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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 2. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 2

Section 19

#### PROFITS ARISING FROM THE EXPLOITATION OF PATENTS ETC

##### PART 1

###### AMENDMENTS OF CTA 2010

- 1 (1) In CTA 2010, after Part 8 insert—

##### “PART 8A

###### PROFITS ARISING FROM THE EXPLOITATION OF PATENTS ETC

##### CHAPTER 1

###### REDUCED CORPORATION TAX RATE FOR PROFITS FROM PATENTS ETC

###### **Election for special treatment of profits from patents etc**

- 357A(1) A company may elect that any relevant IP profits of a trade of the company for an accounting period for which it is a qualifying company are chargeable at a lower rate of corporation tax.
- (2) An election under subsection (1) is to be given effect by allowing a deduction to be made in calculating for corporation tax purposes the profits of the trade for the period.
- (3) The amount of the deduction is—

$$RP \times \left( \frac{MR - IPR}{MR} \right)$$

where—

RP is the relevant IP profits of the trade of the company,

MR is the main rate of corporation tax, and

IPR is the special IP rate of corporation tax.

- (4) The special IP rate of corporation tax is 10%.
- (5) Chapter 2 specifies when a company is a qualifying company.

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- (6) Chapter 3 makes provision for determining the relevant IP profits or relevant IP losses of a trade.
- (7) Chapter 4 makes provision for an alternative way of determining the relevant IP profits or losses of a trade known as “streaming”.
- (8) Chapter 5 makes provision in relation to the relevant IP losses of a trade.
- (9) Chapter 6 contains anti-avoidance provisions.
- (10) Chapter 7 contains supplementary provision.

## CHAPTER 2

### QUALIFYING COMPANIES

#### Meaning of “qualifying company”

- 357B) A company is a qualifying company for an accounting period if—
- (a) condition A or B is met, and
  - (b) in the case of a company that is a member of a group, condition C is met.
- (2) Condition A is that, at any time during the accounting period, the company—
- (a) holds any qualifying IP rights, or
  - (b) holds an exclusive licence in respect of any qualifying IP rights.
- For the meaning of “exclusive licence”, see section 357BA.
- (3) Condition B is that—
- (a) the company has held a qualifying IP right or an exclusive licence in respect of such a right,
  - (b) the company has received income in respect of an event which occurred in relation to the right or licence, or any part of which so occurred, at a time when—
    - (i) the company was a qualifying company, and
    - (ii) an election under section 357A had effect in relation to it, and
  - (c) the income falls to be taxed in the accounting period.
- (4) A right is a qualifying IP right for the purposes of this Part if—
- (a) it is a right to which this Part applies (see section 357BB), and
  - (b) the company meets the development condition in relation to the right (see section 357BC).
- (5) Condition C is that the company meets the active ownership condition for the accounting period (see section 357BE).

#### Meaning of “exclusive licence”

- 357BA) In this Part “exclusive licence”, in relation to a right (“the principal right”), means a licence which—

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- (a) is granted by the person who holds either the principal right or an exclusive licence in respect of the principal right (“the proprietor”), and
  - (b) confers on the person holding the licence (“the licence-holder”), or on the licence-holder and persons authorised by it, the rights in respect of the principal right that are listed in subsection (2).
- (2) The rights are—
- (a) one or more rights conferred to the exclusion of all other persons (including the proprietor) in one or more countries or territories, and
  - (b) the right—
    - (i) to bring proceedings without the consent of the proprietor or any other person in respect of any infringement of the rights within paragraph (a), or
    - (ii) to receive the whole or the greater part of any damages awarded in respect of any such infringement.
- (3) Where the licence-holder has any right within subsection (2)(b) by virtue of any enactment or rule of law, the right is to be regarded for the purposes of this section as conferred by the licence.
- (4) Where—
- (a) a company (“C”) that is a member of a group holds either a right to which this Part applies or an exclusive licence in respect of such a right, and
  - (b) C confers on another company that is a member of the group all of the rights held by C in respect of the invention,
- that other company is to be treated for the purposes of this Part as holding an exclusive licence in respect of that right.
- (5) For the purposes of subsection (4) it does not matter if the rights conferred by C do not include the right to enforce, assign or grant a licence of any of those rights.

### **Rights to which this Part applies**

- 357B(1) This Part applies to the following rights—
- (a) a patent granted under the Patents Act 1977,
  - (b) a patent granted under the European Patent Convention,
  - (c) a right of a specified description which corresponds to a right within paragraph (a) or (b) and is granted under the law of a specified EEA state,
  - (d) a supplementary protection certificate,
  - (e) any plant breeders' rights granted in accordance with Part 1 of the Plant Varieties Act 1997,
  - (f) any Community plant variety rights granted under Council Regulation (EC) No 2100/94.
- (2) Where—
- (a) directions are in force under section 22 of the Patents Act 1977 (information prejudicial to national security or safety of public) with respect to an application for a patent under that Act, and

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- (b) the person making the application has been notified under section 18(4) of that Act that the application complies with the requirements of the Act and the rules,  
 the person is to be treated for the purposes of this Part as if the person had been granted the patent under that Act.
- (3) Where—
- (a) a person holds a marketing authorisation in respect of a product in accordance with any EU legislation, and
- (b) the product benefits from marketing protection (see subsection (4)) or data protection (see subsection (5)),  
 the person is to be treated for the purposes of this Part as having been granted a right to which this Part applies in respect of the product.
- (4) For the purposes of this section a product benefits from marketing protection if—
- (a) the product benefits from marketing protection by virtue of Article 14.11 of Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human use, or
- (b) any of the following prohibitions is in force—
- (i) the prohibition on placing on the market a generic of the product imposed by Article 10.1 of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use,
- (ii) the prohibition imposed by Article 8.1 of Regulation (EC) No 141/2000 of the European Parliament and of the Council of 16 December 1999 on orphan medicinal products, and
- (iii) the prohibition on placing on the market a generic of the product imposed by Article 13.1 of Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products.
- (5) For the purposes of this section a product benefits from data protection if—
- (a) the product benefits from the data exclusivity conferred by Article 10.5 of Directive 2001/83/EC of the European Parliament and of the Council,
- (b) the prohibition on referring to the results of tests or trials in relation to the product imposed by Article 74a of that Directive is in force, or
- (c) data relating to the product benefits from data protection under Article 59 of Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market.
- (6) The reference to data in subsection (5)(c) does not include a study necessary for the renewal or review of a marketing authorisation granted in respect of the product in accordance with Regulation (EC) No 1107/2009.
- (7) In this section—

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“European Patent Convention” means the Convention on the Grant of European Patents,

“rules” means rules made under section 123 of the Patents Act 1977,

“specified” means specified in an order made by the Treasury, and

“supplementary protection certificate” means a certificate issued under—

- (a) Council Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products, or
- (b) Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products.

(8) The Treasury may by order—

- (a) amend this section so as to make provision about the circumstances in which a product benefits from marketing or data protection for the purposes of this section;
- (b) make such provision amending any reference in this section to EU legislation as appears to them appropriate in consequence of any EU legislation amending or replacing that EU legislation.

(9) An order made under this section may make any incidental, supplemental, consequential, transitional or saving provision, including provision amending or modifying this Part.

### **The development condition**

357B(1) A company meets the development condition in relation to a right if condition A, B, C or D is met.

Section 357BD (meaning of “qualifying development”) applies for the purposes of this section.

(2) Condition A is that—

- (a) the company has at any time carried out qualifying development in relation to the right, and
- (b) the company has not ceased to be, or become, a controlled member of a group since that time.

(3) Condition B is that—

- (a) the company has at any time carried out qualifying development in relation to the right,
- (b) the company has ceased to be, or become, a controlled member of a group since that time,
- (c) the company has, for a period of 12 months beginning with the day on which it ceased to be, or became, a controlled member of the group, performed activities of the same description as those that constituted the qualifying development, and
- (d) the company remains a member of that group or (as the case may be) does not become a controlled member of any other group.

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- (4) Condition C is that—
- (a) the company is a member of a group,
  - (b) another company that is or has been a member of the group has carried out qualifying development in relation to the right, and
  - (c) that other company was a member of the group at the time it carried out the qualifying development.
- (5) Condition D is that—
- (a) the company is a member of a group,
  - (b) another company that is or has been a member of the group has carried out qualifying development in relation to the right,
  - (c) that other company (“T”) or, where another member of the group begins to carry on the trade which T carried on immediately before becoming a member of the group, either or both of those companies have, while carrying on that trade as a member of the group, performed activities of the same description as those that constituted the qualifying development, and
  - (d) those activities of those companies, taken together, have been performed for a period of 12 months beginning with the day on which T became a member of the group.
- (6) For the purposes of conditions A and B, a company becomes a controlled member of a group at any time if—
- (a) another company (“P”) either becomes the holder of a major interest in the company, or begins to control the company, at that time, and
  - (b) immediately before that time the company was not associated with P or with any company associated with P immediately before that time.
- (7) For the purposes of conditions A and B, a company ceases to be a controlled member of a group at any time if—
- (a) every other company which immediately before that time held a major interest in, or controlled, the company ceases to do so, and
  - (b) as a result the company ceases to be associated with any of those companies.
- (8) Where—
- (a) a company ceases to be a controlled member of a group at any time, and
  - (b) at that time the company holds a major interest in, or controls, any other company,
- that other company is to be treated for the purposes of conditions A and B as also having ceased to be a controlled member of the group at that time.
- (9) In subsections (6) and (7) “associated” is to be read in accordance with section 357GD(3).
- (10) The following provisions apply for the purposes of subsections (6) to (8)—
- section 472 of CTA 2009 (meaning of “control”), and
  - sections 473 and 474 of CTA 2009 (meaning of “major interest”).

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- (11) A company that meets the development condition in relation to a right by virtue of the performance of the activities mentioned in subsection (3) or (5) for the period of 12 months so mentioned is to be regarded as meeting that condition in relation to the right during that period (as well as at any other time when the company meets the condition).

### **Meaning of “qualifying development”**

- 357B(1) A company carries out “qualifying development” in relation to a right if—
- (a) it creates, or significantly contributes to the creation of, the invention, or
  - (b) it performs a significant amount of activity for the purposes of developing the invention or any item or process incorporating the invention.
- (2) The reference in subsection (1)(b) to developing the invention includes developing ways in which the invention may be used or applied.
- (3) For the purposes of section 357BC it does not matter whether the qualifying development was carried out before or after—
- (a) the company, or
  - (b) where the company is a member of a group, any member of the group,
- became the holder of the right or (as the case may be) an exclusive licence in respect of the right.

### **The active ownership condition**

- 357B(1) A company meets the active ownership condition for an accounting period if all or almost all of the qualifying IP rights held by the company in that accounting period are rights in respect of which condition A or B is met.
- (2) Condition A is that during the accounting period the company performs a significant amount of management activity in relation to the rights.
- (3) In subsection (2) “management activity”, in relation to any qualifying IP rights, means formulating plans and making decisions in relation to the development or exploitation of the rights.
- (4) Condition B is that the company meets the development condition in relation to the rights by virtue of section 357BC(2) or (3).
- (5) 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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### CHAPTER 3

#### RELEVANT IP PROFITS

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

#### **Relevant IP profits**

357(1) To determine the relevant IP profits of a trade of a company for an accounting period—

*Step 1* Calculate the total gross income of the trade for the accounting period (see section 357CA).

*Step 2* Calculate the percentage (“X%”) given by the following formula—

$$\frac{\text{RIPI}}{\text{TI}} \times 100$$

where—

“RIPI” is so much of the total gross income of the trade for the accounting period as is relevant IP income (see sections 357CC and 357CD), and

“TI” is the total gross income of the trade for the accounting period.

*Step 3* Calculate X% of the profits of the trade for the accounting period. If there are no such profits, calculate X% of the losses of the trade (expressed as a negative figure) for the accounting period. In calculating the profits of the trade for the purposes of this step, make any adjustments required by section 357CG (and references in this step to the profits or losses of the trade are to be read subject to any such adjustments).

*Step 4* Deduct from the amount given by Step 3 the routine return figure (see section 357CI). The amount given by this step is the “qualifying residual profit”.

If the amount of the qualifying residual profit is not greater than nil, go to Step 7.

*Step 5* If the company has elected for small claims treatment, calculate the small claims amount in relation to the trade (see section 357CM). If the company has not, go to Step 6.

*Step 6* Deduct from the qualifying residual profit the marketing assets return figure (see section 357CN).

*Step 7* If the company has made an election under section 357CQ (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 5 or 6 (or, if the amount of the qualifying residual profit was not greater than nil, Step 4) any amount determined in accordance with subsection (3) of that section.



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- (2) If the amount given by subsection (1) is greater than nil, that amount is the relevant IP profits of the trade for the accounting period.
- (3) If the amount given by subsection (1) is less than nil, that amount is the relevant IP losses of the trade for the accounting period (see Chapter 5).

### *Total gross income of trade*

#### **Total gross income of a trade**

- 357CA(1) For the purposes of this Part the “total gross income” of a trade of a company for an accounting period is the aggregate of the amounts falling within the Heads set out in—
- (a) subsection (3) (revenue),
  - (b) subsection (5) (compensation),
  - (c) subsection (6) (adjustments),
  - (d) subsection (7) (proceeds from intangible fixed assets),
  - (e) subsection (8) (profits from patent rights).
- (2) But the total gross income of the trade does not include any finance income (see section 357CB).
- (3) Head 1 is any amounts which—
- (a) in accordance with generally accepted accounting practice (“GAAP”) are recognised as revenue in the company's profit and loss account or income statement for the accounting period, and
  - (b) are brought into account as credits in calculating the profits of the trade for the accounting period.
- (4) Where the company does not draw up accounts for an accounting period in accordance with GAAP, the reference in subsection (3)(a) to any amounts which in accordance with GAAP are recognised as revenue in the company's profit and loss account or income statement for the accounting period is to be read as a reference to any amounts which would be so recognised if the company had drawn up such accounts for that accounting period.
- (5) Head 2 is any amounts of damages, proceeds of insurance or other compensation (so far as not falling within Head 1) which are brought into account as credits in calculating the profits of the trade for the accounting period.
- (6) Head 3 is any amounts (so far as not falling within Head 1) which are brought into account as receipts under section 181 of CTA 2009 (adjustment on change of basis) in calculating the profits of the trade for the accounting period.
- (7) Head 4 is any amounts (so far as not falling within Head 1) which are brought into account as credits under Chapter 4 of Part 8 of CTA 2009 (realisation of intangible fixed assets) in calculating the profits of the trade for the accounting period.

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- (8) Head 5 is any profits from the sale by the company of the whole or part of any patent rights held for the purposes of the trade which are taxed under section 912 of CTA 2009 in the accounting period.

### **Finance income**

357C(B) 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 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 a 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*

### **Relevant IP income**

357C(C) 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),
- (e) subsection (9) (other compensation).

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

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

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- (b) an election under section 357A had effect in relation to it.
- (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.

### **Notional royalty**

357C(1) This section applies where—

- (a) a company, for the purposes of any trade of the company, holds any rights mentioned in paragraph (a), (b) or (c) of section 357BB(1) (rights to which this Part applies) or an exclusive licence in respect of any such rights, and
- (b) the rights are relevant qualifying IP rights.
- (2) For the purposes of this section a qualifying IP right is a “relevant qualifying IP right” in relation to an accounting period if—
  - (a) the total gross income of the trade of the company for the accounting period includes any income arising from things done by the company that involve the exploitation by the company of that right, and
  - (b) that income is not relevant IP income or excluded income.

Such income is referred to in this section as “IP-derived income”.

- (3) The company may elect that the notional royalty in respect of the trade for the accounting period is to be treated for the purposes of this Part as if it were relevant IP income.
- (4) The notional royalty in respect of a trade of a company for an accounting period is the appropriate percentage of the IP-derived income for that accounting period.
- (5) The “appropriate percentage” is the proportion of any IP-derived income for an accounting period which the company would pay another person (“P”) for the right to exploit the relevant qualifying IP rights in that accounting period if the company were not otherwise able to exploit them.
- (6) 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 relevant qualifying IP rights to the exclusion of any other person (including P),
  - (c) the company will have the same rights in relation to the relevant qualifying IP rights as it actually has,
  - (d) the relevant qualifying IP rights are conferred on the relevant day,
  - (e) the appropriate percentage for the accounting period is determined at the beginning of the accounting period,

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- (f) the appropriate percentage for the accounting period will apply for each succeeding accounting period for which the company will have the right to exploit the relevant qualifying IP rights, 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 relevant qualifying IP rights.
- (7) In subsection (6)(d) “the relevant day”, in relation to a relevant qualifying IP right or a licence in respect of such a right, means—
- (a) the first day of the accounting period, or
  - (b) if later, the day on which the company first began to hold the right or licence.
- (8) 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.
- (9) In this section “excluded income” means any income falling within any of the Heads in section 357CE.

### **Excluded income**

- 357C(E) For the purposes of this Part income falling within any 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.

### **Mixed sources of income**

- 357C(F) This section applies to any income that—
- (a) is mixed income, or

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- (b) is paid under a mixed agreement.
- (2) “Mixed income” means the proceeds of sale in a case where an item falling within subsection (2) of section 357CC 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
  - (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 357CC(2),
  - (b) the grant of any right falling within paragraph (a), (b) or (c) of section 357CC(6),
  - (c) a sale or disposal falling within section 357CC(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 357CC(2),
  - (b) the grant of any right falling within paragraph (a), (b) or (c) of section 357CC(6), or
  - (c) a sale or disposal falling within section 357CC(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.

#### *Calculating profits of trade*

#### **Adjustments in calculating profits of trade**

- 357C(1) This section applies for the purposes of determining the relevant IP profits of a trade of a company for an accounting period.
- (2) In calculating the profits of the trade for the accounting period—
    - (a) there are to be added the amounts in subsection (3), and
    - (b) there are to be deducted the amounts in subsection (4).
  - (3) The amounts to be added are—
    - (a) the amount of any debits which are treated as expenses of the trade by virtue of—
      - (i) section 297 of CTA 2009 (debts in respect of loan relationships), or

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- (ii) section 573 of CTA 2009 (debits in respect of derivative contracts), and
  - (b) the amount of any additional deduction for the accounting period obtained by the company under Part 13 of CTA 2009 for expenditure on research and development in relation to the trade.
- (4) The amounts to be deducted are any amounts of finance income brought into account in calculating the profits of the trade for the accounting period.  

(For the meaning of “finance income”, see section 357CB.)
- (5) In a case where there is a shortfall in R&D expenditure in relation to the trade for a relevant accounting period (see section 357CH), the amount of R&D expenditure brought into account in calculating the profits of the trade for that accounting period is to be increased by the amount mentioned in section 357CH(2).
- (6) For the purposes of subsection (5)—
  - “R&D expenditure” means expenditure on research and development in relation to the trade,
  - “relevant accounting period”, in relation to a company, means—
    - (a) the first accounting period for which—
      - (i) the company is a qualifying company, and
      - (ii) an election under section 357A has effect in relation to it, and
    - (b) each accounting period that begins before the end of the period of 4 years beginning with that accounting period, and
  - “research and development” means activities, other than oil and gas exploration and appraisal, that fall to be treated as research and development in accordance with generally accepted accounting practice.

### **Shortfall in R&D expenditure**

- 357C**H**) There is a shortfall in R&D expenditure in relation to a trade of a company for a relevant accounting period if the actual R&D expenditure of the trade for the accounting period (as adjusted under subsections (8) to (11)) is less than 75% of the average amount of R&D expenditure.
- (2) The amount that is to be added to the actual R&D expenditure for the purposes of section 357CG(5) is an amount equal to the difference between—
    - (a) 75% of the average amount of R&D expenditure, and
    - (b) the actual R&D expenditure, as adjusted under subsections (8) to (11).
  - (3) In this section—
    - (a) the “actual R&D expenditure” of a trade of a company for an accounting period is the amount of R&D expenditure that (ignoring section 357CG(5)) is brought into account in calculating the profits of the trade for the accounting period, and
    - (b) “R&D expenditure” and “relevant accounting period” have the meaning given by section 357CG(6).

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(4) The average amount of R&D expenditure is—

$$\frac{E}{N} \times 365$$

where—

E is the amount of R&D expenditure that—

- (a) has been incurred by the company during the relevant period, and
- (b) has been brought into account in calculating the profits of the trade for any accounting period ending before the first relevant accounting period, and

N is the number of days in the relevant period.

(5) The relevant period is the shorter of—

- (a) the period of 4 years ending immediately before the first relevant accounting period, and
- (b) the period beginning with the day on which the company begins to carry on the trade and ending immediately before the first relevant accounting period.

(6) For a relevant accounting period of less than 12 months, the average amount of R&D expenditure is proportionately reduced.

(7) Subsections (8) to (11) apply for the purposes of determining—

- (a) whether there is a shortfall in R&D expenditure for a relevant accounting period, and
- (b) if there is such a shortfall, the amount to be added by virtue of subsection (2).

(8) If the amount of the actual R&D expenditure for a relevant accounting period is greater than the average amount of R&D expenditure, the difference between the two amounts is to be added to the actual R&D expenditure for the next relevant accounting period.

(9) If—

- (a) there is not a shortfall in R&D expenditure for a relevant accounting period, but
- (b) in the absence of any additional amount, there would be a shortfall in R&D expenditure for that accounting period,

the remaining portion of the additional amount is to be added to the actual R&D expenditure for the next relevant accounting period.

(10) For the purposes of this section—

“additional amount”, in relation to a relevant accounting period, means any amount added to the actual R&D expenditure for that accounting period by virtue of subsection (8), (9) or (11), and

“the remaining portion” of an additional amount is so much of that amount as exceeds the difference between—



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- (a) the actual R&D expenditure for the relevant accounting period in the absence of the additional amount, and
  - (b) 75% of the average amount of R&D expenditure.
- (11) If—
- (a) there is not a shortfall in R&D expenditure for a relevant accounting period, and
  - (b) there would not be a shortfall in R&D expenditure for that accounting period in the absence of any additional amount,
- the additional amount is to be added to the actual R&D expenditure for the next relevant accounting period (in addition to any additional amount so added by virtue of subsection (8)).

### *Routine return figure*

#### **Routine return figure**

357C(1) To determine the routine return figure in relation to a trade of a company for an accounting period—

*Step 1* Take the aggregate of any routine deductions made by the company in calculating the profits of the trade for the accounting period. For the meaning of “routine deductions”, see sections 357CJ and 357CK.

*Step 2* Multiply that amount by 0.1.

*Step 3* Calculate X% of the amount given by Step 2. “X%” is the percentage given by Step 2 in section 357C(1).

- (2) In a case where—
- (a) the company (“C”) is a member of a group,
  - (b) another member of the group incurs 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, and
  - (d) the deduction would have been a routine deduction,
- C is to be treated for the purposes of subsection (1) as having made such a routine deduction.
- (3) Where expenses are incurred by any member of the group on behalf of C and any other member of the group, subsection (2) 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.

#### **Routine deductions**

357C(1) For the purposes of section 357CI “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),

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- (e) subsection (6) (professional services),
- (f) subsection (7) (miscellaneous services).

This is subject to section 357CK (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.
- (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 electro-magnetic energy.

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

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

357C(1) For the purposes of section 357C 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).
- (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 for which an additional deduction for the accounting period is obtained by the company under Part 13 of CTA 2009, and
  - (b) 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).
- (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) The Treasury may by order amend this section.

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### *Election for small claims treatment*

#### **Companies eligible to elect for small claims treatment**

- 357C(1) A company may elect for small claims treatment for an accounting period if condition A or B is met in relation to the accounting period.
- (2) Condition A is that the aggregate of the amounts of qualifying residual profit of each trade of the company for the accounting period does not exceed £1,000,000.
- (3) Condition B is that—
- (a) the aggregate of the amounts of qualifying residual profit of each trade of the company for the accounting period does not exceed the relevant maximum, and
  - (b) the company did not take Step 6 in section 357C(1) or 357DA(1) for the purpose of calculating the relevant IP profits of any trade of the company for any previous accounting period beginning within the relevant 4-year period.
- (4) In subsection (3)(b) “the relevant 4-year period” means the period of 4 years ending immediately before the accounting period mentioned in subsection (3)(a).
- (5) If the company has no associated company in the accounting period, the relevant maximum is £3,000,000.
- (6) If the company has one or more associated companies in the accounting period, the relevant maximum is—

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

where N is the number of those associated companies in relation to which an election under section 357A has effect for the accounting period.

- (7) For an accounting period of less than 12 months, the relevant maximum is proportionately reduced.
- (8) Any amount of qualifying residual profit of a trade of the company that is not greater than nil is to be disregarded for the purposes of this section.
- (9) Sections 25 to 30 (definition of “associated companies”) have effect for the purposes of this section.

#### **Small claims amount**

- 357CM(1) This section applies where a company elects for small claims treatment for an accounting period.

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- (2) The small claims amount in relation to each trade of the company for the accounting period is—
- (a) if the amount in subsection (3) is lower than the small claims threshold, 75% of the qualifying residual profit of the trade for the accounting period;
  - (b) in any other case, the amount given by—

$$\frac{SCT}{T}$$

where—

SCT is the small claims threshold, and

T is the number of trades of the company.

- (3) The amount referred to in subsection (2)(a) is—

$$0.75 \times QRP$$

where QRP is the aggregate of the amounts of qualifying residual profit of each trade of the company for the accounting period (but see subsection (4)).

- (4) Any amount of qualifying residual profit of a trade of the company that is not greater than nil is to be disregarded for the purposes of subsection (3).
- (5) If the company has no associated company in the accounting period, the small claims threshold is £1,000,000.
- (6) If the company has one or more associated companies in the accounting period, the small claims threshold is—

$$\frac{£1,000,000}{1 + N}$$

where N is the number of those associated companies in relation to which an election under section 357A has effect for the accounting period.

- (7) For an accounting period of less than 12 months, the small claims threshold is proportionately reduced.
- (8) Sections 25 to 30 (definition of “associated companies”) have effect for the purposes of this section.

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*Marketing assets return figure*

**Marketing assets return figure**

357C(N) The marketing assets return figure in relation to a trade of a company for an accounting period is—

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

where—

NMR is the notional marketing royalty in respect of the trade for the accounting period (see section 357CO), and

AMR is the actual marketing royalty in respect of the trade for the accounting period (see section 357CP).

(2) Where—

- (a) AMR is greater than NMR, or
  - (b) the difference between NMR and AMR is less than 10% of the qualifying residual profit of the trade for the accounting period,
- the marketing assets return figure is nil.

**Notional marketing royalty**

357C(O) The notional marketing royalty in respect of a trade of a company for an accounting period is the appropriate percentage of the relevant IP income for that accounting period.

In this section “relevant IP income”, in relation to a trade of a company for an accounting period, means so much of the total gross income of the trade for the accounting period as is relevant IP income.

- (2) The “appropriate percentage” is the proportion of any relevant IP income for an accounting period which the company would pay another person (“P”) for the right to exploit the relevant marketing assets in that accounting period 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 an accounting period if the relevant IP income of the trade of the company for the accounting period includes any income arising from things done by the company that involve the exploitation by the company of that marketing asset.
- (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 relevant marketing assets to the exclusion of any other person (including P),

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- (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 for the accounting period is determined at the beginning of the accounting period,
  - (f) the appropriate percentage for the accounting period 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 relevant IP income 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, 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.
- (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.

#### **Actual marketing royalty**

- 357C(1) The actual marketing royalty in respect of a trade of a company for an accounting period is X% of 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) were brought into account as debits in calculating the profits of the trade for the accounting period.
- (2) In this section—
- “relevant marketing assets” has the same meaning as in section 357CO, and

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“X%” is the percentage given by Step 2 in section 357C(1).

*Profits arising before grant of right*

**Profits arising before grant of right**

357C(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
  - (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 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, or
  - (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.



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- (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.

## CHAPTER 4

### STREAMING

#### **Alternative method of calculating relevant IP profits: “streaming”**

- 357D(1) A company may elect to apply section 357DA (instead of section 357C) for the purposes of determining the relevant IP profits of any trade of the company for an accounting period.
- (2) An election made under subsection (1) is known as a “streaming election”.
  - (3) A streaming election has effect—
    - (a) for the accounting period for which it is made, and
    - (b) for each subsequent accounting period.This is subject to section 357DB.
  - (4) If any of the mandatory streaming conditions in section 357DC is met in relation to a trade of a company for an accounting period, the company must apply section 357DA (instead of section 357C) for the purposes of determining the relevant IP profits of the trade for that accounting period.

#### **Relevant IP profits**

- 357DA(1) To determine the relevant IP profits of a trade of a company for an accounting period in accordance with this section—

*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 357CB), and divide them into two “streams”, amounts of relevant IP income (see sections 357CC and 357CD) and amounts that are not amounts of relevant IP income. The stream consisting of relevant IP income is “the relevant IP income stream”.

*Step 2* Take any amounts which are brought into account as debits in calculating the profits of the trade for the accounting period, other than any amounts referred to in section 357CG(3), and allocate them on a just and reasonable basis between the two streams. (See also section 357CG(5).)

*Step 3* Deduct from the relevant IP income stream the amounts allocated to that stream under Step 2.

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*Step 4* Deduct from the amount given by Step 3 the routine return figure (see subsection (4)). The amount given by this step is the “qualifying residual profit”.

If the amount of the qualifying residual profit is not greater than nil, go to Step 7.

*Step 5* If the company has elected for small claims treatment, calculate the small claims amount in relation to the trade (see section 357CM). If the company has not, go to Step 6.

*Step 6* Deduct from the qualifying residual profit the marketing assets return figure (see section 357CN and subsection (6)).

*Step 7* If the company has made an election under section 357CQ (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 5 or 6 (or, if the amount of the qualifying residual profit was not greater than nil, Step 4) any amount determined in accordance with subsection (3) of that section.

- (2) If the amount given by subsection (1) is greater than nil, that amount is the relevant IP profits of the trade for the accounting period.
- (3) If the amount given by subsection (1) is less than nil, that amount is the relevant IP losses of the trade for the accounting period (see Chapter 5).
- (4) The routine return figure, in relation to a trade of a company for an accounting period, 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 relevant IP income stream under Step 2.
 In this subsection “routine deductions” is to be read in accordance with sections 357CJ and 357CK.
- (5) Subsections (2) and (3) of section 357CI have effect for the purposes of subsection (4) of this section as they have effect for the purposes of that section.
- (6) For the purposes of determining the marketing assets return figure in Step 6, section 357CP (actual marketing royalty) has effect as if the reference to X% of the aggregate of any sums falling within subsection (1) of that section were a reference to the aggregate of any such sums which have been allocated to the relevant IP income stream under Step 2.

### **Method of allocation**

- 357DB) In this section “method of allocation” means the method of allocating, for the purposes of Step 2 in section 357DA(1), the amounts mentioned in that step.
- (2) A company that applies section 357DA for the purposes of determining the relevant IP profits of a trade of the company for an accounting period must use the same method of allocation in relation to the trade for that accounting period as it used in the last accounting period of the company for which it applied that section for the purposes of determining the relevant IP profits of the trade.

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- (3) But subsection (2) does not apply if there is a change of circumstances relating to the trade which makes the use of that method of allocation in relation to the trade for the accounting period inappropriate.
- (4) In such a case, the company may—
  - (a) use a different method of allocation in relation to the trade for the accounting period (and subsection (2) applies accordingly for subsequent accounting periods), or
  - (b) elect not to apply section 357DA for the purposes of determining the relevant IP profits of the trade for the accounting period.
- (5) Subsection (4)(b) does not prevent the company making a fresh streaming election in relation to the trade for any subsequent accounting period.

### **The mandatory streaming conditions**

- 357D(1) Mandatory streaming condition A is met in relation to a trade of a company for an accounting period if—
- (a) any amount brought into account as a credit in calculating the profits of the trade for the accounting period is not fully recognised as revenue for the accounting period, and
  - (b) the amount, or the aggregate of any such amounts, is substantial.
- (2) An amount is a “substantial” amount for the purposes of this section if it is greater than—
- (a) £2,000,000, or
  - (b) 20% of the total gross income of the trade for the accounting period, whichever is the lower.
- (3) But an amount is not a substantial amount for the purposes of this section if it does not exceed £50,000.
- (4) The reference in subsection (1)(a) to an amount brought into account as a credit includes a reference to any amount brought into account by virtue of section 147 of TIOPA 2010 (basic transfer-pricing rule).
- (5) Mandatory streaming condition B is met in relation to a trade of a company for an accounting period if the total gross income of the trade for the accounting period includes—
- (a) relevant IP income, and
  - (b) a substantial amount of licensing income that is not relevant IP income.
- (6) In subsection (5) “licensing income” means income consisting of any licence fee, royalty or other payment which the company has received under an agreement granting another person any right in respect of any intellectual property held by the company.
- “Intellectual property” has the meaning given by section 712(3) of CTA 2009.
- (7) Mandatory streaming condition C is met in relation to a trade of a company for an accounting period if the total gross income of the trade for the accounting period includes—

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- (a) income that is not relevant IP income, and
  - (b) a substantial amount of relevant Head 2 income.
- (8) Income is “relevant Head 2 income” for the purposes of subsection (7) if—
- (a) it is relevant IP income received under an agreement falling within subsection (6) of section 357CC, and
  - (b) every qualifying IP right—
    - (i) in respect of which a right within paragraph (a) of that subsection is granted by the agreement, or
    - (ii) which is granted in respect of an invention in respect of which a right within paragraph (b) of that subsection is granted by the agreement,

is a right in respect of which the company holds an exclusive licence.
- (9) In a case where—
- (a) relevant IP income is received under an agreement falling within section 357CC(6), but
  - (b) the condition in paragraph (b) of subsection (8) above is not met,
- so much of the relevant IP income as on a just and reasonable apportionment is attributable to any qualifying IP right falling within that paragraph is relevant Head 2 income for the purposes of subsection (7).

## CHAPTER 5

### RELEVANT IP LOSSES

#### **Company with relevant IP losses: set-off amount**

357E Where a company would be entitled to make a deduction under section 357A(2) in calculating the profits of a trade of the company for an accounting period but for the fact that there are relevant IP losses of the trade for the accounting period, there is a “set-off amount” in relation to the trade of the company for the accounting period which is equal to the amount of the relevant IP losses.

#### **Effect of set-off amount on company with more than one trade**

- 357E(1) This section applies where—
- (a) there is a set-off amount in relation to a trade of a company for an accounting period, and
  - (b) the company carries on any other trade.
- (2) The set-off amount is to be reduced (but not to below nil) by any relevant IP profits of that other trade for the accounting period.
- (3) Section 357A does not apply in relation to so much of the amount of relevant IP profits of that other trade for the accounting period as is equal to the amount by which the set-off amount is reduced under subsection (2).

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### **Allocation of set-off amount within a group**

357E(1) This section applies where—

- (a) there is a set-off amount in relation to a trade of a company for an accounting period,
  - (b) the company is a member of a group, and
  - (c) the set-off amount has not been reduced to nil by the operation of section 357EA(2).
- (2) The set-off amount (or so much of it as remains after the operation of section 357EA(2)) is to be reduced (but not to below nil) by any relevant IP profits of a trade of a relevant group member for the relevant accounting period.
- (3) For the purposes of this section—
- (a) “relevant group member” means another member of the group that has made an election under section 357A and is a qualifying company for the relevant accounting period, and
  - (b) “relevant accounting period”, in relation to a company, means the accounting period of the company in or at the end of which the accounting period mentioned in subsection (1)(a) ends.
- (4) Section 357A does not apply in relation to so much of the amount of relevant IP profits of the trade of the relevant group member for the relevant accounting period as is equal to the amount by which the set-off amount (or so much of it as remains after the operation of section 357EA(2)) is reduced under subsection (2).
- (5) Where there is more than one relevant group member, the relevant group members may jointly determine the order in which subsection (2) is to apply to them.
- (6) If no determination is made under subsection (5), subsection (2) is to apply first to the trade that has the greatest amount of relevant IP profits of any trade of any of the relevant group members for a relevant accounting period, then to the trade that has the second greatest amount of relevant IP profits of any of those trades for such a period, and so on.

### **Carry-forward of set-off amount**

357E(1) This section applies where—

- (a) there is a set-off amount in relation to a trade of a company for an accounting period, and
  - (b) the set-off amount has not been reduced to nil by the operation of section 357EA(2) or 357EB(2).
- (2) The set-off amount (or so much of it as remains after the operation of section 357EA(2) or 357EB(2)) is to be reduced (but not to below nil) by the amount of any relevant IP profits of the trade of the company for the current accounting period.

The “current accounting period” is the accounting period immediately following the accounting period mentioned in subsection (1)(a).

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- (3) Section 357A does not apply in relation to so much of the amount of relevant IP profits of the trade of the company for the current accounting period as is equal to the amount by which the set-off amount (or so much of it as remains after the operation of section 357EA(2) or 357EB(2)) is reduced under subsection (2).
- (4) If any portion of the set-off amount remains after the operation of subsection (2), that portion (“the remaining portion”) is to be treated as the set-off amount in relation to the trade of the company for the current accounting period (and the provisions of this Chapter apply accordingly).
- (5) If there are relevant IP losses of the trade of the company for the current accounting period, the set-off amount in relation to the trade of the company for that accounting period is the aggregate of the remaining portion and an amount equal to the amount of those relevant IP losses (and the provisions of this Chapter apply accordingly).

#### **Company ceasing to carry on trade, etc**

357E(1) This section applies where—

- (a) there is a set-off amount in relation to a trade of a company for an accounting period, and
  - (b) at any time in the accounting period immediately following that accounting period, the company meets any of the conditions in subsection (2).
- (2) The conditions are—
- (a) that the company ceases to carry on the trade,
  - (b) that the company ceases to be within the charge to corporation tax in respect of the trade, or
  - (c) that any election made by the company under section 357A ceases to have effect.
- (3) Sections 357EA to 357EC continue to have effect in relation to the set-off amount subject to the following provisions of this section.
- (4) Section 357EB has effect as if—
- (a) the reference in subsection (1)(b) to the company being a member of a group were a reference to the company having been a member of the group at the time referred to in subsection (1)(b) of this section,
  - (b) for subsection (2) there were substituted—
    - “(2) The set-off amount (or so much of it as remains after the operation of section 357EA(2)) is to become, or be added to, the set-off amount in relation to a trade of a relevant group member for the relevant accounting period.”,
    - (c) subsection (4) were omitted,
    - (d) for the words after “determine” in subsection (5) there were substituted “ the relevant group member to which subsection (2) is to apply ”, and
    - (e) for subsection (6) there were substituted—

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- “(6) If no determination is made under subsection (5), subsection (2) is to apply to the trade that has the greatest amount of relevant IP profits of any trade of any of the relevant group members for a relevant accounting period.
- (7) If there is no relevant group member with any relevant IP profits of a trade for the relevant accounting period, subsection (2) is to apply to the trade that has the greatest set-off amount in relation to any trade of any of the relevant group members for a relevant accounting period.”
- (5) Sections 357EA to 357EC cease to have effect in relation to the set-off amount in relation to the trade of the company for an accounting period if—
- (a) the company is not carrying on any other trade in that accounting period, and
  - (b) in the case of a company that was a member of a group at the time referred to in subsection (1)(b) of this section, none of the members of the group is a relevant group member (within the meaning of section 357EB).
- (6) In such a case, the set-off amount (so far as remaining after the operation of those sections) is to be reduced to nil.

### **Transfer of a trade between group members**

357E(1) This section applies where—

- (a) there is a set-off amount in relation to a trade of a company for an accounting period,
  - (b) the company is a member of a group,
  - (c) the company ceases to carry on the trade, and
  - (d) another company (“the transferee”) that is a member of the group begins to carry on that trade.
- (2) For the purposes of this Chapter an amount equal to the set-off amount is to become, or be added to, the set-off amount in relation to the trade of the transferee for the accounting period in which the transferee begins to carry on the trade.

### **Payments between group members in consequence of section 357EB**

357E(1) This section applies if—

- (a) there is a set-off amount in relation to a trade of a company for an accounting period,
- (b) subsection (2) of section 357EB has effect in relation to a relevant group member for the relevant accounting period (within the meaning of that section),
- (c) the company and the relevant group member have an agreement between them in relation to the relevant IP losses of the company, and
- (d) as a result of the agreement the company makes a payment to the relevant group member that does not exceed the reduction in

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the relevant IP profits of the relevant group member arising under section 357EB(4).

- (2) The payment—
- (a) is not to be taken into account in determining the profits or losses of either company for corporation tax purposes, and
  - (b) is not for any purposes of the Corporation Tax Acts to be regarded as a distribution.
- (3) In a case where section 357ED applies (company ceasing to carry on trade, etc), the reference in subsection (1)(d) to the reduction in the relevant IP profits of the relevant group member is to be read as a reference to the amount that becomes, or is added to, the set-off amount in relation to a trade of the relevant group member for the relevant accounting period under section 357EB(2).

## CHAPTER 6

### ANTI-AVOIDANCE

#### *Licences conferring exclusive rights*

##### **Licences conferring exclusive rights**

357F 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*

##### **Incorporation of qualifying items**

357F(A) 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.

- (2) “Qualifying item” has the same meaning as in section 357CC(2).

#### *Tax advantage schemes*

##### **Tax advantage schemes**

357F(B) 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



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- (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)), or
    - (iii) a mismatch between relevant IP income and expenditure (see subsection (4)).
- (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
  - (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 section 357A did not have effect.
- (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.

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## CHAPTER 7

### SUPPLEMENTARY

#### *Elections under section 357A*

#### **Making of election under section 357A**

- 357G(1) An election made by a company under section 357A is made by giving notice to an officer of Revenue and Customs.
- (2) The notice must specify the first accounting period of the company for which the election is to have effect.
  - (3) The notice must be given on or before the last day on which an amendment of the company's tax return for that accounting period could be made under paragraph 15 of Schedule 18 to FA 1998.
  - (4) The election has effect in relation to each trade carried on by the company.
  - (5) Subject to section 357GA, the election has effect for the accounting period specified in the notice and all subsequent accounting periods of the company.

#### **Revocation of election made under section 357A**

- 357G(1) A company may revoke an election made by it under section 357A by giving notice to an officer of Revenue and Customs.
- (2) The notice must specify the first accounting period of the company for which the revocation is to have effect.
  - (3) The notice must be given on or before the last day on which an amendment of the company's tax return for that accounting period could be made under paragraph 15 of Schedule 18 to FA 1998.
  - (4) The revocation has effect in relation to the accounting period specified in the notice and all subsequent accounting periods of the company.
  - (5) An election made under section 357A by a company that has given notice under this section does not have effect in relation to any accounting period of the company that begins before the end of the period of 5 years beginning with the day after the last day of the accounting period specified in the notice.

#### *Partnerships*

#### **Application of this Part in relation to partnerships**

- 357G(1) This section applies if a firm (within the meaning of CTA 2009) carries on a trade and any partner in the firm is a company within the charge to corporation tax.

Such a partner is referred to in this section as a “corporate partner”.

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- (2) Subject to the following provisions of this section, this Part applies in relation to the firm as it applies in relation to a company.
- (3) Any election under this Part—
  - (a) may be made or revoked not by the firm but instead by any one or more of the corporate partners (whether jointly or otherwise), and
  - (b) has effect in relation to each corporate partner making or revoking it as if made or revoked by the firm.
- (4) Accordingly, any reference in section 357G(3) or 357GA(3) (time limit for making or revoking elections under section 357A) to the company making or revoking the election is to be read as a reference to the corporate partner so doing.
- (5) Section 1261 of CTA 2009 (accounting periods of firms) applies for the purposes of this Part as it applies for the purposes of Part 17 of that Act.
- (6) Section 357B (meaning of “qualifying company”) has effect as if in subsection (1) the words “in the case of a company that is a member of a group” were omitted.
- (7) For the purposes of this Part the firm meets the development condition in relation to a right to which this Part applies if—
  - (a) the firm has at any time carried out qualifying development in relation to the right, or
  - (b) there is a relevant corporate partner in the firm who meets the development condition in relation to the right.
- (8) A “relevant corporate partner” is a corporate partner who is entitled to a share of at least 40% of the profits or losses of the firm for any accounting period of the firm.
- (9) Section 357BD applies for the purposes of subsection (7)(a) of this section as it applies for the purposes of section 357BC.
- (10) Section 357BE (active ownership condition) has effect as if the reference in subsection (4) to section 357BC(2) or (3) included a reference to subsection (7)(a) of this section.
- (11) Sections 357CL and 357CM (election for small claims treatment) have effect as if—
  - (a) any reference to a company having one or more associated companies were a reference to any corporate partner in relation to which an election under section 357CL has effect having one or more associated companies, and
  - (b) any reference to a company having no associated company were a reference to each such corporate partner having no associated company.
- (12) Subsection (13) applies where a corporate partner is a party to an arrangement at any time during an accounting period of the firm which produces for the corporate partner a return within section 357CB(1)(c).
- (13) For the accounting period of the firm the corporate partner's share of a profit or loss of a trade carried on by the firm is determined for corporation tax

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purposes as if no election under section 357A had effect in relation to the trade.

### *Cost-sharing arrangements*

#### **Application of this Part in relation to cost-sharing arrangements**

357G(1) This section applies where a company is a party to an arrangement under which—

- (a) one of the parties to the arrangement holds a qualifying IP right or an exclusive licence in respect of such a right,
  - (b) each of the parties to the arrangement is required to contribute to the cost of, or perform activities for the purpose of, creating or developing the invention or any item or process incorporating the invention,
  - (c) under the arrangement each of those parties—
    - (i) is entitled to a share of any income attributable to the right or licence, or
    - (ii) has one or more rights in respect of the invention, and
  - (d) the amount of any income received by each of those parties is proportionate to its participation in the arrangement as described in paragraph (b).
- (2) The company is to be treated for the purposes of this Part as if it held the qualifying IP right or (as the case may be) the exclusive licence in respect of the qualifying IP right.
- (3) But this section does not apply where the arrangement produces for the company a return within section 357CB(1)(c).
- (4) The reference in subsection (1)(b) to developing the invention includes developing ways in which the invention may be used or applied.

### *Interpretation*

#### **Meaning of “group”**

357G(1) For the purposes of this Part a company (“company A”) is a member of a group at any time if any other company is at that time associated with company A.

- (2) The group consists of company A and each company in relation to which the condition in subsection (1) is met.
- (3) For the purposes of this section a company (“company B”) is associated with company A at a time (“the relevant time”) if any of the following five conditions is met.
- (4) The first condition is that the financial results of company A and company B, for a period that includes the relevant time, meet the consolidation condition.

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- (5) The second condition is that there is a connection between company A and company B for the accounting period of company A in which the relevant time falls.
- (6) The third condition is that, at the relevant time, company A has a major interest in company B or company B has a major interest in company A.
- (7) The fourth condition is that—
- (a) the financial results of company A and a third company, for a period that includes the relevant time, meet the consolidation condition, and
  - (b) at the relevant time the third company has a major interest in company B.
- (8) The fifth condition is that—
- (a) there is a connection between company A and a third company for the accounting period of company A in which the relevant time falls, and
  - (b) at the relevant time the third company has a major interest in company B.
- (9) In this section, the financial results of any two companies for any period meet “the consolidation condition” if—
- (a) they are required to be fully comprised in group accounts,
  - (b) they would be required to be fully comprised in such accounts but for the application of an exemption, or
  - (c) they are in fact fully comprised in such accounts.
- (10) In subsection (9) “group accounts” means accounts prepared under—
- (a) section 399 of the Companies Act 2006, or
  - (b) any corresponding provision of the law of a country or territory outside the United Kingdom.
- (11) The following provisions apply for the purposes of this section—
- sections 466 to 471 of CTA 2009 (companies connected for accounting period), and
  - sections 473 and 474 of CTA 2009 (meaning of “major interest”).

### **Other interpretation**

357GE) In this Part—

“invention”, in relation to a right to which this Part applies, means the item or process in respect of which the right is granted,

“item” includes any substance,

“the OECD Model Tax Convention” means—

- (a) the version of the Model Tax Convention on Income and on Capital published in July 2010 by the Organisation for Economic Co-operation and Development (“the OECD”), or
- (b) such other document approved and published by the OECD in place of that (or a later) version or in place of that Convention as is designated for the time being by order made by the Treasury,

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“the OECD transfer pricing guidelines” means—

- (a) the version of the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations published in July 2010 by the OECD, or
- (b) such other document approved and published by the OECD in place of that (or a later) version or in place of those Guidelines as is designated for the time being by order made by the Treasury,

including, in either case, such material published by the OECD as part of (or by way of update or supplement to) the version or other document concerned as may be so designated, and

“qualifying residual profit” of a trade, in relation to any accounting period, is the amount obtained by the application of Steps 1 to 4 in section 357C or (as the case may be) section 357DA in relation to the trade for the accounting period.

- (2) Any reference in this Part to calculating the profits of a trade of a company for an accounting period is a reference to calculating those profits for corporation tax purposes (and any reference to the profits or losses of a trade of a company for an accounting period is to be read accordingly).”

- (2) In Schedule 4 to CTA 2010 (index of defined expressions), at the appropriate place insert—

“exclusive licence (in Part 8A)	section 357BA”;
“finance income (in Part 8A)	section 357CB”;
“group (in Part 8A)	section 357GD”;
“invention (in Part 8A)	section 357GE”;
“item (in Part 8A)	section 357GE”;
“the OECD Model Tax Convention (in Part 8A)	section 357GE”;
“the OECD transfer pricing guidelines (in Part 8A)	section 357GE”;
“qualifying company (in Part 8A)	section 357B”;
“qualifying IP right (in Part 8A)	section 357B(4)”;
“qualifying residual profit of a trade (in Part 8A)	section 357GE”;

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“relevant IP income (in Part 8A)                      section 357CC”;

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“total gross income of a trade (in Part 8A)                      section 357CA”.

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## PART 2

### AMENDMENTS OF TIOPA 2010

- 2        In Part 4 of TIOPA 2010 (transfer pricing), Chapter 3 (exemptions from basic rule) is amended as follows.
- 3        In section 166 (exemption for small and medium-sized enterprises), in subsection (2)(a), for “section 167” substitute “ sections 167 and 167A ”.
- 4        After section 167 insert—

#### “167A Small enterprises: exception from exemption: transfer pricing notice

- (1) Section 166(1) does not apply in relation to any provision made or imposed if—
- (a) the potentially advantaged person is a small enterprise for the chargeable period,
  - (b) the person meets the condition in subsection (2), and
  - (c) the Commissioners for Her Majesty's Revenue and Customs give that person a notice requiring the person to calculate the profits and losses of that chargeable period in accordance with section 147(3) or (5) in the case of that provision.
- (2) A person meets the condition referred to in subsection (1)(b) if—
- (a) provision has been made or imposed as between the person and any other person by means of a transaction or series of transactions,
  - (b) the basic pre-condition in section 147 is met in respect of the provision, and
  - (c) the transaction, or one or more of the series of transactions, is taken into account in calculating, for the purposes of Part 8A of CTA 2010 (profits arising from the exploitation of patents etc), the relevant IP profits of a trade of a person who is or was a party to the transaction or transactions.
- (3) A notice under subsection (1) is referred to in this Chapter as a transfer pricing notice.”
- 5        In section 170 (appeals against transfer pricing notices), in subsection (1), for the words from “on the ground that” to the end substitute “on one of the following grounds—
- (a) that the condition in section 167A(1)(b) is not met, or
  - (b) that the condition in section 168(1)(a) is not met.”
- 6        In section 171 (tax returns where transfer pricing notice given), in subsection (3) (a), before “medium-sized” insert “ small or ”.

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### PART 3

#### COMMENCEMENT AND TRANSITIONAL PROVISION

##### *Application*

- 7 (1) The amendments made by this Schedule have effect in relation to accounting periods beginning on or after 1 April 2013 for which an election under section 357A of CTA 2010 has effect.
- (2) Sub-paragraph (3) applies where a company has an accounting period beginning before 1 April 2013 and ending on or after that date (“the straddling period”).
- (3) For the purposes of Part 8A of CTA 2010—
- so much of the straddling period as falls before 1 April 2013, and so much of that period as falls on or after that date, are treated as separate accounting periods, and
  - 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.

##### *Special treatment of profits from patents etc to be phased in*

- 8 (1) In each of the financial years in the Table below, the reference to RP in the formula in section 357A(3) of CTA 2010 is to be read as a reference to the percentage of RP given for that year—

<i>Financial year</i>	<i>Percentage of RP</i>
2013	60%
2014	70%
2015	80%
2016	90%

- (2) Sub-paragraph (3) applies where there is a set-off amount in relation to any trade of a company for an accounting period falling wholly or partly within a financial year mentioned in the Table in sub-paragraph (1) (“the relevant year”) and—
- section 357EB of CTA 2010 (allocation of set-off amount within group) applies in relation to the set-off amount (or so much of it as remains after the operation of section 357EA(2) of that Act) for a relevant accounting period falling wholly or partly within the financial year following the relevant year, or
  - section 357EC of that Act (carry-forward of set-off amount) applies in relation to the set-off amount (or so much of it as remains after the operation of section 357EA(2) or 357EB(2) of that Act).
- (3) For the purposes of section 357EB or (as the case may be) 357EC of CTA 2010 there is to be deducted from the relevant amount an amount equal to the appropriate fraction of that amount.



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“The relevant amount” is the amount in relation to which that section applies as mentioned in sub-paragraph (2).

(4) The appropriate fraction is—

$$\frac{10\%}{P}$$

where P is—

- a the percentage given as the percentage of RP by that Table for the financial year following the relevant year, or
- b where the relevant year is the financial year 2016, 100%.

(5) If a company's accounting period falls within more than one financial year—

- (a) the amount of any relevant IP profits of a trade of the company for the accounting period, and
- (b) where sub-paragraph (3) applies, the relevant amount (within the meaning of that sub-paragraph),

must for the purposes of this paragraph be apportioned between the financial years in which the accounting period falls on such basis as is just and reasonable.

(6) In this paragraph—

“relevant accounting period” has the meaning given by section 357EB(3) of CTA 2010,

“relevant IP profits”, in relation to a trade of a company for an accounting period, has the same meaning in this paragraph as in Part 8A of that Act, and

“set-off amount”, in relation to a trade of a company for an accounting period, is to be read in accordance with Chapter 5 of that Act.

**Changes to legislation:**

There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 2.