for an accounting period, the company may not make a global streaming election for the accounting period under section 357BN(2)(c).

#### **357BP Meaning of “new qualifying IP right” and “old qualifying IP right”**

- (1) This section applies for the purposes of this Part.
- (2) “New qualifying IP right”, in relation to a company, means a qualifying IP right which meets condition A, B or C.
- (3) “Old qualifying IP right”, in relation to a company, means a qualifying IP right which does not meet any of those conditions.
- (4) Condition A is that the right was granted or issued to the company in response to an application filed on or after the relevant date.
- (5) Condition B is that the right was assigned to the company on or after the relevant date.
- (6) Condition C is that an exclusive licence in respect of the right was granted to the company on or after the relevant date.
- (7) The “relevant date” for the purposes of subsections (4), (5) and (6) is 1 July 2016; but this is subject to subsection (8).
- (8) The “relevant date” for the purposes of subsections (5) and (6) is 2 January 2016 if—
  - (a) the company and the person who assigned the right or granted the licence were connected at the time of the assignment or grant,

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- (b) the main purpose, or one of the main purposes, of the assignment of the right or the grant of the licence was the avoidance of a foreign tax,
  - (c) the person who assigned the right or granted the licence was not within the charge to corporation tax at the time of the assignment or grant, and
  - (d) the person who assigned the right or granted the licence was not liable at the time of the assignment or grant to a foreign tax which is designated for the purposes of this section by regulations made by the Treasury.
- (9) Regulations may be made under subsection (8)(d) which designate a foreign tax only if it appears to the Treasury that the tax may be charged at a reduced rate under provisions of the law of the country or territory concerned which correspond to the provisions of this Part.
- (10) Regulations may not be made under subsection (8)(d) after 31 December 2016.
- (11) In this section “foreign tax” means a tax under the law of a country or territory outside the United Kingdom.
- (12) Section 1122 (meaning of “connected” persons) applies for the purposes of this section.

### **357BQ The modifications**

- (1) The modifications of section 357BF referred to in section 357BO(1) are as follows.
- (2) Omit subsection (1).
- (3) In subsection (2)—
  - (a) in Step 2—
    - (i) before paragraph (a) insert—
      - “(aa) a sub-stream consisting of income properly attributable to old qualifying IP rights (“an old IP rights sub-stream”),”
    - (ii) in paragraph (a) before “qualifying IP right” insert “ new ”,
    - (iii) in the words after paragraph (c) for “and (7)” substitute “ to (7E) ”,
  - (b) in Step 6, for “relevant IP income sub-stream” substitute “ individual IP right sub-stream, each product sub-stream and each process sub-stream ”, and
  - (c) for Step 7 substitute—
    - “Step 7 Add together—
      - (a) the amount of any old IP rights sub-stream (following Steps 4 and 5), and
      - (b) the amount of each of the individual IP right sub-streams, each of the product sub-streams and each of the process sub-streams (following Step 6).”
- (4) In subsection (7) for paragraph (a) substitute—

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“(a) it would not be reasonably practicable to apportion the income between—

- (i) individual IP rights sub-streams, or
- (ii) individual IP rights sub-streams and an old IP rights sub-stream, or”.

(5) After subsection (7) insert—

“(7A) Subsections (7B) to (7E) apply where—

- (a) income which is properly attributable to an IP item or IP process may in accordance with subsection (7) be allocated at Step 2 of subsection (2) to a product sub-stream or process sub-stream, and
- (b) the IP item or IP process incorporates—
  - (i) at least one item or process in respect of which an old qualifying IP right held by the company has been granted, and
  - (ii) at least one item or process in respect of which a new qualifying IP right held by the company has been granted.

(7B) If—

- (a) the value of the IP item or IP process is wholly or mainly attributable to the incorporation in it of the items or processes referred to in subsection (7A)(b)(i), or
- (b) the old IP percentage for the IP item or IP process is 80% or more, the income properly attributable to the IP item or IP process may be treated as if it were properly attributable to old qualifying IP rights only; and, accordingly, the income may be allocated at Step 2 of subsection (2) to an old qualifying IP rights sub-stream (rather than to a product sub-stream or process sub-stream).

(7C) If the old IP percentage for the IP item or IP process is less than 80% but not less than 20%, that percentage of the income which is properly attributable to the IP item or IP process may be treated as if it were properly attributable to old qualifying IP rights only; and, accordingly, that percentage of the income may be allocated at Step 2 of subsection (2) to an old IP rights sub-stream (and the remainder is to be allocated to a product sub-stream or process sub-stream).

(7D) Where by reason of subsection (7C) only part of the income properly attributable to the IP item or IP process is allocated to a product sub-stream or process sub-stream, the IP item or IP process is to be treated, in determining the R&D fraction for the sub-stream, as if it did not incorporate the items or processes referred to in subsection (7A)(b)(i).

(7E) For the purposes of subsection (7B) and (7C), the “old IP percentage” for an IP item or IP process is the percentage found by the following calculation—

$$\frac{O}{T} \times 100$$

where—

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O is the number of items or processes incorporated in the IP item or IP process in respect of which an old qualifying IP right held by the company has been granted, and

T is the number of items or processes incorporated in the IP item or IP process in respect of which an old or a new qualifying IP right held by the company has been granted.””

(4) In section 357FB (tax advantage schemes)—

(a) in subsection (2)(b) (list of ways by which deductions can be inflated)—

(i) omit “or” at the end of sub-paragraph (ii), and

(ii) after sub-paragraph (iii) insert “, or

(iv) an R&D fraction (see subsection (4A)) being greater than it would be but for the scheme.”, and

(b) after subsection (4) insert—

“(4A) The reference in subsection (2)(b)(iv) to an R&D fraction is a reference to such a fraction as is mentioned at Step 6 of section 357BF(2).”

(5) After section 357GC insert—

### *“Transferred trades*

#### **357GCA Application of this Part in relation to transferred trades**

(1) Where—

- (a) a company (“the transferor”) ceases to carry on a trade which involves the exploitation of a qualifying IP right (“the relevant qualifying IP right”),
- (b) the transferor assigns the relevant qualifying IP right, or grants or transfers an exclusive licence in respect of it, to another company (“the transferee”), and
- (c) the transferee begins to carry on the trade,

the following provisions apply in determining under this Part the relevant IP profits of the trade carried on by the transferee.

(2) The transferee is to be treated as not being a new entrant if—

- (a) an election under section 357A(1) has effect in relation to the transferor on the date of the assignment, grant or transfer mentioned in subsection (1)(b) (“the transfer date”), and
- (b) the first accounting period of the transferor for which that election had effect began before 1 July 2016.

(3) The relevant qualifying IP right is to be treated as being an old qualifying IP right in relation to the transferee if by reason of section 357BP it is an old qualifying IP right in relation to the transferor.

(4) Expenditure incurred prior to the transfer date by the transferor which is attributable to relevant research and development undertaken by the transferor is to be treated for the purposes of section 357BLB as if it is expenditure

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incurred by the transferee which is attributable to relevant research and development undertaken by the transferee.

- (5) Expenditure incurred prior to the transfer date by the transferor in making a payment to a person in respect of relevant research and development contracted out by the transferor to that person is to be treated for the purposes of sections 357BLC and 357BLD as if it is expenditure incurred by the transferee in making a payment to that person in respect of relevant research and development contracted out by the transferee to that person.
- (6) Expenditure incurred prior to the transfer date by the transferor in making a payment in connection with the relevant qualifying IP right which is within subsection (2), (3) or (4) of section 357BLE is to be treated for the purposes of that section as if it is expenditure incurred by the transferee in making a payment in connection with that right which is within one of those subsections.
- (7) Expenditure incurred by the transferee in making a payment to the transferor in respect of the assignment, grant or transfer mentioned in subsection (1)(b) is to be ignored for the purposes of section 357BLE.
- (8) In this section—
  - “trade” includes part of a trade, and
  - “relevant research and development” means research and development which relates to the relevant qualifying IP right.
- (9) For the purposes of this section research and development “relates” to the relevant qualifying IP right 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.”
- (6) Schedule 9 contains amendments consequential on this section.
- (7) The amendments made by this section have effect in relation to accounting periods beginning on or after 1 July 2016.
- (8) Subsection (9) applies where a company has an accounting period (“the straddling period”) which begins before, and ends on or after, 1 July 2016 or 1 July 2021 (“the relevant date”).
- (9) For the purposes of this section and Part 8A of CTA 2010—
  - (a) so much of the straddling period as falls before the relevant date, and so much of that period as falls on or after that date, are treated as separate accounting periods, and
  - (b) any amounts brought into account for the purposes of calculating for corporation tax purposes the profits of any trade of the company for the straddling period are apportioned to the two separate accounting periods on such basis as is just and reasonable.
- (10) Subsection (11) applies if—
  - (a) an election is made by a company under section 357A(1) of CTA 2010, and

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- (b) the notice under section 357G of that Act specifies the accounting period of the company which ends on 30 June 2016, or any earlier accounting period, as being the first accounting period for which the election is to have effect.
- (11) Nothing in section 357GA(5) prevents the election having effect in relation to the accounting period of the company which ends on 30 June 2016 or any subsequent accounting period.
- (12) Subsection (13) applies to an amount of relevant IP income of a company if—
  - (a) the company is not a new entrant,
  - (b) the income is properly attributable to a new qualifying IP right which was assigned to the company, or in respect of which an exclusive licence was granted to the company, during the period beginning on 2 January 2016 and ending on 1 July 2016, and
  - (c) the income accrued to the company during the period beginning on 1 July 2016 and ending on 1 January 2017.
- (13) The income is to be treated for the purposes of Part 8A of CTA 2010 as being properly attributable to an old qualifying IP right.
- (14) Expressions used in subsections (12) and (13) and in Part 8A of CTA 2010 have the meaning they have in that Part.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 19 para. 12(5)(b) inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(c\)](#)
- Sch. 19 para. 12(5)(a) word inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(b\)](#)
- Sch. 19 para. 51(8)(b) words inserted by [2017 c. 32 Sch. 14 para. 48\(2\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(a\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(b\)](#)
- Sch. 19 para. 12(5)(a) words renumbered as Sch. 19 para. 12(5)(a) by [2017 c. 32 Sch. 14 para. 49\(2\)\(a\)](#)
- Sch. 19 para. 58(1) words substituted by [2017 c. 32 Sch. 14 para. 48\(5\)](#)
- Sch. 20 para. 1(4)(e) inserted by [2021 c. 26 Sch. 27 para. 47\(2\)](#)
- Sch. 20 para. 3(3)(d) and word inserted by [2021 c. 26 Sch. 27 para. 47\(3\)\(b\)](#)
- Sch. 20 para. 5(5) inserted by [2021 c. 26 Sch. 27 para. 47\(5\)](#)
- Sch. 22 para. 2(4B) inserted by [2021 c. 26 Sch. 27 para. 48\(2\)\(c\)](#)
- Sch. 22 para. 3(4A) inserted by [2021 c. 26 Sch. 27 para. 48\(3\)](#)