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### 31 Profits arising from the exploitation of patents etc

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

#### “CHAPTER 2A

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

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

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

- (1) This section applies for the purposes of determining the relevant IP profits of a trade of a company for an accounting period in a case where –
  - (a) the accounting period begins on or after 1 July 2021, or
  - (b) the company is a new entrant (see section 357A(11)).
- (2) To determine the relevant IP profits –
  - Step 1*  
Take any amounts which are brought into account as credits in calculating the profits of the trade for the accounting period, other than any amounts of finance income (see section 357BG), and divide them

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into two “streams”, amounts of relevant IP income (see sections 357BH to 357BHC) and amounts that are not amounts of relevant IP income.

The stream consisting of relevant IP income is “the relevant IP income stream”; the other stream is the “standard income stream”.

*Step 2*

Divide the relevant IP income stream into “relevant IP income sub-streams” so that each sub-stream is either –

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

See subsection (5) for further provision in connection with product sub-streams.

*Step 3*

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

*Step 4*

Deduct from each relevant IP income sub-stream –

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

*Step 5*

If the company has made an election under section 357BK for small claims treatment, deduct from each relevant IP income sub-stream which is greater than nil following Step 4 the small claims figure for the sub-stream (see section 357BKA).

*Step 6*

If the company has not made an election under section 357BK for small claims treatment, deduct from each relevant IP income sub-stream which is greater than nil following Step 4 the marketing assets return figure for the sub-stream (see section 357BL).

*Step 7*

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

*Step 8*

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

*Step 9*

If the company has made an election under section 357BN (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 8 any amount determined in accordance with subsection (3) of that section.

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

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- (4) If the amount given by subsection (2) is less than nil, that amount is the relevant IP losses of the trade for the accounting period (see Chapter 5).
  - (5) Income may be allocated at Step 2 to a product sub-stream only if –
    - (a) it would not be reasonably practicable to apportion it between individual IP right sub-streams, or
    - (b) it would be reasonably practicable to do that but doing so would result in it not being reasonably practicable to apply any of the remaining steps in subsection (2).
  - (6) In this section “multi-IP item” means an item which incorporates two or more qualifying items.
  - (7) For the purposes of this section multi-IP items may be treated as being of a particular kind if they are substantially the same as each other, having regard to the qualifying items incorporated within them and the purposes of which they are intended to be used.
  - (8) In subsections (6) and (7) “qualifying item” has the same meaning as in section 357BH(2)(a).

*Finance income*

**357BG Finance Income**

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

“economically equivalent to interest” is to be construed in accordance with section 486B(2) and (3) of CTA 2009, and

“financial asset” means a financial asset as defined for the purposes of generally accepted accounting practice.
- (3) For the purposes of subsection (1)(c), the amount of a return is the amount which by virtue of the return would, in calculating the company’s chargeable profits, be treated under section 486B of CTA 2009 (disguised interest to be regarded as profit from loan relationship) as profit arising to the company from a loan relationship.

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

**357BH Relevant IP Income**

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

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

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

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- (9) Head 5 is any amount of damages, proceeds of insurance or other compensation, other than an amount in respect of an infringement or alleged infringement of a qualifying IP right, which is received by the company in respect of an event and –
    - (a) is paid in respect of any items that fell within subsection (2) at the time of that event, or
    - (b) represents a loss of income which would, if received by the company at the time of that event have been relevant IP income.
  - (10) But income is not relevant IP income by virtue of subsection (8) or (9) unless the event in respect of which the income is received, or any part of that event, occurred at a time when –
    - (a) the company was a qualifying company, and
    - (b) an election under section 357A 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.

#### **357BHA Notional royalty**

- (1) This section applies where –
  - (a) a company holds a qualifying IP right or an exclusive licence in respect of a qualifying IP right,
  - (b) the qualifying IP right falls within paragraph (a), (b) or (c) of section 357BB(1), and
  - (c) the income of a trade of the company for an accounting period includes income (“IP-derived income”) which –
    - (i) arises from things done by the company that involve the exploitation by the company of the qualifying IP right, and
    - (ii) is not relevant IP income or excluded income.
- (2) The company may elect that the appropriate percentage of the IP-derived income is to be treated for the purposes of this Part as if it were relevant IP income.
- (3) The “appropriate percentage” is the proportion of the IP-derived income which the company would pay another person (“P”) for the right to exploit the qualifying IP right in the accounting period concerned if the company were not otherwise able to exploit it.
- (4) For the purposes of determining the appropriate percentage, assume that –
  - (a) the company and P are dealing at arm’s length,
  - (b) the company, or the company and persons authorised by it, will have the right to exploit the qualifying IP right to the exclusion of any other person (including P),
  - (c) the company will have the same rights in relation to the qualifying IP right as it actually has,

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- (d) the right to exploit the qualifying IP right is conferred on the relevant day,
  - (e) the appropriate percentage is determined at the beginning of the accounting period concerned,
  - (f) the appropriate percentage will apply for each succeeding accounting period for which the company will have the right to exploit the qualifying IP right, and
  - (g) no income other than IP-derived income will arise from anything done by the company that involves the exploitation by the company of the qualifying IP right.
- (5) In subsection (4)(d) “the relevant day” means—
- (a) the first day of the accounting period concerned, or
  - (b) if later, the day on which the company first began to hold the qualifying IP right or licence.
- (6) In determining the appropriate percentage, the company must act in accordance with—
- (a) Article 9 of the OECD Model Tax Convention, and
  - (b) the OECD transfer pricing guidelines.
- (7) In this section “excluded income” means any income falling within either of the Heads in section 357BHB.

### **357BHB Excluded income**

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

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

- (1) This section applies to any income that—
- (a) is mixed income, or
  - (b) is paid under a mixed agreement.

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- (2) “Mixed income” means the proceeds of sale where an item falling within subsection (2) of section 357BH and an item not falling within that subsection are sold together as, or as part of, a single unit for a single price.
- (3) A “mixed agreement” is an agreement providing for –
- (a) one or more of the matters in paragraphs (a) to (c) of subsection (4), and
  - (b) one or more of the matters in paragraphs (d) to (g) of that subsection.
- (4) The matters are –
- (a) the sale of an item falling within section 357BH(2),
  - (b) the grant of any right falling within paragraph (a), (b) or (c) of section 357BH(6),
  - (c) a sale or disposal falling within section 357BH(7),
  - (d) the sale of any other item,
  - (e) the grant of any other right,
  - (f) any other sale or disposal,
  - (g) the provision of any services.
- (5) So much of the income as on a just and reasonable apportionment is properly attributable to –
- (a) the sale of an item falling within section 357BH(2),
  - (b) the grant of any right falling within paragraph (a), (b) or (c) of section 357BH(6), or
  - (c) a sale or disposal falling within section 357BH(7),
- is to be regarded for the purposes of this Part as relevant IP income.
- (6) But where the amount of income that on such an apportionment is properly attributable to any of the matters in paragraphs (d) to (g) of subsection (4) is a trivial proportion of the income to which this section applies, all of that income is to be regarded for the purposes of this Part as relevant IP income.

*Excluded debits*

**357BI Excluded debits**

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

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

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- (d) the amount of any additional deduction for an accounting period obtained by a company under Part 15B of CTA 2009 in respect of qualifying expenditure on a video game, and
  - (e) the amount of any additional deduction for an accounting period obtained by a company under Part 15C of CTA 2009 in respect of qualifying expenditure on a theatrical production.

*Routine return figure*

**357BJ Routine return figure**

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

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

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

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

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

**357BJA Routine deductions**

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

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- (f) subsection (7) (miscellaneous services).  
This is subject to section 357BJB (deductions that are not routine deductions).
- (2) Head 1 is any allowances under CAA 2001.
- (3) Head 2 is any deductions made by the company in respect of any premises occupied by the company.
- (4) Head 3 is any deductions made by the company in respect of—
- (a) any director or employee of the company, or
  - (b) any externally provided workers.
- (5) Head 4 is any deductions made by the company in respect of any plant or machinery used by the company.
- (6) Head 5 is any deductions made by the company in respect of any of the following services—
- (a) legal services, other than IP-related services;
  - (b) financial services, including—
    - (i) insurance services, and
    - (ii) valuation or actuarial services;
  - (c) services provided in connection with the administration or management of the company’s directors and employees;
  - (d) any other consultancy services.
- (7) Head 6 is any deductions made by the company in respect of any of the following services—
- (a) the supply of water, fuel or power;
  - (b) telecommunication 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,
  - “telecommunication 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.
- (9) The Treasury may by regulations amend this section.

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### 357BJB Deductions that are not routine deductions

- (1) For the purposes of this Part a deduction is not a “routine deduction” if it falls within any of the Heads set out in—
  - (a) subsection (2) (loan relationships and derivative contracts),
  - (b) subsection (3) (R&D expenses),
  - (c) subsection (4) (capital allowances for R&D or patents),
  - (d) subsection (5) (R&D-related employee share acquisitions),
  - (e) subsection (8) (television production expenditure),
  - (f) subsection (9) (video games development expenditure).
- (2) Head 1 is any debits which are treated as expenses of the trade by virtue of—
  - (a) section 297 of CTA 2009 (debits in respect of loan relationships),  
or
  - (b) section 573 of CTA 2009 (debits in respect of derivative contracts).
- (3) Head 2 is—
  - (a) the amount of any expenditure on research and development in relation to the trade—
    - (i) for which an additional deduction for the accounting period is obtained by the company under Part 13 of CTA 2009, or
    - (ii) in respect of which the company is entitled to an R&D expenditure credit for the accounting period under Chapter 6A of Part 3 of CTA 2009, and
  - (b) where the company obtains an additional deduction as mentioned in paragraph (a)(i), the amount of that additional deduction.
- (4) Head 3 is any allowances under—
  - (a) Part 6 of CAA 2001 (research and development allowances), or
  - (b) Part 8 of CAA 2001 (patent allowances).
- (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.

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- (8) Head 5 is –
- (a) the amount of any qualifying expenditure on a television programme for which an additional deduction for the accounting period is obtained by the company under Part 15A of CTA 2009, and
  - (b) the amount of that additional deduction.
- (9) Head 6 is –
- (a) the amount of any qualifying expenditure on a video game for which an additional deduction for the accounting period is obtained by the company under Part 15B of CTA 2009, and
  - (b) the amount of that additional deduction.
- (10) The Treasury may by regulations amend this section.

*Election for small claims treatment*

**357BK Companies eligible to elect for small claims treatment**

- (1) A company may make an election under this section for small claims treatment for an accounting period if –
- (a) Conditions A and B are met, and
  - (b) Condition C or D is met.
- (2) Condition A is that the company carries on only one trade during the accounting period.
- (3) Condition B is that section 357BF applies for the purposes of determining the relevant IP profits of the trade for the accounting period.
- (4) Condition C is that the qualifying residual profit of the trade for the accounting period does not exceed £1,000,000.
- (5) Condition D is that –
- (a) the qualifying residual profit of the trade for the accounting period does not exceed the relevant maximum, and
  - (b) the company did not take Step 6 in section 357BF(2), 357C(1) or 357DA(1) for the purpose of calculating the relevant IP profits of the trade for any previous accounting period beginning within the relevant 4-year period.

The “relevant 4-year period” means the period of 4 years ending immediately before the beginning of the accounting period mentioned in paragraph (a).

- (6) If no other company is a related 51% group company of the company in the accounting period, the relevant maximum is £3,000,000.
- (7) If one or more other companies are related 51% group companies of the company in the accounting period, the relevant maximum is –

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

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

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- (8) For an accounting period of less than 12 months, the relevant maximum is proportionally reduced.
  - (9) For the purposes of this section and section 357BKA, the “qualifying residual profit” of a trade of a company for an accounting period is the aggregate of the relevant IP income sub-streams established at Step 2 in section 357BF(2) in determining the relevant IP profits of the trade for the accounting period, following the deductions required by Step 4 (ignoring the amount of any sub-stream which is not greater than nil following those deductions).

### **357BKA Small claims figure**

- (1) This section applies for the purpose of calculating the small claims figure for a relevant IP income sub-stream established at Step 2 in section 357BF(2) in determining the relevant IP profits of a trade of a company for an accounting period.
- (2) If 75% of the qualifying residual profit of the trade for the accounting period is lower than the small claims threshold, the small claims figure for the sub-stream is 25% of the amount of the sub-stream following Step 4 in section 357BF(2).
- (3) If 75% of the qualifying residual profit of the trade for the accounting period is higher than the small claims threshold, the small claims figure for the sub-stream is the amount given by –

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

where –

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

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

SCT is the small claims threshold.

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

$$\frac{\text{£1,000,000}}{1 + N}$$

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

- (6) For an accounting period of less than 12 months, the small claims threshold is proportionately reduced.

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*Marketing assets return figure*

**357BL Marketing assets return figure**

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

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

where –

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

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

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

**357BLA Notional marketing royalty**

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

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involves the exploitation by the company of the relevant marketing assets.

- (5) In subsection (4)(d) “the relevant day”, in relation to a relevant marketing asset, means—
  - (a) the first day of the accounting period concerned, or
  - (b) if later, the day on which the company first acquired the relevant marketing asset or the right to exploit the asset.
- (6) In determining the appropriate percentage, the company must act in accordance with—
  - (a) Article 9 of the OECD Model Tax Convention, and
  - (b) the OECD transfer pricing guidelines.
- (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.

### **357BLB Actual marketing royalty**

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

### *R&D fraction*

### **357BM Introduction**

Sections 357BMA to 357BMG apply for the purpose of determining the R&D fraction for a relevant IP income sub-stream (referred to in those sections as “the sub-stream concerned”).

### **357BMA The R&D fraction**

The R&D fraction for the sub-stream concerned is the lesser of 1 and —

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

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where –

D is the company's qualifying expenditure on relevant R&D undertaken in-house (see section 357BMB),

S1 is the company's qualifying expenditure on relevant R&D sub-contracted to unconnected persons (see section 357BMC),

S2 is the company's qualifying expenditure on relevant R&D sub-contracted to connected persons (see section 357BMD), and

A is the company's qualifying expenditure on the acquisition of relevant qualifying IP rights (see section 357BME).

### **357BMB Qualifying expenditure on relevant R&D undertaken in-house**

- (1) In section 357BMA, the company's "qualifying expenditure on relevant R&D undertaken in-house" means the expenditure incurred by the company during the relevant period which meets conditions A, B and C.
- (2) Condition A is that the expenditure is –
  - (a) incurred on staffing costs,
  - (b) incurred on software or consumable items,
  - (c) qualifying expenditure on externally provided workers, or
  - (d) incurred on relevant payments to the subjects of clinical trials.
- (3) Condition B is that the expenditure is attributable to relevant research and development undertaken by the company itself.
- (4) In this section and sections 357BMC and 357BMD, "relevant research and development" means research and development (within the meaning of section 1138) which –
  - (a) in a case where the sub-stream concerned is an individual IP right sub-stream, relates to the qualifying IP right to which the income in the sub-stream is attributable, or
  - (b) in a case where the sub-stream concerned is a product sub-stream, relates to a qualifying IP right granted in respect of any qualifying item incorporated in a multi-IP item to which income in the sub-stream is attributable.
- (5) Research and development "relates" to a qualifying IP right for the purposes of subsection (4) if –
  - (a) it creates, or contributes to the creation of, the invention,
  - (b) it is undertaken for the purpose of developing the invention,
  - (c) it is undertaken for the purpose of developing ways in which the invention may be used or applied, or
  - (d) it is undertaken for the purpose of developing any item or process incorporating the invention.
- (6) The following provisions of CTA 2009 apply for the purposes of this section –
  - (a) section 1123 (meaning of "staffing costs"),
  - (b) section 1124 (when staffing costs are attributable to relevant research and development),
  - (c) section 1125 (meaning of "software or consumable items"),
  - (d) sections 1126 to 1126B (when software or consumable items are attributable to relevant research and development),

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- (e) sections 1127 to 1131 (meaning of “qualifying expenditure on externally provided workers”),
  - (f) section 1132 (when qualifying expenditure on externally provided workers is attributable to relevant research and development), and
  - (g) section 1140 (meaning of “relevant payments to the subjects of clinical trials”),

and in the application of those provisions for the purposes of this section any reference to “relevant research and development” is to be read as a reference to relevant research and development within the meaning given by subsection (4).

### **357BMC Qualifying expenditure on relevant R&D sub-contracted to unconnected persons**

- (1) In section 357BMA, the company’s “qualifying expenditure on relevant R&D sub-contracted to unconnected persons” means the expenditure incurred by the company during the relevant period which meets conditions A, B and C.
- (2) Condition A is that the expenditure is incurred in making the qualifying element of a sub-contractor payment.
- (3) Condition B is that the company and the sub-contractor are not connected.
- (4) Condition C is that the expenditure is attributable to relevant research and development (see section 357BMB(4)).
- (5) The following provisions apply for the purposes of this section –
  - (a) section 1133 of CTA 2009 (meaning of “sub-contractor payment” and “sub-contractor”);
  - (b) section 1136 of CTA 2009 (meaning of “qualifying element” of sub-contractor payment: unconnected persons);
  - (c) section 1122 of this Act (meaning of “connected” persons).
- (6) In its application for the purposes of this section, section 1136 of CTA 2009 has effect as if paragraph (c) of subsection (1) of the section was omitted.

### **357BMD Qualifying expenditure on relevant R&D sub-contracted to connected persons**

- (1) In section 357BMA, the company’s “qualifying expenditure on relevant R&D sub-contracted to connected persons” means the expenditure incurred by the company during the relevant period in relation to which conditions A, B and C are met.
- (2) Condition A is that the expenditure is incurred in making the qualifying element of a sub-contractor payment.
- (3) Condition B is that the company and the sub-contractor are connected.
- (4) Condition C is that the expenditure is attributable to relevant research and development (see section 357BMB(4)).
- (5) The following provisions apply for the purposes of this section –

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- (a) section 1133 of CTA 2009 (meaning of “sub-contractor payment” and “sub-contractor”);
  - (b) section 1134 of CTA 2009 (meaning of “qualifying element” of sub-contractor payment: connected persons);
  - (c) section 1122 of this Act (meaning of “connected” persons).
- (6) In its application for the purposes of this section, section 1134 of CTA 2009 has effect with the following modifications –
- (a) in subsection (3) –
    - (i) at the end of paragraph (b) insert “and”;
    - (ii) omit paragraph (d);
  - (b) in subsection (5) –
    - (i) in the words before paragraph (a) for “requirements of subsection (3)(c) and (d)” substitute “requirement of subsection (3)(c)”;
    - (ii) omit paragraph (c).

### **357BME Qualifying expenditure on acquisition of relevant qualifying IP right**

- (1) In section 357BMA, the company’s “qualifying expenditure on the acquisition of relevant qualifying IP rights” means the expenditure incurred by the company during the relevant period for the acquisition of a relevant qualifying IP right or an exclusive licence in respect of a relevant qualifying IP right.
- (2) “Relevant qualifying IP right” means –
  - (a) in a case where the sub-stream concerned is an individual IP right sub-stream, the qualifying IP right to which the income in the sub-stream is attributable, and
  - (b) in a case where the sub-stream concerned is a product sub-stream, a qualifying IP right granted in respect of a qualifying item incorporated in a multi-IP item to which income in the sub-stream is attributable.

### **357BMF Meaning of the “relevant period”**

- (1) This section defines the “relevant period” for the purposes of sections 357BMB to 357BME.
- (2) The “relevant period” is the period which –
  - (a) ends with the last day of the accounting period to which the sub-stream concerned relates (“the accounting period in question”), and
  - (b) begins with the relevant day or such earlier day as the company may elect.

This is subject to subsection (6).

- (3) The “relevant day” is 1 July 2013 in a case where –
  - (a) the accounting period in question begins before 1 July 2021, and
  - (b) the company is a new entrant (see section 357A(11)).
- (4) The relevant day is 1 July 2016 in any other case.
- (5) A day elected under subsection (2)(b) must not be more than 15 years before the last day of the accounting period in question.

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- (6) If the last day of the accounting period in question is, or is after, 1 July 2031 the “relevant period” is the period of 15 years ending with that day.

**357BMG New entrants with insufficient information about pre-enactment expenditure**

- (1) This section applies to a company if –
- (a) it is a new entrant (see section 357A(11)), and
  - (b) it has insufficient information about its expenditure in the period which began with 1 July 2013 and ended with 30 June 2016 to be able to calculate the R&D fraction for a relevant IP income sub-stream which relates to an accounting period which begins before 1 July 2021.
- (2) If the accounting period to which the sub-stream relates begins on or after 1 July 2019, the company may elect that, for the purposes of determining the R&D fraction for the sub-stream, section 357BMF is to have effect as if in subsection (3) for “1 July 2013” there was substituted “1 July 2016”.
- (3) If the accounting period to which the sub-stream relates begins before 1 July 2019 the company may elect that, for the purposes of determining the R&D fraction for the sub-stream, sections 357BM to 357BME are to have effect as if –
- (a) any reference in those sections to the relevant period was to the period of three years ending with the last day of the accounting period,
  - (b) in section 357BMB, for subsections (4) and (5) there was substituted –
    - “(4) In this section and sections 357BMC and 357BMD, “relevant research and development” means research and development (within the meaning of section 1138) which relates to the trade concerned.”, and
  - (c) in section 357BME –
    - (i) in subsection (1) for the words from “a relevant qualifying IP right” to the end there was substituted “qualifying IP rights or exclusive licences in respect of qualifying IP rights”, and
    - (ii) subsection (2) was omitted.

*Profits arising before grant of right*

**357BN Profits arising before grant of right**

- (1) This section applies where a company –
- (a) holds a right mentioned in paragraph (a), (b) or (c) of section 357BB(1) (rights to which this Part applies) or an exclusive licence in respect of such a right, or
  - (b) would hold such a right or licence but for the fact that the company disposed of any rights in the invention or (as the case may be) the licence before the right was granted.
- (2) The company may elect that, for the purposes of determining the relevant IP profits of a trade of the company for the accounting period

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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, and
  - (b) the day on which—
    - (i) the application for the grant of the right was filed, or
    - (ii) in the case of a company that holds an exclusive licence in respect of the right, the licence was granted.
- (8) Where the company would be a qualifying company for an accounting period but for the fact that the right had not been granted at any time during that accounting period, the company is to be treated for the purposes of this section as if it were a qualifying company for that accounting period.
- (9) Where the company would be a qualifying company for the accounting period in which the right was granted but for the fact that the company disposed of the rights or licence mentioned in subsection (1)(b) before the right was granted, the company is to be treated for the purposes of section 357A as if it were a qualifying company for that accounting period.

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## CHAPTER 2B

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

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

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

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

- (1) For the purposes of this Part “new qualifying IP right”, in relation to a company, means a qualifying IP right which meets condition A, B or C.
- (2) Condition A is that the right was granted or issued to the company in response to an application filed on or after 1 July 2016.
- (3) Condition B is that the right was assigned to the company on or after the relevant date.
- (4) Condition C is that an exclusive licence in respect of the right was granted to the company on or after the relevant date.
- (5) In subsections (3) and (4) the “relevant date” means –
  - (a) 2 January 2016, if the person who assigned the right or (as the case may be) granted the licence was within subsection (6) or (7) at the time of the assignment or grant, and
  - (b) 1 July 2016, in any other case.
- (6) A person is within this subsection if the person –
  - (a) is a company,
  - (b) is connected with the company referred to in subsection (1),
  - (c) is either not a qualifying company or not a company in relation to which an election under section 357A has effect, and
  - (d) is not entitled to a reduced rate of tax under any provision of the law of a country or territory outside the United Kingdom designated by regulations made by the Treasury as being provision which corresponds to this Part of this Act.
- (7) A person is within this subsection if the person –
  - (a) is not a company, and
  - (b) is connected with the company referred to in subsection (1).

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- (8) A company may elect that for the purposes of determining the relevant IP profits of a trade of the company for an accounting period a qualifying IP right which does not meet any of conditions A, B or C is to be treated as if it was a new qualifying IP right.
  - (9) An election under subsection (8) has effect –
    - (a) for the accounting period for which it is made, and
    - (b) for each subsequent accounting period which begins before 1 July 2021.
  - (10) Section 1122 (meaning of “connected” persons) applies for the purposes of this section.

### **357BQ The modifications**

- (1) The modifications of section 357BF referred to in section 357BO(1) are as follows.
- (2) In subsection (2) –
  - (a) in Step 2 –
    - (i) before paragraph (a) insert –

“(aa) a sub-stream consisting of all the income properly attributable to qualifying IP rights which are not new qualifying IP rights (“the old IP rights sub-stream”),”
    - (ii) in paragraph (a) before “qualifying IP right” insert “new”,
    - (iii) in paragraph (b) before “multi-IP item” insert “new”,
  - (b) in Step 7, for “relevant IP income sub-stream” substitute “individual IP right sub-stream and each product sub-stream”, and
  - (c) for Step 8 substitute –

“*Step 8*  
Add together –

    - (a) the amount of the old IP rights sub-stream (following Steps 4 to 6), and
    - (b) the amount of each of the individual IP right sub-streams and product sub-streams (following Step 7).”
- (3) In subsection (6) –
  - (a) for “multi-IP item” substitute “new multi-IP item”, and
  - (b) at the end insert “all of which are qualifying items in respect of which a new qualifying IP right has been granted”.
- (4) In subsection (7) before “multi-IP items” insert “new”.
- (4) The Schedule (which contains amendments consequential on this section) has effect.

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## SCHEDULE TO CLAUSE 31

### EXPLOITATION OF PATENTS ETC: CONSEQUENTIAL AMENDMENTS

- 1 Part 8A of CTA 2010 is amended in accordance with this Schedule.
- 2 In the heading of Chapter 3, after “profits” insert “: cases mentioned in section 357A(7): no income from new IP”.
- 3 (1) Section 357C is amended as follows.
  - (2) Before subsection (1) insert—

“(A1) This section applies for the purposes of determining the relevant IP profits of a trade of a company for an accounting period in a case where—

    - (a) the accounting period begins before 1 July 2021,
    - (b) the company is not a new entrant (see section 357A(11)), and
    - (c) none of the amounts of relevant IP income brought into account as credits in calculating the profits of the trade for the accounting period is properly attributable to a new qualifying IP right (see section 357BP).

But see also section 357D (alternative method of calculating relevant IP profits in such a case).”
  - (3) In subsection (1)—
    - (a) in the words before Step 1, omit “of a trade” to “an accounting period”,
    - (b) in Step 2, for “357CC and 357CD” substitute “357BH to 357BHC”,
    - (c) in Step 4, after “routine return figure” insert “in relation to the trade for the accounting period”,
    - (d) in Step 5, for “elected” substitute “made an election under section 357CL”, and
    - (e) in Step 6, after “marketing assets return figure” insert “in relation to the trade for the accounting period”.
- 4 In section 357CA(2) for “357CB” substitute “357BG”.
- 5 Omit sections 357CB to 357CF.
- 6 (1) Section 357CG is amended as follows.
  - (2) In subsection (1) after “determining” insert “under section 357C”.
  - (3) In subsection (4), in the words after paragraph (b), for “357CB” substitute “357BG”.
- 7 In section 357CI(1), in Step 1, for “357CJ and 357CK” substitute “357BJA and 357BJB”.

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- 8 Omit sections 357CJ and 357CK.
- 9 In section 357CL(1) for “elect” substitute “make an election under this section”.
- 10 In section 357CM(1) for “elects” substitute “makes an election under section 357CL”.
- 11 For the heading of Chapter 4 substitute “Relevant IP profits: cases mentioned in section 357A(7): alternative method”
- 12 (1) Section 357D is amended as follows.
- (2) In subsection (1) at the end insert “in a case where—
- (a) the accounting period begins before 1 July 2021,
  - (b) the company is not a new entrant (see section 357A(11)), and
  - (c) none of the amounts of relevant IP income brought into account as credits in calculating the profits of the trade for the accounting period is properly attributable to a new qualifying IP right (see section 357BP).”
- (3) For subsection (4) substitute—
- “(4) A company must apply section 357DA (instead of section 357C) for the purposes of determining the relevant IP profits of a trade of the company for an accounting period in a case mentioned in subsection (1) if any of the mandatory streaming conditions in section 357DC is met in relation to the trade for the period.”
- 13 (1) Section 357DA is amended as follows.
- (2) In subsection (1)—
- (a) in Step 1—
    - (i) for “357CB” substitute “357BG”,
    - (ii) for “357CC and 357CD” substitute “357BH to 357BHC”,
  - (b) in Step 4, after “routine return figure” insert “in relation to the trade for the accounting period”,
  - (c) in Step 5, for “elected” substitute “made an election under section 357CL”, and
  - (d) in Step 6, after “marketing assets return figure” insert “in relation to the trade for the accounting period”.
- (3) In subsection (4), in the words after paragraph (b), for “357CJ and 357CK” substitute “357BJA and 357BJB”.
- 14 (1) Section 357DC is amended as follows.
- (2) In subsection (8)(a) for “357CC” substitute “357BH”.
  - (3) In subsection (9)(a) for “357CC(6)” substitute “357BH(6)”.
- 15 In section 357FA(2) for “357CC(2)” substitute “357BH(2)”.
- 16 (1) Section 357GB is amended as follows.
- (2) In subsection (11)—
- (a) in the words before paragraph (a), after “Sections” insert “357BK, 357BKA,”, and

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(b) in paragraph (a) after “section” insert “357BK or”.

(3) In subsection (12) for “357CB(1)(c)” substitute “357BG(1)(c)”.

17 In section 357GC(3) for “357CB(1)(c)” substitute “357BG(1)(c)”.