

FINANCE ACT 2012

EXPLANATORY NOTES

INTRODUCTION

Section 19 Schedule 2: Profits Arising from the Exploitation of Patents Etc

Details of the Schedule

Part 1: Amendments of CTA 2010

Chapter 6: Anti-avoidance

207. New sections 357F to 357FB are anti avoidance provisions.
208. New section 357F applies in situations where licences may be entered into for non commercial reasons. This will be where the main purpose or one of the main purposes of conferring any right in respect of a protected item is to ensure that the licence meets the definition of exclusive licence for the purposes of the new regime. Thus it may apply for example in cases where the exclusivity provided by the agreement was in respect of a spurious commercial right. In such cases, even though the licence may confer the right to the exclusion of all other persons, it will not be regarded as an exclusive licence for the purposes of part 8A.
209. New section 357FA applies in situations where a qualifying item is incorporated into a larger item to ensure that income from the sale of that larger item will be relevant IP income. Where the main purpose or one of the main purposes of the inclusion of the item is to make income from the sale of the larger item relevant IP income, then such income will not be relevant IP income.
210. New section 357FB is a targeted anti-avoidance provision which limits or denies a Patent Box deduction to a company that is party to a scheme entered into in order to secure a tax advantage.
211. New section 357FB(1) applies the section where a company that is entitled to make a deduction under new section 357A is party to a scheme, one of the main purposes of which is to obtain a relevant tax advantage. A scheme is defined in new section 357FB(6).
212. New section 357FB(2) identifies a relevant tax advantage for the purposes of the section where there is an increase in the amount of any deduction due to the company, or another member of that company's group, under new section 357A. This increase must be attributable to:
- avoiding the operation of any provision of the regime, such as the R&D expenditure condition of new section 357CH, or the relevant IP loss provisions of chapter 5, or
 - artificially inflating the amount of relevant IP income which is brought into accounts in determining trade profits, or
 - a mismatch between relevant IP income and the expenditure incurred in generating that relevant IP income.

*These notes refer to the Finance Act 2012 (c.14)
which received Royal Assent on 17 July 2012*

213. New section 357FB(3) explains that a company will be regarded as having artificially inflated the amount of its relevant IP income where it is party to a scheme that does either of two things affecting the proportion of relevant IP income and other income used in calculating its relevant IP profits. The first is to include matching amounts of additional income that would be relevant IP income and additional expenses that would be debited in the computation of profits. The second is to include an additional amount of income that would be relevant IP income where there is a corresponding decrease in other income that is not relevant IP income.
214. New section 357FB(4) sets out when there is a mismatch between relevant IP income and expenditure for the purposes of the rule. This will be where:
- relevant IP income is brought in to account in calculating a deduction under new section 357A for a company, and
 - expenditure in relation to that right is brought to account in a different accounting period of that company, or in a different company, where no election under new section 357A was in effect.
215. New section 357FB(5) provides that where the section applies, the deduction to be made by the company is to be limited an amount that ensures that no relevant tax advantage arises.