

# Corporation Tax Reform: Patent Box

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## Who is likely to be affected?

Companies within the charge to corporation tax that actively hold qualifying patents and some other forms of intellectual property (IP) Patents are used by a wide variety of businesses, but particular sectors likely to benefit are pharmaceuticals, life sciences, manufacturing, electronics, and defence.

## General description of the measure

The Patent Box will allow companies to elect to apply a 10 per cent rate of corporation tax from 1 April 2013 to all profits attributable to qualifying patents, whether paid separately as royalties or embedded in the sales price of products. The regime will also apply to other qualifying intellectual property rights such as regulatory data protection (also called 'data exclusivity'), supplementary protection certificates (SPCs) and plant variety rights. Other non-qualifying profits in these companies will continue to be taxed at the main rate. The Patent Box will potentially benefit a wide range of companies which receive patent royalties, sell patented products, or use patented processes as part of their business.

## Policy objective

The Patent Box is part of the Government's growth agenda (as detailed in the *Plan for Growth* document published in March 2011). The aim of the Patent Box is to provide an additional incentive for companies to retain and commercialise existing patents and to develop new innovative patented products. This will encourage companies to locate the high-value jobs associated with the development, manufacture and exploitation of patents in the UK and maintain the UK's position as a world leader in patented technologies.

## Background to the measure

The Patent Box measure was announced at the 2009 Pre-Budget Report.

Two consultation documents have been published. *The Taxation of Innovation and Intellectual Property* was published in November 2010 and set out the high level principles for the Patent Box design. *Consultation on the Patent Box*, published in June 2011, was the stage 2 consultation document which gave more detail on the design proposals. In addition a consultation response document has now been published.

## Detailed proposal

### Operative date

The measure will have effect in relation to profits made or after 1 April 2013.

### Proposed Changes

Legislation will be introduced in Finance Bill 2012 to introduce the Patent Box.

The Patent Box will allow companies to elect to apply a 10 per cent rate of corporation tax from 1 April 2013 to all profits attributable to qualifying IP.

Qualifying IP includes patents granted by the UK Intellectual Property Office (IPO) and the European Patent Office, as well as supplementary protection certificates, regulatory data protection and plant variety rights. The Patent Box will apply to existing as well as new IP,

and to acquired IP provided that the group has further developed the IP or the product which incorporates it.

The legislation sets out a structured approach to calculate the profits from qualifying IP.

For companies selling patented products or licensing their patents, the calculation starts from the total profit from the sale of products incorporating the patented invention or the profit from licensing the invention. The full rate of corporation tax will still be charged on a 10 per cent routine return on certain costs and on any part of those profits which is attributable to marketing intangibles. Companies making smaller claims can choose a simpler calculation avoiding the need to value their brand. All remaining profit will be eligible for the Patent Box rate.

Companies which use the IP to perform processes or provide services will benefit from the Patent Box up to the level of an arm's length royalty for the use of the qualifying IP.

### Summary of impacts

Exchequer impact (£m)	2011-12	2012-13	2013-14	2014-15	2015-16
	-	-	-500	-800	-900
	<p>These figures were set out in Table 2.2 of Budget 2011, with a steady state cost of £1.1 billion. In addition, further development of policy design as a result of consultation will be expected to decrease the cost to the Exchequer by approximately £160 million a year in steady state. The final costing will be subject to scrutiny by the Office for Budget Responsibility, and will be set out at Budget 2012.</p>				
<p><b>Economic impact</b></p>	<p>The world economy is changing rapidly. Developments in technology and communications are opening up new markets and increasing international competition. The UK economy is increasingly "knowledge" driven. Knowledge is important to all industries, whether they are "high" or "low" tech, because it is crucial to innovation as well as the creation and exploitation of new products and markets. Patents are a key element of the knowledge economy and an important source of competitive advantage for UK businesses. How companies manage and develop their patents has become a crucial factor in determining their competitiveness in national and global markets.</p> <p>Against this background, a number of countries – Belgium, Luxemburg and the Netherlands amongst others – already provide an additional incentive for companies to retain and commercialise existing patents. Thus, the introduction of the Patent Box in the UK would further the Government's aim of ensuring that the UK is an attractive place to do business, and that businesses in the UK can compete effectively within the global market place.</p> <p>Patents are used by a wide variety of businesses: sectors such as pharmaceuticals, life sciences, manufacturing, electronics, and defence are likely to benefit from the Patent Box.</p> <p>Where revenue-generating patents are held by unincorporated businesses, the introduction of the Patent Box will likely increase the incentive to incorporate. However, this increase is unlikely to be significant as incorporation will normally have been undertaken already in order to qualify for the research and development Relief which is only available for companies.</p> <p>The introduction of the Patent Box is likely to encourage investment and</p>				

	<p>economic growth as well as prevent the movement of intellectual property offshore by innovative businesses who otherwise might invest elsewhere. A provisional behavioural response reflecting the likely impact of the Patent Box on increasing inward investment has been estimated, and has been incorporated into the steady state costing. Further work is underway covering how quickly the behavioural effect on attracting investment is likely to build-up.</p> <p>Other behavioural impacts included in the costings are: an estimate of additional patenting by companies where currently no patent protection is sought; an estimate of the costs associated with a degree of income shifting by corporate groups.</p>																			
<b>Impact on individuals and households</b>	This measure is aimed at the corporate sector so there is no impact on individuals.																			
<b>Equalities impacts</b>	The Government has carefully considered whether this measure impacts on people with protected characteristics and have not identified any impacts.																			
<b>Impact on business including civil society organisations</b>	<p>The final number of companies which will benefit has not been established at this stage.</p> <p>The Patent Box will be available to patents granted by the IPO and European Patent Office, and the Government also intends to include patents granted by some other EU jurisdictions. Some businesses who do not currently patent through these routes will therefore need to apply for patents and will incur additional costs. The IPO fees to acquire a UK patent, including application and renewal fees, are £950 for 10 years and £4,770 for the maximum 20 years. The proposed design for the Patent Box, which requires only one patent over a product in order for the associated profits to qualify, reduces the impact of this requirement.</p> <p>The Government has developed a largely formulaic approach to calculating the net profit from patents to improve certainty and reduce administrative burdens. Although the regime is elective there is some unavoidable complexity which will impose an additional administrative burden on those who choose to elect in. The requirement for some companies to calculate an arm's length royalty for use of marketing intangibles will impose the use of transfer pricing methodologies in those cases. Additionally where the formula produces an inappropriate result the company will either be able or be required to use alternative rules to calculate the net patent profit. This will be in the areas of expense streaming and claw-back of pre-commercialisation expenses.</p> <p>Indicative total annual administration costs of a potential Patent Box population complying with the regime are currently estimated to be £30 million. These costs are reliant on final design. Work is ongoing to refine these costs between now and Budget 2012.</p> <table border="1" data-bbox="424 1783 1410 2027"> <thead> <tr> <th data-bbox="424 1783 783 1816"></th> <th data-bbox="783 1783 1070 1816">Cost</th> <th data-bbox="1070 1783 1410 1816">Time Period (yrs)</th> </tr> </thead> <tbody> <tr> <td data-bbox="424 1816 783 1850"><b>Compliance Costs</b></td> <td data-bbox="783 1816 1070 1850"></td> <td data-bbox="1070 1816 1410 1850"></td> </tr> <tr> <td data-bbox="424 1850 783 1883">One-off Costs</td> <td data-bbox="783 1850 1070 1883">To be quantified</td> <td data-bbox="1070 1850 1410 1883"></td> </tr> <tr> <td data-bbox="424 1883 783 1917">Average Annual Costs</td> <td data-bbox="783 1883 1070 1917">£30m</td> <td data-bbox="1070 1883 1410 1917">10 years</td> </tr> <tr> <td data-bbox="424 1917 783 1995">Total Costs (PV)</td> <td data-bbox="783 1917 1070 1995">£30m + one off costs</td> <td data-bbox="1070 1917 1410 1995"></td> </tr> <tr> <td data-bbox="424 1995 783 2027"><b>Compliance Benefits</b></td> <td data-bbox="783 1995 1070 2027"></td> <td data-bbox="1070 1995 1410 2027"></td> </tr> </tbody> </table>			Cost	Time Period (yrs)	<b>Compliance Costs</b>			One-off Costs	To be quantified		Average Annual Costs	£30m	10 years	Total Costs (PV)	£30m + one off costs		<b>Compliance Benefits</b>		
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<b>Compliance Benefits</b>																				

	One-off Benefit	-	-
	Average Annual Benefit	-	-
	Total Benefit (PV)	-	-
	Net Benefit (NPV)	N/A	
	Impact on Administrative Burden (included in Net Benefit)		
	Increase	Decrease	Net Impact
	£30m	-	£30m
<b>Operational impact (£m) (HMRC or other government departments)</b>	<p>Indicative estimated annual costs of HMRC administering the regime are in the range of £2 million to £5 million, although these costs are very much reliant on the final design. Training and familiarisation on the new legislation will be required.</p> <p>There may be some operational impact on the IPO, as the regime may encourage increased patenting in the UK. Several aspects of the proposals have been designed to minimise this impact, including the proposed model design, which requires only one patent over a product in order for the associated profits to qualify. Additional patent examiners may be required to deal with the projected additional demand.</p> <p>It is not anticipated that there will be any significant operational impacts on other government departments.</p>		
<b>Other impacts</b>	<p><u>Competition assessment:</u> The Patent Box is not sector specific and is generous in its scope by also including SPCs and data exclusivity. Any company with eligible patents and qualifying income may be able to take advantage of the Patent Box.</p> <p><u>Small firms impact test:</u> However, several aspects of the proposals have been designed to help reduce the impact on small businesses. The largely formulaic approach will help small businesses to accurately self-assess their corporation tax. The Government recognises that some small companies may not have experience of identifying the relative contribution of patents and brand IP. This is addressed by proposing a safe harbour for the attribution of profits to patent and brand IP in smaller claims of up to £1,000,000 a year which can be used by small companies who choose not to adopt the formulaic method. The Government intends to produce comprehensive guidance which will further assist small businesses.</p>		

## Monitoring and evaluation

The measure will be monitored and assessed alongside other measures in the Government's package of corporate tax reforms.

## Further advice

If you have any questions about this change, please contact Anna Floyer-Lea via email: [corporatetaxreform@hmtreasury.gsi.gov.uk](mailto:corporatetaxreform@hmtreasury.gsi.gov.uk)

**1 Profits arising from the exploitation of patents etc**

Schedule 1 contains provision about the treatment for corporation tax purposes of profits arising from the exploitation of patents etc.

SCHEDULE 1

Section 1

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

**357A Election for special treatment of profits from patents etc**

- (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 the profits of the trade for the period for the purposes of corporation tax.
- (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.
- (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 relating to this Part.

## CHAPTER 2

### QUALIFYING COMPANIES

#### **357B Meaning of “qualifying company”**

- (1) 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 357BD).

#### **357BA Meaning of “exclusive licence”**

- (1) In this Part “exclusive licence”, in relation to a right, means a licence which—
  - (a) is granted by the person who holds either the right or an exclusive licence in respect of the 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 protected item 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 who carry on the same, or a similar, description of trade as the licence-holder in those 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 protected item,
- 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.

### **357BB Rights to which this Part applies**

- (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) any right specified for the purposes of this section in an order made by the Treasury.
- (2) In a case 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
  - (b) the person making the application (“the applicant”) has been notified under section 18(4) of that Act that the application complies with the requirements of the Act and the rules,
- the applicant is to be treated for the purposes of this Part as if the applicant had been granted the patent under that Act.
- (3) An order made under this section may make any incidental, supplemental, consequential, transitional or saving provision, including provision amending or modifying this Part.
- (4) In this section –
- “European Patent Convention” means the Convention on the Grant of European Patents;
  - “rules” means rules made under section 123 of the Patents Act 1977.

### **357BC The development condition**

- (1) A company meets the development condition in relation to a right if condition A, B, C or D is met.
- (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 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 member of a group since that time, and
  - (c) the company has, for a period of 12 months beginning with the day on which it ceased to be, or became, a member of the group, performed activities of the same description as those that constituted the qualifying development.
- (4) Condition C is that—
  - (a) the company is a member of a group,
  - (b) another company has, at any time when that other company was a member of the group, carried out qualifying development in relation to the right, and
  - (c) the company has been a member of the group since becoming the holder of the right or (as the case may be) an exclusive licence in respect of the right.
- (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 at any time carried out qualifying development in relation to the right, and
  - (c) that other company has, for a period of 12 months beginning with the day on which it became a member of the group and during which it was a member of the group, performed activities of the same description as those that constituted the qualifying development.
- (6) A company that meets the development condition in relation to a right by virtue of subsection (3) or (5) is to be regarded as meeting that condition in relation to the right for the period of 12 months mentioned in paragraph (c) of that subsection (as well as at any other time when the company meets the condition).
- (7) A company carries out “qualifying development” in relation to a right if—
  - (a) it creates, or significantly contributes to the creation of, the protected item, or
  - (b) it performs a significant amount of activity for the purposes of developing the protected item or any item incorporating the protected item.

- (8) The reference in subsection (7)(b) to developing the protected item includes developing ways in which the protected item may be used or applied.
- (9) For the purposes of this section 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.

### **357BD The active ownership condition**

- (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 has an exclusive licence.

## **CHAPTER 3**

### RELEVANT IP PROFITS

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

### **357C Relevant IP profits**

- (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 –

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

where –

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

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

*Step 3*

Calculate X% of the profits of the trade (calculated for the purposes of corporation tax) for the accounting period.

If there are no such profits, calculate X% of the losses of the trade (calculated for those purposes) for the accounting period.

See also section 357CF (adjustments in calculating profits of trade).

*Step 4*

Deduct from the amount given by Step 3 the routine return figure (see section 357CH).

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, go to section 357CJ.

If the company has not, go to Step 6.

*Step 6*

Deduct from the qualifying residual profit the marketing assets return figure (see section 357CK).

*Step 7*

If the company has made an election under section 357CN (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 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).

*Total gross income of trade*

**357CA Total gross income of a trade**

- (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 following amounts—
  - (a) any amounts which—
    - (i) in accordance with generally accepted accounting practice are recognised as revenue in the company’s

- profit and loss account or income statement for the accounting period, and
- (ii) are brought into account as credits in calculating for corporation tax purposes the profits of the trade for the accounting period,
- (b) any amounts (so far as not falling within paragraph (a)) which are brought into account as credits under Chapter 4 of Part 8 of CTA 2009 (realisation of intangible fixed assets) in calculating for those purposes the profits of the trade for the accounting period, and
- (c) 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 that Act in the accounting period.
- (2) But the total gross income of the trade does not include any of the following –
- (a) any credits which are treated as receipts of the trade by virtue of section 297 of CTA 2009 (credits in respect of loan relationships),
- (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.
- (3) In subsection (2) –
- “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.
- (4) For the purposes of subsection (2)(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*

**357CB 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 (7) (licence fees),
- (c) subsection (8) (proceeds of sale etc),
- (d) subsection (9) (damages for infringement).
- This is subject to section 357CD (excluded income).

- (2) Head 1 is income arising from the sale of any of the following items –
  - (a) items protected by a qualifying IP right held by the company (“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) Income arising from the sale of items within paragraph (c) of subsection (2) is relevant IP income only if the company receiving the income holds the right referred to in paragraph (a) of that subsection.
- (7) 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, and
  - (b) in the case of an agreement granting any right within paragraph (a), a right granted for the same purposes as those for which that right was granted.
- (8) 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.
- (9) Head 4 is any amount received by the company in respect of an infringement, or alleged infringement, of a qualifying IP right, in a case where –
  - (a) the right was held by the company at the time of the infringement or alleged infringement, and
  - (b) the infringement or alleged infringement (or any part of it) 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.
- (10) Where the whole of the infringement (or alleged infringement) does not occur at the time referred to in paragraph (b) of subsection (9), that subsection applies only to so much of the amount received by the company in respect of the infringement (or alleged infringement) as on a just and reasonable apportionment is properly attributable to such time.

- (11) 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 has an exclusive licence.

### **357CC Notional royalty**

- (1) This section applies where—
- (a) a company, for the purposes of any trade of the company, holds any rights mentioned in paragraph (a) or (b) of section 357BB(1) 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,
  - (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, and
  - (b) the transfer pricing guidelines.
- (9) In this section –
- “excluded income” means any income falling within any of the Heads in section 357CD;
- “the OECD model” 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;
- “the 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.

### **357CD Excluded income**

- (1) 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.
- (3) Head 2 is income which on a just and reasonable apportionment is properly attributable to a non-exclusive licence held by the company 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

protected item 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.

- (5) In this section –  
     “non-exclusive licence”, in relation to a right to which this Part applies, means a licence that is not an exclusive licence;  
     “oil extraction activities” and “oil rights” have the same meaning as in Part 8 (see sections 272 and 273).

### **357CE Mixed sources of income**

- (1) This section applies to any income that –  
     (a) is mixed income, or  
     (b) is paid under a mixed agreement.
- (2) “Mixed income” means the proceeds of sale in a case where an item falling within subsection (2) of section 357CB 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 paragraph (a) or (b) of subsection (4), and  
     (b) one or more of the matters in paragraph (c), (d) or (e) of that subsection.
- (4) The matters are –  
     (a) the sale of an item falling within section 357CB(2),  
     (b) the grant of any right falling within paragraph (a) or (b) of section 357CB(7),  
     (c) the sale of any other item,  
     (d) the grant of any other right,  
     (e) 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 357CB(2), or  
     (b) the grant of any right falling within paragraph (a) or (b) of section 357CB(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 paragraph (c), (d) or (e) 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*

**357CF Adjustments in calculating profits of trade**

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

“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.
- (5) For the purposes of subsection (3)(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.
- (6) In a case where the R&D expenditure condition is met (see section 357CG), the amount of R&D expenditure that is to be brought into account in calculating the profits of the trade for a relevant accounting period is 75% of the average amount of R&D expenditure calculated in accordance with section 357CG.
- (7) For the purposes of subsection (6) –

“R&D expenditure” means expenditure on research and development in relation to the trade;

“relevant accounting period” means –

- (a) the first accounting period for which an election made by the company under section 357A has effect, and
- (b) each accounting period that begins before the end of the period of 4 years beginning with that accounting period;

“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.

### **357CG R&D expenditure condition**

- (1) The R&D expenditure condition is met if the amount of R&D expenditure that would, apart from section 357CF(6), be brought into account in calculating for corporation tax purposes the profits of a trade of a company for a relevant accounting period (“the actual R&D expenditure”) is less than 75% of the average amount of R&D expenditure.
- (2) In the case of a relevant accounting period that is less than 12 months, the average amount of R&D expenditure must be proportionately reduced.

- (3) The average amount of R&D expenditure is –

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

where –

- E is the amount of R&D expenditure incurred by the company during the relevant period, and
- N is the number of days in the relevant period.

- (4) 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.
- (5) If the amount of the actual R&D expenditure in 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 in the next relevant accounting period for the purposes of determining whether the R&D expenditure condition is met in relation to that accounting period.
- (6) If –
  - (a) the R&D expenditure condition is not met in relation to a relevant accounting period, but
  - (b) in the absence of any additional amount, the R&D expenditure condition would be met in relation to that accounting period,

the used-up portion of the additional amount is to be added to the actual R&D expenditure in the next relevant accounting period for

the purposes of determining whether the R&D expenditure condition is met in relation to that accounting period.

- (7) For the purposes of this section –
- “additional amount”, in relation to a relevant accounting period, is any amount added to the actual R&D expenditure in that accounting period by virtue of this section, and
  - “the used-up portion”, in relation to any additional amount, is so much of that amount as exceeds the difference between –
    - (a) the actual R&D expenditure in the relevant accounting period in the absence of the additional amount, and
    - (b) 75% of the average amount of R&D expenditure.
- (8) If –
- (a) the R&D expenditure condition is not met in relation to a relevant accounting period, and
  - (b) the R&D expenditure condition would not be met in relation to that accounting period in the absence of any additional amount,
- the additional amount is to be added to the actual R&D expenditure in the next relevant accounting period for the purposes of determining whether the R&D expenditure condition is met in relation to that accounting period (in addition to any additional amount so added by virtue of subsection (5)).
- (9) In this section “R&D expenditure” and “relevant accounting period” have the meaning given by section 357CF(7).

#### *Routine return figure*

#### **357CH Routine return figure**

- (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 expenses, other than expenses within subsection (2), brought into account in calculating for corporation tax purposes the profits of the trade for the accounting period.  
For the meaning of “routine expenses”, see section 357CI.
- 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) The expenses referred to in Step 1 are –
- (a) the amount referred to in section 357CF(2)(b) (debits in respect of loan relationships), and
  - (b) R&D expenses.
- (3) In subsection (2) “R&D expenses” means –

- (a) the aggregate of –
    - (i) 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
    - (ii) the amount of that additional deduction, or
  - (b) where subsection (6) of section 357CF (adjustments in calculating profits of trade) applies, any R&D expenditure (within the meaning of that subsection) brought into account by virtue of that subsection.
- (4) In the case of a company (“C”) that is a member of a group, the reference in this section to any routine expenses brought into account in calculating the profits of a trade of C includes a reference to any routine expenses of another member of the group which –
- (a) are incurred on behalf of C, and
  - (b) had they been incurred by C, would have been so brought into account.
- (5) Where expenses are incurred by any member of the group on behalf of C and any other member of the group, subsection (4) applies 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.

### **357CI Routine expenses**

- (1) For the purposes of section 357CH “routine expenses” means expenses 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) (miscellaneous services).
- (2) Head 1 is any allowances under CAA 2001.
- (3) Head 2 is any expenditure incurred by the company in respect of any premises occupied by the company.
- (4) Head 3 is any expenditure incurred 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 expenditure incurred by the company in respect of any plant or machinery.
- (6) Head 5 is expenditure on any of the following –
- (a) the supply of water, fuel or power;
  - (b) consultancy or other professional services;
  - (c) telecommunications services;
  - (d) computing services, including computer software;
  - (e) postal services;
  - (f) the transportation of any items;
  - (g) the collection, removal and disposal of refuse.

- (7) In this section –
- “externally provided worker” has the same meaning as in Part 13 of CTA 2009 (see section 1128 of that Act),
  - “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.
- (8) The Treasury may by order amend this section.

*Small claims*

**357CJ Election for small claims treatment**

- (1) This section applies where the company elects for small claims treatment for an accounting period.
- (2) The amount of the relevant IP profits of 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 small claims threshold (see subsections (5) and (6)).
- (3) The amount referred to in subsection (2)(a) is –
- $$0.75 \times \text{QRP}$$
- 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 –
- $$\frac{\text{£1,000,000}}{1 + N}$$
- 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 have effect for the purposes of this section.

*Marketing assets return figure*

**357CK Marketing assets return figure**

- (1) 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, and

AMR is the actual marketing royalty in respect of the trade for the accounting period.

- (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.

**357CL Notional marketing royalty**

- (1) 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),
  - (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, and
  - (b) the transfer pricing guidelines.
- (7) In this section –
  - “marketing assets” means any of the following (whether or not capable of being transferred or assigned) –
    - (a) any trade mark within the meaning of section 1 of the Trade Marks Act 1994 (whether or not registered under that Act),
    - (b) any other signs or indications which may serve, in trade, to designate the geographical origin of goods or services, and
    - (c) any information relating to customers or potential customers of the company or any other member of a group of which the company is a member;
  - “the OECD model” 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;
  - “the 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.

### **357CM Actual marketing royalty**

- (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, in the accounting period, and
  - (b) were brought into account as debits in calculating for corporation tax purposes the profits of the trade for that accounting period.
- (2) In this section—
 

“relevant marketing assets” has the same meaning as in section 357CL;

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

### *Profits arising before grant of right*

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

- (1) This section applies where a company—
  - (a) holds a right mentioned in paragraph (a) or (b) 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 respect of the protected item 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.
- (8) Where the company would be a qualifying company for any relevant 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

#### **357D Alternative method of calculating relevant IP profits: “streaming”**

- (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.  
An election made under this subsection is known as a “streaming election”.
- (2) A streaming election made by a company has effect in relation to each trade of the company.
- (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 the mandatory streaming condition 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.

#### **357DA Relevant IP profits**

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

*Step 1*

Divide the total gross income of the trade for the accounting period (see section 357CA) into two parts (“streams”), so much of that amount as is relevant IP income (see sections 357CB and 357CC) and so much of it as is not 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 for corporation tax purposes the profits of the trade for the accounting period, other than any amounts referred to in section 357CF(2), and allocate them on a just and reasonable basis between the two streams.

*Step 3*

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

*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, go to section 357CJ.

If the company has not, go to Step 6.

*Step 6*

Deduct from the qualifying residual profit the marketing assets return figure (see section 357CK and subsection (7)).

*Step 7*

If the company has made an election under section 357CN (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 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 expenses, other than R&D expenses, which—
  - (a) have been brought into account in calculating for corporation tax purposes the profits of the trade for the accounting period, and

- (b) have been allocated to the relevant IP income stream under Step 2 in subsection (1).
- (5) In subsection (4) –
  - “R&D expenses” has the meaning given by section 357CH(3), and
  - “routine expenses” is to be read in accordance with section 357CI.
- (6) Subsections (4) and (5) of section 357CH have effect for the purposes of subsection (4) of this section as they have effect for the purposes of that section.
- (7) For the purposes of determining the marketing assets return figure in Step 6, section 357CM (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.

#### **357DB Method of allocation**

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

#### **357DC The mandatory streaming condition**

- (1) The mandatory streaming condition 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.

- (2) An amount of income is “substantial” for the purposes of this section if it is greater than –
  - (a) £2 million, or
  - (b) 20% of the total gross income of the trade for the accounting period,
 whichever is the lower.
- (3) But an amount of income is not substantial for the purposes of this section if it does not exceed £50,000.
- (4) In this section “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.  
 In this subsection “intellectual property” has the meaning given by section 712(3) of CTA 2009.

## CHAPTER 5

### RELEVANT IP LOSSES

#### **357E Company with relevant IP losses: set-off amount**

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.

#### **357EA Effect of set-off amount on company with more than one trade**

- (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).

#### **357EB Allocation of set-off amount within a group**

- (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 has not been reduced by 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 has not been reduced by 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.

### **357EC Carry-forward of set-off amount**

- (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 has not been reduced by 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).
- (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 has not been reduced by the operation of section 357EA(2) or 357EB(2)) is reduced under subsection (2).
- (4) If any portion of the set-off amount (or so much of it as was not reduced by the operation of section 357EA(2) or 357EB(2)) has not been reduced by the operation of subsection (2), that portion (“the unreduced 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 unreduced portion and an amount equal to the amount of those relevant IP losses (and the provisions of this Chapter apply accordingly).

### **357ED Company ceasing to carry on trade, etc**

- (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 current 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) for subsection (2) there were substituted—
 

“(2) The set-off amount (or so much of it as has not been reduced by 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.”,
  - (b) subsection (4) were omitted,
  - (c) for the words after “determine” in subsection (5) there were substituted “the relevant group member to whom subsection (2) is to apply”, and
  - (d) after subsection (6) there were inserted—
 

“(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 first 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, then to the trade that has the second greatest set-off amount in relation to any of those trades for such a period, and so on.”
- (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 is a member of a group, none of the members of the group is a relevant group member for the relevant accounting period.
- (6) In such a case, the set-off amount (so far as not already reduced by the operation of those sections) is to be reduced to nil.
- (7) In subsection (5) “relevant group member” and “relevant accounting period” have the same meaning as in section 357EB.

#### **357EE Intra-group transfer of a trade**

- (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.

## **CHAPTER 6**

### **ANTI-AVOIDANCE**

#### *Licences conferring exclusive rights*

#### **357F Licences conferring exclusive rights**

A licence that confers any right in respect of a protected item 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*

#### **357FA Incorporation of qualifying items**

- (1) 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 357CB(2).

#### *Tax advantage schemes*

#### **357FB Tax advantage schemes**

- (1) 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
  - (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) not fully recognising as revenue for the accounting period any amount brought into account as a credit in calculating those profits, or
    - (iii) a mismatch between relevant IP income and expenditure.
- (3) 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.
- (4) 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).
- (5) 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.

## CHAPTER 7

### SUPPLEMENTARY

#### *Elections under section 357A*

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

- (1) An election made by a company under section 357A is made by giving notice in writing 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.

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

- (1) A company may revoke an election made by it under section 357A by giving notice in writing 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*

##### **357GB Application of this Part in relation to partnerships**

- (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".
- (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) In a case where the firm does not draw up accounts for an accounting period in accordance with generally accepted accounting practice, any reference in this Part to any amounts which in accordance with generally accepted accounting practice are recognised as revenue in the firm'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 firm had drawn up such accounts for that accounting period.
- (7) 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.
- (8) 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.
- (9) 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.
- (10) Subsections (7) to (9) of section 357BC apply for the purposes of subsection (8)(a) of this section as they apply for the purposes of that section.
- (11) Section 357BD (active ownership condition) has effect as if the reference in subsection (4) to section 357BC(2) or (3) included a reference to subsection (8)(a) of this section.
- (12) Section 357CJ (election for small claims treatment) has effect as if any reference in subsection (5) or (6) of that section to the company that has made an election under that section were a reference to any corporate partner in relation to which an election under that section has effect.
- (13) Subsection (14) 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 357CA(2)(c).

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

#### *Cost-sharing arrangements*

### **357GC Application of this Part in relation to cost-sharing arrangements**

- (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 protected item or any item incorporating the protected item, and
  - (c) each of those parties is entitled to a share of any income attributable to the right or licence.
- (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 357CA(2)(c).
- (4) The reference in subsection (1)(b) to developing the protected item includes developing ways in which the protected item may be used or applied.

#### *Interpretation*

### **357GD Meaning of “group”**

- (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.
- (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 comprised in group accounts,
  - (b) they would be required to be comprised in such accounts but for the application of an exemption, or
  - (c) they are in fact 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”).

### 357GE Other definitions

In this Part—

“item” includes any substance,

“protected item”, in relation to a right to which this Part applies, means the item in respect of which the right is granted (and references to an item protected by a right are to be read accordingly), and

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

“exclusive licence (in Part 8A)	section 357BA”;
“group (in Part 8A)	section 357GD”;
“item (in Part 8A)	section 357GE”;

“protected item (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”;
“relevant IP income (in Part 8A)	section 357CB”;
“total gross income of a trade (in Part 8A)	section 357CA”.

## PART 2

### AMENDMENTS OF OTHER LEGISLATION

#### *Taxation (International and Other Provisions) Act 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”.

### 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 –
- (a) 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
- (b) any amounts brought into account for the purposes of calculating 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 –

- (a) 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 has not been reduced by 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
  - (b) 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 has not been reduced by 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.  
“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 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 construed in accordance with Chapter 5 of that Act.





**EXPLANATORY NOTE**

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

**SUMMARY**

1. This clause and Schedule introduce a new tax regime which will allow companies to elect to apply a 10 per cent corporation tax rate to profits attributable to patents and certain other qualifying intellectual property (IP) from 1 April 2013 (on a progressively incremental basis from 2013 to 2017).

**DETAILS OF THE SCHEDULE**

2. There are 3 parts in the Schedule. Part 1 introduces amendments to Corporation Taxes Act (CTA) 2010, whereas Part 2 provides for changes to other legislation. Part 3 contains the commencement and transitional provisions.

**Part 1: Amendments of CTA 2010**

3. Paragraph 1 introduces a new Part 8A to CTA 2010 concerning the new IP tax regime. It also explains that there are 7 chapters in Part 1 covering election to the new IP treatment, qualifying companies, 2 types of determination of IP profits/losses of a trade, provisions for setting off IP losses, anti-avoidance provisions, and supplementary provisions.

**Chapter 1: Reduced Corporation Tax rate for profits from patents etc**

4. New section 357A(1) outlines an elective regime to provide for a reduced rate of corporation tax for profits from patents and other specified intellectual property for qualifying companies.
5. Where an election is made, new section 357A(2) gives effect to that election not by applying a reduced rate of tax to eligible profits directly, but by granting a deduction from trading profits of such an amount as has the same effect as reducing the main rate of corporation tax on eligible profits to the special IP rate.
6. New section 357A(3) provides the formula for calculating the amount of the deduction.
7. New section 357A(4) sets the special IP rate of corporation tax at 10 per cent.

**Chapter 2: Qualifying companies**

8. New sections 357B(1) to (3) outline the requirements for a company to be a qualifying company in any accounting period for the purposes of an election under new section S357A. The company must either;
  - hold a qualifying IP right or an exclusive licence in respect of a qualifying IP right at some time during the accounting period, or
  - have previously held a qualifying IP right or an exclusive licence in respect of a qualifying IP right, and be taxable in the accounting period on income in respect of that right. That income must be attributable to events occurring wholly or partly during a period when the company was a qualifying company and had made an election under new section 357A.
9. The second condition allows a company to apply the Patent Box rules to income received when it would not otherwise be a qualifying company. An example is damages for infringement of patent rights where compensation is received after the expiry of a patent, but where the company had made a Patent Box election at the time of the infringement.
10. In addition, for a company that is a member of a group, new section 357B(5) requires it to also satisfy the active ownership condition of new section 357BD.
11. New section 357B(4) defines a qualifying IP right. The right must be one of those listed in new section 357BB and the company must also meet the development condition of new section 357BC in respect of that IP right.
12. New section 357BA defines the term exclusive licence.
13. New section 357BA(1) states that an exclusive licence is one granted by the proprietor, being someone who holds either the qualifying IP right or an exclusive licence over that right, which gives the person holding the licence exclusive rights over an item that is protected by the IP rights held by the proprietor.
14. New section 357BA(2) specifies that the rights granted under an exclusive licence must at least:
  - confer one or more rights to the exclusion of any other person operating in a similar field to the licence-holder, including the proprietor, in relation to the protected item in at least a whole national territory, and

- either include the right to take legal proceedings for any infringement of the licence-holder's rights, or receive all or the greater part of any damages that might follow from such an infringement.
15. A licence which grants more limited rights which, for example, do not extend to at least one whole country or territory, or where the licence holder is precluded from being a party to proceedings for infringement within its territory and recover any damages, will not be a qualifying IP right.
  16. New Section 357BA is subject to an anti-avoidance rule in new section 357F in Chapter 6 to ensure that an exclusive licence does not include one where rights are conferred for a main purpose of securing that the licence qualifies for the regime. This is aimed at ensuring that the grant of commercially spurious exclusive rights does not constitute the grant of an exclusive licence for the purposes of this Part.
  17. A company can vest the rights it holds in an exclusive licence to another member of its group. Where that happens the other company is treated as if it holds the exclusive licence, even if the company holding the exclusive rights retains the right to enforce, assign or grant further licences in respect of the licence. This might be the case where, for example, the original licence holder is a group company whose primary role is the management of the group's intellectual property portfolio, and any exploitation or development of the rights is carried out elsewhere in the group.
  18. It is quite possible for the proprietor to grant exclusive licences to several persons for use in the same country or territory, provided that their use of the rights over the protected item is in unrelated fields of activity.
  19. New section 357BB specifies the rights to which Part 8A applies. Rights specified here are the only types of right that can be qualifying IP in accordance with new section 357B(4).
  20. New section 357BB(1) lists the rights currently specified. These are patents granted by the UK Patent Office or under the European Patent Convention. Additional rights may be specified by order of the Treasury.
  21. New section 357BB(2) allows certain patent applications which are subject to a prohibition on publication on the grounds of national security or safety of the public to be treated as though they had been granted under that Act. This allows the innovation which is the subject of such an application to be treated as a qualifying IP right.

22. New section 357BB(3) gives the Treasury power to make any additional changes that are necessary in connection with an order amending the rights to which Part 8A applies.
23. New section 357BB(4) gives the meaning of the terms European Patent Convention used in new section 357BB(1), and ‘rules’ used in new section 357BB(2).
24. New section 357BC sets out four ways (see Condition A to Condition D below) that a company can meet the development condition in respect of an IP right it holds. Where the development condition is met, and provided that the right concerned is also of a type specified by new section 357BB, the right will be a qualifying IP right for that company.
25. New sections 357BC(2) and (3) ensure that a company meets the development condition in respect of an IP right if it carried out qualifying development in respect of the right in question (see new sections 357B(7) and (8) below). Condition A applies where the company has not left or joined a group since carrying out the qualifying development. Where it has, Condition B applies if it continues to carry on activities of the same nature as those that amounted to the qualifying development for 12 months after joining or leaving the group. These activities need not necessarily be in respect of the same protected item or right.
26. New section 357BC(4) provides for Condition C which allows a company within a group that holds a qualifying IP right to meet the development condition under Condition C by virtue of the qualifying development undertaken by another group company. The company undertaking the qualifying development must have been a member of the relevant group when the qualifying development was carried out (even if the company that holds the right was not). However it is not necessary that the company holding the rights was a member of the group at the time the development occurred; it is sufficient for it to have been a member of the group at all times since acquiring the rights.
27. New section 357BC(5) stipulates Condition D to deal with the situation where a company, holding IP rights in respect of which it meets the development condition (as in Condition B), joins a new group and then transfers the IP rights to another company in the new group. Condition D allows the company to which those rights have been transferred to satisfy the development condition where the transferee remains a member of the group and continues to undertake activities of the same nature as those that amounted to the qualifying development for 12 months after joining the group.

28. New section 357BC(6) ensures that where a group company meets the development condition under either Condition B or D, it is regarded as meeting that condition from the date that either it or the other company respectively joined the group, rather than on the expiry of the 12 month period.
29. New sections 357BC(7) and (8) defines qualifying development of an IP right as the creation or development (including a significant contribution to these activities) of a protected item which is in turn set out in new section 357GE in Chapter 7. Developing a protected item includes developing ways to use or apply the item. Protected item is defined by new section 357GE.
30. New section 357BC(9) confirms that qualifying development undertaken before the IP right was acquired, whether by the company which holds the IP right or another member of the group, is taken into account in considering whether the development condition is satisfied.
31. New section 357BD sets out when a company is regarded as satisfying the active ownership condition. Companies that are not part of a group do not need to meet the active ownership condition, by virtue of new section 357B(1).
32. New section 357BD(1) states that a company meets the active ownership condition substantially all of its qualifying IP rights satisfy either of two conditions.
33. New sections 357BD(2) and (3) set out the first condition, which is met where the company performs significant management of its qualifying IP rights portfolio during the accounting period. In this context management activity includes the formulation of plans and decision-making in relation to the development or exploitation of the IP rights.
34. New section 357BD(4) sets out the second condition, which is met where the company carries out development activity in relation to the particular IP rights during the accounting period, meeting either of the development conditions set out in new sections 357BC(2) or (3). These require the development activity to be carried out by the company that has the IP rights rather than by any other member of the group.

### **Chapter 3: Relevant IP profits**

35. New section 357C sets out the Steps necessary to determine the relevant IP profits of the trade. The relevant IP profits of the trade

are the profits that are used in the formula in new section 357A to calculate the appropriate amount of the deduction from the profits of the trade which gives effect to the lower rate of corporation tax.

36. New section 357C(1) outlines the six Steps involved in the computation of the relevant IP profits of a trade.
37. Step 1 specifies that the total gross income of a trade must be calculated. Total gross income of the trade is defined in new section 357CA.
38. Step 2 determines the percentage of the company's total gross income of the trade that is relevant IP income, denoted as X per cent. Relevant IP income includes not only the income identified under the various Heads in new section 357CA, but also any notional royalty identified under new section 357CB.
39. Step 3 apportions the total profit or loss of the trade between that attributed to activities of the trade involving the exploitation of qualifying IP rights and other matters. This is achieved using the proportion of total gross income of the trade that is RIPI computed at Step 2, X per cent. The total profit or loss of the trade for this purpose is the amount of profit or loss of the trade for corporation tax purposes (before any deduction under Part 8A).
40. Step 4 determines any qualifying residual profit figure by deducting an amount representing a routine return, calculated under new section 357CH, from the result of Step 3. Where this is a positive figure, this is the qualifying residual profit, which represents the additional profit over and above a routine return attributed to the exploitation of the all of the company's intangible assets. If the routine return figure is greater than X per cent of the total profit, then subject to Step 7, there will be a relevant IP loss for the period. No further adjustment is necessary under Steps 5 and 6 where there is a loss at this stage in the calculation.
41. Companies with a qualifying residual profit now make a decision regarding how to calculate the amount of this qualifying residual profit that is attributed to the qualifying IP rights. Step 5 sets out that where the company has not made an election for small claims treatment, it should proceed to Step 6; alternatively if the company has made such election, it should use the simplified procedure set out in new section 357CJ.
42. Step 6 deducts from any qualifying residual profit an amount to be attributed to marketing assets. Whilst it is possible that the result of deducting the marketing assets return figure from the qualifying residual profits creates a loss, in practice a company in that position

will always be better off making a small claims election and using the alternative method set out in new section 357CJ.

43. Step 7 is the point at which a company includes in its relevant IP profits for the period any additional amount in respect of profits arising in period where grant of a patent is pending that are allowed under new section 357CN.
44. New sections 357C(2) and (3) specify that any positive sum determined from the Steps set out above is the relevant IP profit for the period, whilst any negative amount will be the relevant IP loss for the period.
45. New section 357CA sets out the calculation of the total gross income of the trade for Patent Box purposes.
46. New section 357CA(1) specifies that total gross income of the trade includes any amounts which are both recognised as revenue in the company accounts, and brought into account in computing the profits of the trade for corporation tax purposes, any credits from the realisation of intangible fixed assets, and any profits from the sale of pre-2002 patent rights, held for the purposes of the trade which arise during the accounting period.
47. New sections 357CA(2) to (4) specify that total gross income of the trade excludes credits arising from financial assets, any interest treated as a receipt of the trade by virtue of section 297 of CTA 2009, and other amounts economically equivalent to interest which a company receives as a consequence of any arrangement to which it is a party. Income from financial assets includes dividends and other income from shares that forms part of the income of a financial trader.
48. New section 357CB sets out the amounts included in the total gross income of the trade which are to be regarded as relevant IP income. The aggregate of these amounts, together with any notional royalty identified under new section 357CC, will form the relevant IP income used in Step 2 of new section 357C(1). This is subject to any amounts that are treated as excluded income under new section 357CD.
49. Relevant IP income must fall under one of the Heads identified in new section 357CB(1).
50. Any income which falls within Heads 1 to 4 (see new sections 357CB(2), (7), (8) and (9) below) will nevertheless not be relevant IP income to the extent that it is excluded income by virtue of new section 357CD.

51. New section 357CB(2) outlines income falling within Head 1. This is not limited to income from the sale of qualifying items which are items protected by a qualifying IP right. It also includes the income from the sale of items either incorporating the qualifying item, or wholly or mainly designed to be incorporated into it.
52. For these purposes an item is defined in new section 357GE in Chapter 7 as including any substance.
53. New sections 357CB(3) and (4) deal with the distinction between a protected item and its packaging. These are treated separately unless the packaging performs an essential function relating to the use of an item. The requirement to treat packaging separately is subject to a de minimis exception in new section 357CE(6) and it should not be relevant for most companies. Companies selling protected items will not generally be required to separately identify the value attributable to its packaging. The principal exception, where separate treatment is necessary, is the sale of an item that is not a protected item but which is sold in patented packaging. The effect of the rule in such a case is to prevent the income from the sale of the item being regarded as part of the company's relevant IP income.
54. New section 357CB(5) extends the meaning of items incorporating one or more qualifying items in subsection 2(b) to include the situation where a qualifying item and an item designed to incorporate that item are sold together for a single price.
55. New section 357CB(6) ensures that income arising from the sale of items designed to be incorporated into a qualifying item (or into an item incorporating one or more qualifying items) is only relevant IP income if it is received by the same company that holds the qualifying IP rights as set out in new section 357B(4). This includes an exclusive licence in respect of such rights by virtue of new section 357CB(10).
56. New section 357CB(7) provides that income falling within Head 2 is income consisting of any licence fee or royalty received by the company under an agreement which only grants to another person:
  - a right in respect of a qualifying IP right held by the company; and
  - a right granted for the same purposes as the right granted in respect of such qualifying IP right.
57. Only licence fees or royalties that exclusively relate to the qualifying IP rights are included in Head 2 income. If the agreement provides for the receipt of royalties and / or fees for any other matter, then the

rules for a mixed agreement in new section 357CE must be applied to determine the amount of relevant IP income.

58. New section 357CB(8) outlines income falling within Head 3. This is any income arising from the disposal of a qualifying IP right.
59. New sections 357CB(9) and (10) outline income falling within Head 4. This is any amount received by the company arising from infringement or alleged infringement of any qualifying IP right held by the company. At the time of the infringement the company must have held the qualifying IP right and must also have been a qualifying company to which an election under new section 357A in Chapter 1 had effect. Where the damages etc. received for the infringement relate partly to periods when the company was a qualifying company and partly to periods when it was not, then a just and reasonable apportionment is to be made to determine the amount which is relevant IP income.
60. Income will be treated as relevant IP income within Head 4 even where it is received at a time when the company no longer holds a qualifying IP right, provided that it relates to an infringement which occurred at a time when the company did hold the qualifying IP right and was a qualifying company to which an election under new section 357A had effect. New section 357B(3)(b) ensures that the company is also treated as a qualifying company at the time it receives the amount.
61. New section 357CC provides a mechanism for determining the amount of a company's total gross income of the trade which is not relevant IP income arising as a direct result of the company's exploitation of a qualifying IP right under any of the heads of new section 357CB. An example of this might be the sale of non-patented goods that are produced using a patented process. The aim of this section is to arrive at a further amount of the total gross income that will be treated as relevant IP income. This is achieved by establishing a notional royalty that reflects what the company would pay out of the income generated by the exploitation of the IP in the accounting period to a third party for use of those qualifying IP rights. This amount will be added to the relevant IP income of the trade for use in Step 2 of the calculation of relevant IP profits in new section 357C.
62. New sections 357CC(1) and (2) provide that a relevant qualifying IP right arises if a company holds any rights mentioned in new sections 357BB(1)(a) and (b) (either held directly or through an exclusive licence) and the total gross income of the trade includes an amount arising from the company's exploitation of its qualifying IP rights which is neither relevant IP income under new section 357CB nor excluded income under new section 357CD.

63. New section 357CC(3) allows a company to elect to treat such a notional royalty as if it were relevant IP income. Where a company has negligible amounts of income that would fall within this section it may therefore decide not to carry out a calculation of any notional royalty. However, where the company decides to elect to include a notional royalty, no formal election procedure is set down, and the company may simply include the notional royalty election by way of a note to the computations in its corporation tax return (or an amended return) for the period.
64. New sections 357CC(4) and (5) set out how to determine the notional royalty. This is the appropriate amount of any IP derived income for the accounting period that the company would pay to a third party for the right to exploit any qualifying IP rights used for that accounting period, assuming that the company were not otherwise able to exploit it.
65. New sections 357CC(6) and (7) set out the assumptions that are to be made in arriving at the appropriate percentage of the IP derived income for an accounting period. These are:
- the royalty will be payable at arms length;
  - the company, or the company and persons authorised by it, will have the exclusive right to exploit the qualifying IP;
  - the rights deemed to be granted are only those that the company actually has in relation to the qualifying IP right. This is most likely to be relevant in cases where, for the example, the company holds a right or licence of limited duration or which is restricted to a particular country or territory;
  - the rights are conferred on the later of the start of the accounting period or the date when the company acquired the IP right;
  - the percentage is determined at the start of the accounting period, and
  - will continue at an unchanged level for subsequent accounting periods.

These assumptions ensure that the notional royalty relates to relevant IP-derived income generated during the accounting period. The amount of the notional royalty cannot exceed the amount of the IP-derived income because it is calculated as a percentage of that income, and any amount in excess of 100 per cent would clearly not be a commercial arrangement.

66. Thus, where there is no significant change in the company's circumstances, the actual percentage used in one accounting period should also be used in the following accounting period. Only if there is a significant change in the company's circumstances would a company need to reassess the appropriate amount in accordance with the above assumptions for a subsequent accounting period.
67. New section 357CC(9) requires that the amount of the royalty must be determined in accordance with article 9 of the OECD model and the transfer pricing guidelines. Both these terms are defined in new section 357(CC)(10).
68. New section 357CD specifies that 3 types of income, which could otherwise fall within one of the Heads of relevant IP income outlined at new section 357CA, will not be relevant IP income under any circumstances.
69. New sections 357CD(1) to (3) specify that ring fence income, from UK Continental Shelf oil and gas trades as set out in Part 8 of CTA 2010 (see sections 272 and 273), and income arising to a licensee that is attributable to any non-exclusive licence is excluded from being relevant IP income. Non exclusive licence is defined in new section 357CD(5).
70. Where it is necessary to attribute an amount of income to a non-exclusive licence in respect of a qualifying IP right as set out in new section 357B(4), then this is to be done on a just and reasonable basis.
71. New section 357CD(4) ensures that where a company has been granted a mixture of exclusive and non-exclusive rights over a qualifying IP right under a single licence, the licence is to be treated under Part 8A as comprising two separate licences; one an exclusive licence which confers only the exclusive right or related rights and the other non-exclusive covering the non-exclusive rights. Income in respect of the deemed non-exclusive licence is excluded income by virtue of new section 357CD(3).
72. New section 357CE requires a company to make a just and reasonable apportionment of income which includes elements of both relevant IP income and other income, for the purposes of determining the company's relevant IP income.
73. New section 357CE(1) provides that the section will apply to mixed income, and income paid under a mixed agreement.
74. New section 357CE(2) defines mixed income. This is income from the sale of qualifying items together with non-qualifying items as a single unit and for a single price. A qualifying item is one whose sale would produce relevant IP income under new section 357CB(2).

75. New sections 357CE(3) and (4) define a mixed agreement. This is any agreement that provides for both:

- the sale of a qualifying item, as set out in new section 357CB(1), or the granting of rights in respect of a qualifying IP right held by the company under new sections 357CB(7)(a) or (b),

and also

- the sale of any non-qualifying item, the granting of any rights other than in respect of a qualifying IP right or the supply of any service.

76. New section 357CE(5) requires the amount of relevant IP income to be determined using a just and reasonable apportionment of the mixed income or the income received under mixed agreement. This is subject to a de minimis rule in new section 357CE(6). This provision can require a company to determine appropriate apportionments where none are provided within the agreement, or can override the terms of an agreement where it is necessary to do so to arrive at a just and reasonable result.

77. For example, an agreement provides a single price for the sale of a single unit, where the sale includes 50 hairdryers with a patented motor (with the protected IP item (see new section 357CB) owned by the vendor), and 70 curling tongs where the vendor has no interest in any protected IP rights. The vendor's basic wholesale price of the hairdryer is £10 per unit, and the curling tongs £6 per unit. Income from the sale which relates to the hairdryers falls within new section 357CB(2)(b), whereas that relating to the curling tongs does not fall within new section 357CB. A just and reasonable amount of relevant IP income from the sale of the hairdryers could be calculated as:

$$£750 \times \frac{(50 \times 10)}{(70 \times 6) + (50 \times 10)} = £407.61$$

78. New section 357CE(6) allows a company to disregard trivial amounts of income that can be attributed to the sale of non-qualifying items, the grant of other rights or the supply of services arising from a sale that generates mixed income, or under a mixed agreement, when calculating relevant IP income. Where there are several non-qualifying amounts it is the aggregate amount which must be considered to determine whether the income is trivial.

79. New section 357CF sets out the adjustments that a company needs to make to its taxable profits from a trade in order to determine its relevant IP profits from that trade.

80. New sections 357CF(2) to (4) provide for the profits of the trade to be adjusted for two amounts, relating to research and development (R&D) tax relief, and financial income or expenses as follows.
81. Adding back any additional deductions for R&D expenditure obtained under Part 13 of the CTA 2009 ensures that the company retains the full benefit of this tax relief even though its IP profits are taxed at a lower rate.
82. Removing any net credits or debits in respect of the trading loan relationships ensures that the method of financing the company's trade will not affect its relevant IP profits, and therefore the amount of tax relief it receives from the reduced rate of tax on those profits.
83. For the purposes of this section, net credits or debits in respect of loan relationships includes any interest treated as receipts of the trade, any amounts recognised as arising from a financial asset in accordance with generally accepted accounting practice, and amounts economically equivalent to interest. Income from financial assets includes dividends and other income from shares that forms part of the income of a financial trader.
84. New sections 357CF(5) and (6) define terms used in subsection (4).
85. New section 357CF(7) requires a company to use a greater amount of R&D expenditure in computing the profits of the trade in accounting periods when the R&D expenditure condition is met. The provision operates in situations where a company's R&D expenditure has predominantly been incurred in earlier periods while it was not within the Patent Box regime, and income from the results of that expenditure is mainly received in later periods at a time when it is within the regime, but its R&D expenditure has significantly reduced. It only applies in the four years after a company makes an election under new section 357A.
86. Where the R&D expenditure condition is met, the provision requires a company to substitute 75 per cent of the average figure for R&D expenditure when calculating the relevant IP profits of the trade.
87. New section 357CF(8) defines terms used in new section 357CF(7).
88. New section 357CG outlines the circumstances in which the R&D expenditure condition is met. Where that is the case, then the actual amount of R&D expenditure incurred in an accounting period will be replaced by 75 per cent of the average amount of R&D expenditure incurred in the four years prior to the accounting period in which the company made an election under new section 357A (or the time since the trade commenced if this is less than four years).

89. New section 357CG(1) specifies that the R&D condition is met where the actual R&D expenditure in the accounting period is less than 75 per cent of the average amount of R&D expenditure.
90. New section 357CG(2) directs that where an accounting period is less than 12 months, the average amount of R&D expenditure used to compare with the actual expenditure is reduced proportionately.
91. New section 357CG(3) sets out the method of calculating the average amount of R&D expenditure. This is the total amount of R&D expenditure incurred by the company during the relevant period (as defined in new section 357CG(4)) divided by the number of days in that period. This daily figure is then multiplied by 365 to give an annual amount.
92. New section 357CG(4) defines the relevant period for the purposes of new section 357CG(3).
93. New section 357CG(5) provides that where, in any relevant accounting period, actual R&D expenditure is greater than the average calculated under new section 357CG(3) the excess can be carried forward and added to the actual amount of R&D expenditure for the next relevant accounting period. That augmented amount of R&D expenditure is then compared with the average amount to determine whether the R&D condition is met.
94. New sections 357CG(6) and (7) apply where it is the only additional amount of R&D expenditure included for an accounting period by virtue of subsection (5) that ensures the R&D condition is not met. In such a case, the part of the additional amount which is necessary to increase the actual R&D expenditure for an accounting period to 75 per cent of the average R&D expenditure is used up. Any excess over that part may be carried forward for use in a future period.
95. However, where an additional amount of R&D expenditure is included for an accounting period by virtue of subsection (5), but it is not sufficient to prevent the R&D condition being met, then the whole of that amount may be carried forward to a later period for the purposes of determining whether the R&D condition is met.
96. The provisions in new sections 357CG(5) to (8) make it less likely that a company will need to make an adjustment to its profits under new section 357CF. Where an adjustment is required it will help smooth the results, for example where R&D is still being undertaken, but the amounts of expenditure are volatile from year to year.
97. New section 357CG(9) specifies that for the purpose of this section R&D expenditure and relevant accounting period have the meanings given by new section 357CF(8).

98. New section 357CH sets out how to compute a routine return figure for the purposes of Step 4 of new section 357A. Step 4 aims to exclude from such profits an amount of profit which represents a routine return. A routine return is the return which could be expected from the business if the company was not able exploit its qualifying IP rights and other intangible assets.
99. New sections 357CH(1) and (2) outline the three Steps for calculating the routine return.
100. Step 1 identifies the total of the routine expenses incurred by the company which have been brought into account in computing the profits of the trade. Routine expenses are those identified in new section 357CI. Any loan relationship amounts and R&D expenses are to be excluded from these routine expenses. The exclusion of any amounts that have qualified for R&D tax relief at this stage ensures that there is no incentive for Patent Box companies to outsource their R&D activities to other group companies. R&D expenses for this purpose are defined in new section 357CH(3).
101. Step 2 applies a mark-up of 10 per cent to the amount identified in Step 1. A cost-plus methodology is used to determine the arms-length return expected from a trader that does not use unique intangible assets in its trade. It adopts the same principles as those set out in the OECD Transfer Pricing Guidelines for Multinational Enterprises. The 10 per cent rate reflects the fact that only a proportion of the actual expenses of the trade are used when estimating a routine return figure.
102. Step 3 determines how much of that routine return is to be attributed to profits from the company's relevant IP income. This is achieved on a pro-rata basis using the ratio of relevant IP income to the total gross income figure, as in Steps 1 and 2 of the computation under new section 357C, denoted as X per cent per cent
103. New section 357CH(3) defines R&D expenses for the purposes of the calculation in new section 357CH(1). This will include all amounts under any of the Heads of relevant expenses identified in new section 357CI which form part of a claim for R&D tax relief under Part 13 of CTA 2009, plus the amount of any additional deduction due under that Part that relates to those expenses, and also any R&D expenditure brought into account by virtue of new section 357CF(5).
104. New sections 357CH(4) and (5) ensure that the expenses taken into account for the purposes of determining a routine return also include any expenses incurred on a company's behalf by other members of the group, irrespective of whether or not these have been reimbursed, for example by way of a service fee or adjustment to intercompany balances. Where necessary, a just and reasonable apportionment of

expenses incurred by the other company should be made to determine the amount relating to the company's routine expenses.

105. New section 357CI sets out the meaning of routine expenses for the purposes of new section 357CH. These are the expenses to which a mark-up is applied to determine the routine return from the trade. Any loan relationship amounts and R&D expenses are specifically excluded by virtue of new section 357CH(2).
106. New section 357CI(1) sets out five general heads of expenditure, each of which is further explained in new sections 357CI(2) to (7).
107. New section 357CI(8) permits the Treasury to amend the list of items included in relevant expenses and their description by way of an Order.
108. New section 357CJ provides a simpler method for calculating the relevant IP profits of a company where such profits are small. In this circumstance, the company may make an election under new section 357CJ(1) and use a formulaic approach in the computation of their relevant IP profits instead of Step 6 as set out in new section 357C. No formal election procedure is set down, and a company may simply include the election for small claims treatment by way of a note to the computations in its corporation tax return (or an amended return) for the period.
109. New sections 357CJ(2) to (3) provide that where an election for small claims treatment is made by a company with just one trade, the amount of relevant IP profits is the lower of 75 per cent of the qualifying residual profit of the trade or the small claims threshold.
110. Where a company has more than one trade, the qualifying residual profit of each of the trades is aggregated to determine whether the small claims limit has been exceeded. Any negative amounts of qualifying residual profit in a trade are ignored, by virtue of new section 357CJ(4).
111. Where the total does not exceed the small claims threshold, the relevant IP profits are 75 per cent of the qualifying residual profit in each trade. If the aggregate exceeds the small claims threshold, then the relevant IP profit figure is the small claims threshold – this is a total figure rather than an amount per trade.
112. New section 357CJ(5) sets the small claims threshold for a company which has no associated companies that have made an election under new section 357A at £1 million for an accounting period of twelve months.

113. New sections 357CJ(6) and (7) reduce the small claims threshold proportionately where a company has one or more associated companies that have made an election under new section 357A, or where the accounting period is less than twelve months respectively.
114. New section 357CJ(8) specifies that when determining whether two companies are associated for the purposes of the small claims threshold as the rules used for claims to the small profits rate of corporation tax are to be followed.
115. New section 357CK details the method that is to be used to arrive at the marketing assets return figure required for a deduction from qualifying residual profit at Step 6 of new section 357C(1).
116. New section 357CK(1) specifies that the marketing assets return figure is the difference between notional marketing royalty in respect of the trade (NMR) for the accounting period and the actual marketing royalty in respect of the trade (AMR) for the accounting period. The NMR and the AMR are defined by new sections 357CL and 357M.
117. New section 357CK(2) states that the marketing assets return figure is taken to be where:
- AMR is greater than the NMR, or
  - NMR is less than 10 per cent of qualifying residual profit (see new section 357GE(2) in Chapter 7).
118. New section 357CL outlines the principles to be used in determining the notional marketing royalty figure to be used in new section 357CJ.
119. New sections 357CL(1) and (2) specify that the notional marketing royalty is to be determined as the amount of its relevant IP income for the accounting period that the company would pay to a third party for the right to exploit its relevant marketing assets, assuming that otherwise it would have no such right. This is the appropriate amount of the relevant IP income.
120. New section 357CL(3) provides that relevant marketing assets are those marketing assets that are used to generate relevant IP income of the trade in the accounting period.
121. New section 357CL(4) details the assumptions used for deriving the amount of the notional marketing royalty. These are:
- the royalty will be payable at arms length;

- the company, or the company and persons authorised by it, will have the exclusive right to exploit the relevant marketing assets;
- the royalty will be paid only in respect of rights that the company actually holds;
- the right will be granted on the relevant day;
- the appropriate percentage is calculated at the start of an accounting period;
- the same percentage will apply for succeeding accounting periods, and
- the only benefits the company will derive from the exploitation of the rights will be in respect of relevant IP income during the accounting period.

These assumptions ensure that the notional marketing royalty relates on to relevant IP income generated during the accounting period. They will exclude the use of assumptions based on other market practices such as front- or rear-loaded payments, lump sums covering longer periods, etc.

122. New section 357CL(5) defines the relevant day for the purposes of the assumptions made about the appropriate amount.
123. New section 357CL(6) requires that the amount of the royalty must be determined in accordance with article 9 of the OECD model and the transfer pricing guidelines.
124. New section 357CL(7) defines the terms marketing assets, OECD model and the transfer pricing guidelines for the purposes of new section 357CL.
125. New section 357CM sets out how to determine the actual marketing royalty of a trade for an accounting period.
126. New section 357CM(1) states that the actual marketing royalty is X per cent of the total amount paid by the company during the accounting period for the acquisition of, or the right to exploit, any relevant marketing assets, and which are included in its corporation tax profits of the company's trade for the accounting period,.
127. New section 357CM(2) provides that in new section 357CM(1) relevant marketing assets has the same meaning as that given in new section 357CL, and X per cent is the proportion of total gross income

of the trade that is relevant IP income, as computed under Step 2 of new section 357C(1).

128. New section 357CN provides that an amount of profits arising between the date of application to register a qualifying IP right and the date of grant may be included in the calculation of relevant IP income in the period in which that right is granted. Registration of a qualifying IP right may take a number of years; where the right is a patent right, the intervening period is generally known as the patent pending period. A maximum of six years' additional profits may be brought in for the period when the right is granted. New section 357BB defines relevant IP rights, and, other than in a case where the exception for patents that affect national security or public safety in new section 357BB(2) applies, requires the right to have been granted. Without this section any income received from the innovation which is the subject of the application, prior to grant, would not be relevant IP income.
129. New section 357CN (2) provides for a company to elect to include an additional amount in its calculation of the relevant IP profits of the accounting period in which a qualifying IP right is granted. No formal election procedure is set down, and a company may simply include the election by way of a note to the computations in its corporation tax return (or an amended return) for the period.
130. New section 357CN(3) sets out how the additional amount is calculated. It includes IP profits arising after the relevant day, in any relevant accounting period, that have not otherwise been included in relevant IP profits of the period. Relevant day and relevant period are defined in new sections 357CN(6) and (4) respectively.
131. New section 357CN(4) ensures that any relevant IP profits that have been allocated to a set-off amount are disregarded for the purposes of the calculation of the additional amount.
132. New sections 357CN(5) and (6) give the conditions which determine which accounting periods will be a relevant accounting periods. A relevant accounting period is any accounting period in which the right is granted, and any earlier accounting period, ending on or after the relevant day, for which the company is a qualifying company and has made an election under new section 357A.
133. New section 357CN(7) defines the relevant day for the purposes of the section. This will be the later of:
- 6 years prior to the date of grant; and
  - either the date of application for the qualifying IP, or

- where a company holds an exclusive licence, the date the licence was granted.
134. New section 357CN(8) allows a company to be treated as if it was a qualifying company for the purposes of new section 357CN if the only reason it would not be a qualifying company is that the right had not yet been granted.
135. New section 357CN(9) allows a company to be treated for the purposes of new section 357A as if it was a qualifying company for the accounting period in which the right is granted if the only reason that it would not qualify is that the company disposed of the right, or the licence to that right before it was granted. This allows a deduction under new section 357A to be made by a company that would not otherwise be a qualifying company for that accounting period.

#### Chapter 4: Streaming

136. In certain circumstances apportioning the profits of a trade by using the overall ratio of relevant IP income to total gross income, as required at Step 3 of new section 357C, may give rise to a distorted result. This may occur where the relative proportions of income from the exploitation of IP rights and other income differs markedly from the relative proportions of profits derived from such income.
137. New section 357D therefore provides for a company to elect for the provisions of new section 357C to be set aside, and for the relevant IP profits of the trade to be ascertained using the streaming provisions of new section 357DA. It also provides that the provisions of new section 357DA will replace new section 357C where the mandatory streaming condition of new section 357DC is met.
138. New section 357D(1) allows a company to elect to apply new section 357DA. This is a streaming election. No formal election procedure is set down, and a company may simply include the streaming election by way of a note to the computations in its corporation tax return (or an amended return) for the period.
139. New section 357D(2) ensures that where a streaming election is made, it is to be applied to all the company's trades. Thus a company cannot pick and choose which of its trades would benefit from a streaming election.
140. New section 357D(3) states that a streaming election has effect for the accounting period in which it is made and each following period, unless the company ceases to use streaming where there has been a change of circumstances as set out in new section 357DB(3).

141. New section 357D(4) stipulates that where a company is required to use streaming because the condition in new section 357DC is met, it must apply the provisions of new section 357DA to calculate its relevant IP profits rather than new section 357C.
142. New section 357DA(1) outlines the steps used to determine the relevant IP profits of the trade where either, the company has made a streaming election, or the company meets the mandatory streaming condition.
143. Step 1 directs that the total gross income of the trade determined under Step 1 of new section 357C is to be split in to two streams; a relevant IP income stream (including any notional royalty computed under new section 357CC) and income that is not relevant IP income.
144. Step 2 requires that, having separated the total gross income of the trade into separate streams, all of the amounts deducted in calculating the corporation tax profits of the trade, should now be allocated on a just and reasonable basis against one or other of the streams of income. There is an exception for amounts identified under new section 357CF(2), that is any additional deductions for expenditure on research and development under Part 13 of CTA 2009, and any trading loan relationship debits.
145. Step 3 requires that the amounts allocated to the relevant IP income streams under Step 2 above are deducted from that income stream.
146. Step 4 determines any qualifying residual profit figure by deducting an amount representing a routine return, calculated under new section 357CH, from the result of Step 3. Where this is a positive figure, this is the qualifying residual profit, which represents the additional profit over and above a routine return attributed to the exploitation of the all of the company's intangible assets. If the routine return figure is greater than X per cent of the total profit, then subject to Step 7, there will be a relevant IP loss for the period. No further adjustment is necessary under Steps 5 and 6 where there is a loss at this stage in the calculation.
147. Companies with a qualifying residual profit now make a decision regarding how to calculate the amount of this qualifying residual profit that is attributed to the qualifying IP rights. Step 5 sets out that companies that have not made an election for small claims treatment proceed to Step 6; those that have made an election use the simplified procedure set out in new section 357CJ.
148. Step 6 deducts from any qualifying residual profit an amount to be attributed to marketing assets. Whilst it is possible that the result of deducting the marketing assets return figure from the qualifying residual profits creates a loss, in practice a company in that position

will always be better off making a small claims election and using the alternative method set out in new section 357CJ.

149. Step 7 is the point at which a company includes in its relevant IP profits for the period any additional amount in respect of profits arising in period where grant of a patent is pending that are allowed under new section 357CN.
150. New sections 357DA(2) and (3) specify that any positive sum determined from the Steps set out above is the relevant IP profit for the period, whilst any negative amount will be the relevant IP loss for the period.
151. New sections 357DA(4) and (5) specify that the routine return figure referred to in Step 4 is 10 per cent of the aggregate of routine expenses, less any R&D expenses, allocated against the relevant IP income stream at Step 2. Routine expenses for this purpose are those identified in new section 357CI, and R&D expenses are those defined in new section 357CH(3).
152. New section 357DA(6) applies the rule at new section 357CH(4) and (5) where a routine return is computed in cases where there is a streaming election. The effect of that rule is to ensure that the expenses taken into account also include any expenses incurred on a company's behalf by other members of the group, irrespective of whether or not these have been reimbursed, for example by way of a service fee or adjustment to intercompany balances. Where necessary, a just and reasonable apportionment of expenses incurred by the other company should be made to determine the amount relating to the company's routine expenses.
153. New section 357DA(7) adapts the rule for calculating a marketing assets return figure at Step 6 where the streaming provisions apply.
154. New section 357DB requires that where a company has made a streaming election, the method it uses to allocate deductions between income streams, at Step 2 of new section 357DA, should not change from accounting period to accounting period, unless there is a change of circumstances.
155. New section 357DB(1) states that the phrase method of allocation refers to the method applied at Step 2 of new section 357DA.
156. New section 357DB(2) requires that where a company applies the streaming rules it must use the same method of allocation in each accounting period for which the streaming election has effect. This applies irrespective of whether the rules are applied by election or are mandated.

157. However, new sections 357DB(3) and (4) provide that where there is a change of circumstances in respect of any of the company's trades, which makes the method of allocation inappropriate for an accounting period, the company can choose a different method of allocation, or elect not to apply the streaming election, for that accounting period. If the company chooses a different method then new section 357DB(2) will apply to require that that new method is applied for each subsequent accounting period. No formal procedure is set down, and a company may simply include an election not to apply streaming for the accounting period by way of a note to the computations in its corporation tax return (or an amended return) for the period.
158. New section 357DB(5) provides that where a company elects not to apply streaming for an accounting period under new section 357DB(4)(b), this does not prevent it from making fresh streaming elections in subsequent accounting periods.
159. New section 357DC details the circumstances under which a company is required to apply the streaming provisions of new section 357DA in determining relevant IP profits rather than those of new section 357C, other than where it has made an election to do so.
160. New section 357DC(1) states that a company is required to apply the streaming provisions for an accounting period where its total gross income from the trade includes relevant IP income, and a substantial amount of licensing income that is not relevant IP income. Licensing income is defined in new section 357DC(4).
161. New sections 357DC(2) and (3) specify that the licensing income is substantial if it exceeds the lower of £2 million or 20 per cent of the aggregate of the relevant IP income and such licensing income, subject to a de minimis figure of £50,000.

#### **Chapter 5: Companies with relevant IP losses: set-off amount**

162. New section 357E identifies a set-off amount where a company has a relevant IP loss for an accounting period that is equal to those losses. This is subject to the transitional rules for the Financial Years 2013 to 2016 whereby the relevant IP profits or losses for the period are reduced to a specified proportion, as set out in paragraph 8(3) of the Schedule.
163. New sections 357EA to EE describe how this set-off amount is to be dealt with in the computations. The principle underlying these rules is that the set-off amount should be matched with an amount of relevant IP profits either in another trade of the company, in other

group members who have made an election under new section 357A, or in a later accounting period, to reduce an amount of relevant IP profits in respect of which new section 357A can apply to give a deduction from the corporation profits of the trade.

164. New section 357EA provides that the set-off amount is first allocated against any relevant IP profits arising in the same accounting period in respect of another trade of the company.
165. New section 357EB(1) sets out the rules for allocating a set-off amount where a company is a member of a group in which more than one company has made an election under new section 357A. The effect of the allocation is to reduce both the set-off amount and the relevant IP profits of the other trade to which an election under new section 357A has effect by the lesser of those two amounts.
166. New sections 357EB(2) to (4) provide that where there is another company in the same group that has relevant IP profits for a relevant accounting period, any set-off amount not allocated against another trade of the company is to be allocated against the relevant IP profits of that other company. The effect of the allocation rule is to reduce both the set-off amount, and the relevant IP profits of the trade of other company to which new section 357A can apply, by the lesser of the remaining set-off amount and the relevant IP profits.
167. New section 357EB(5) allows the group companies to jointly determine in which order the set-off amount is to be applied to them where there is more than one company in the group with relevant IP profits against which the set-off amount can be allocated.
168. New section 357EB(6) sets out the order in which the allocation is to be made in the absence of any joint determination by companies in the group. This is firstly to the trade of the company with the highest amount of relevant IP profits, then that with the next highest profits, and so on until either all of the set-amount has been allocated or there are no relevant IP profits remaining against which to allocate the remainder.
169. New section 357EC sets out the rules for carrying forward a set-off amount.
170. New section 357EC(1) specifies that the rule applies where some of its set-off amount remains after any allocation has been made against relevant IP profits in other trades in the company, or other relevant group members.
171. New sections 357EC(2) and (3) provide that any set-off amount which remains unallocated from an earlier accounting period is first allocated against relevant IP profits of the company in which the set-

off amount arose for the following accounting period. New section 357A does not apply to a matching amount of relevant IP profits.

172. New section 357EC(4) sets out that where any of the set-off amount remains after any allocation has been made against relevant IP profits in the following accounting period, it is treated as a set-off amount for this the subsequent accounting period. The allocation rules in the Chapter may then apply to that remaining amount.
173. New section 357EC(5) specifies that where a company which has carried forward all or part of a set-off amount it is to be added to any relevant IP losses in the later period, such that the set-off amount for that period is the sum of the two figures, and the allocation rules in the Chapter may then apply to that amount.
174. New section 357ED ensures that where a company in a group ceases to carry on a trade, any set-off amount incurred in the trade which has not been reduced to nil by the operation of new sections 357EA or 357EB continues to be carried forward until such time as it has been fully allocated against relevant IP profits of other members of the group.
175. New sections 357ED (1) to (3) sets out how any unallocated set-off amount is dealt with where a company in a group ceases to carry on a trade, no longer falls within the charge to corporation tax, or an election under new section 357A otherwise ceases to have effect for any reason.
176. New section 357ED(3) specifies that new sections 357EA to 357EC will apply with some modifications to any set-off amount incurred in the company's trade, or trades, which has yet to be allocated against relevant IP profits.
177. New section 357ED(4) modifies the wording of new section 357EB so that it applies in situations where a company ceases to trade, no longer falls within the corporation tax charge or an election under new section 375A ceases to have effect. The modifications act to transfer the unallocated set-off amount to a relevant group member. In the absence of a joint determination to the contrary, this will be the relevant group member with the highest amount of relevant IP profits in that accounting period. However if there are no relevant group members with relevant IP profits for the accounting period, the unallocated set-off amount is to be added to the set-off amount of the company with the largest set-off amount in that accounting period.
178. New sections 357ED(5) to (7) determine when any unallocated set-off amount will finally be extinguished. Where a company is not a member of a group, the amount is extinguished only when the company ceases to carry on any trade. Where a company is a

member of a group, the set-off amount will remain to be allocated amongst other members of the group until such time as there is no company in the group that has made an election under section 357A and is a qualifying company for the accounting period.

179. New section 357EE provides for the transfer of any unallocated set-off amount where the trade of a company is transferred to another group company.
180. New section 357EE(2) directs that in such cases the set-off amount is to become the unallocated set-off amount of the other group company for the accounting period in which it begins to carry on the transferred trade. Where the group company which acquires the trade already has an unallocated set-off amount, the unallocated set-off amount of the transferor company is added to the set-off amount of the transferee company.

#### **Chapter 6: Anti-avoidance**

181. New sections 357F to 357FB are anti avoidance provisions.
182. New section 357F applies in situations where licences may be entered into for non commercial reasons. These will be where the main or one of the main purposes of conferring any right in respect of a protected item is to ensure that the licence meets the definition of exclusive licence for the purposes of the new regime. Thus it may apply for example in cases where the exclusivity provided by the agreement was in respect of a spurious commercial right. In such cases, even though the licence may confer the right to the exclusion of all other persons, it will not be regarded as an exclusive licence for the purposes of Part 8A.
183. New section 357FA applies in situations where a qualifying item is incorporated into a larger item to ensure that income from the sale of that larger item will be relevant IP income. Where the main purpose or one of the main purposes of the inclusion of the item is to make income from the sale of the larger item relevant IP income, then such income will not be relevant IP income.
184. New section 357FB is a targeted anti-avoidance provision which limits or denies a Patent Box deduction to a company that is party to a scheme entered into in order to secure a tax advantage.
185. New section 357FB(1) applies the section where a company that is entitled to make a deduction under new section 357A is party to a scheme, one of the main purposes of which is to obtain a relevant tax advantage. A scheme is defined in new section 357FB(5).

186. New section 357FB(2) identifies a relevant tax advantage for the purposes of the section where there is an increase in the amount of any deduction due to the company, or another member of that company's group, under new section 357A. This increase must be attributable to:
- avoiding the operation of any provision of the regime, such as the R&D expenditure condition of new section 357CG, or the relevant IP loss provisions of Chapter 5, or
  - not fully recognising as revenue amounts which are brought into accounts as credits in determining trade profits, or
  - a mismatch between relevant IP income and the expenditure incurred in generating that relevant IP income.
187. New section 357FB(3) sets out when there is a mismatch between relevant IP income and expenditure for the purposes of the rule. This will be where:
- relevant IP income is brought in to account in calculating a deduction under new section 357A for a company, and
  - expenditure in relation to that right is brought to account in a different accounting period of that company, or in a different company, where no election under new section 357A was in point.
188. New section 357FB(4) provides that where the section applies, the deduction to be made by the company is to be limited an amount that ensures that no relevant tax advantage arises.

### **Chapter 7: Supplementary**

189. New section 357G sets out the procedure for making an election under new section 357A.
190. New sections 357G(1) and (2) require a company to provide a notice of election that specifies the first accounting period for which the rules are to apply.
191. New section 357G(3) sets out the latest date by which an election can be made for any particular accounting period. This is the date by which an amended corporation tax return for that period must have been submitted in accordance with paragraph 15 of Schedule 18 to Finance Act 1998.

192. New section 357G(4) ensures that the election applies to all the trades carried on by the company, so that it is not possible to make an election in respect of only some of a company's trades.
193. New subsection 357G(5) ensures that an election made under new section 357A need only be made once, and that the election will continue to have effect until it is revoked.
194. New section 357GA sets out the terms under which a company may revoke an election it has made under new section 357A.
195. New sections 357GA(1) and (2) require a company to provide a written notice revoking the election, which specifies the first accounting period for which the rules are to cease to apply.
196. New section 357GA(3) sets out the latest date by which an election can be revoked for any particular accounting period. This is the date by which an amended corporation tax return for that period must have been submitted in accordance with paragraph 15 of Schedule 18 to Finance Act 1998.
197. New section 357GA(4) specifies that the revoking of an election has effect for all future accounting periods of the company, until and unless the company makes a new valid election under new section 357A.
198. New section 357GA(5) specifies that a new election under new section 357A can only have effect after five years have elapsed since the company revoked a previous election.
199. New sections 357GB(1) and (2) introduce the amendments that are made to the rules in order for them to apply to a company that carries on a trade in partnership with other persons. In brief, the provisions of the regime are to be applied to the firm as a whole in similar way as they apply to a single company carrying on a trade, subject to the modifications set out in new sections 357GB(3) to (9). A partnership may include both corporate and non-corporate partners, and any deduction to be made in consequence of an election under new section 357A is made only for the purposes of determining the share of a member who is liable to corporation tax.
200. New section 357GB(3) sets out the procedure for a corporate partner to make or revoke an election for the Patent Box, and the effect of its doing so. Any corporate partner in a firm may choose to make or revoke an election under new section 357A. The effect of the election is that the partner's share in the profits (or losses) of the firm is computed as if the election had been made or revoked by the firm. An election made or revoked by one partner has no effect on the shares of any other partner.

201. New section 357GB(4) ensures that references to the time limits applying to the making or revoking of an election are those relevant to the corporate partner rather than the firm.
202. New section 357GB(5) applies the rules in section 1261 of the CTA 2009 for determining accounting periods of the firm where there is a corporate partner.
203. New section 357GB(6) ensures that where a firm does not draw up accounts following generally accepted accounting practice, any reference to amounts recognised as revenue is treated as amounts that would be so recognised if the firm had drawn up such accounts.
204. New section 357GB(7) ensures that any company which is a corporate partner in a firm must meet the active ownership condition, whether or not it is a member of a group.
205. New sections 357GB(8) and (9) sets out that a firm meets the development condition in respect of an IP right where either the partnership itself, or a corporate partner with at least a 40 per cent share in the partnership has carried out qualifying development in relation to that right.
206. New section 357GB(10) applies the definition of qualifying development set out in new sections 357BC(7) to (9) to the firm for the purposes of new section 357GB(5)(a).
207. New section 357GB(11) amends condition B of the active ownership condition where it is to be applied to a corporate partner.
208. New section 357GB(12) modifies the provision for a small claims election, so that it is appropriate to claims made by a corporate partner.
209. New sections 357GB(13) & (14) ensure that any corporate partner who is party to an arrangement designed to secure a return from the firm that is economically equivalent to the receipt of interest is treated as if they had not made an election under new section 357A.
210. New section 357GC sets out how the Patent Box regime is to be applied to a company that is a member of a cost-sharing arrangement.
211. New section 357GC(1) defines a cost-sharing arrangement as an arrangement between several parties that leads to the creation or development of qualifying IP rights, where the company is entitled to a share of the income attributable to that right.
212. New section 357GC(2) treats a company, which is party to the cost-sharing arrangement but which does not hold the qualifying IP rights

created or developed under the arrangement, as if it did hold those qualifying IP rights.

213. However, new section 357GC(3) prevents this treatment where the income received by the company in respect of its contributions to the arrangement is economically equivalent to interest.
214. New section 357GD defines a group for the purposes of the Patent Box regime. This is a company, A, and any other company that is associated with company A. For this purpose, a company (company B) is associated with company A at any time during an accounting period of company A if any one of following five conditions is met.
215. The first condition is that the financial results of company A and company B meet the consolidation condition. The consolidation condition is defined in new section 357GD(9).
216. The second condition is that company A and company B are connected. Sections 466 to 471 of CTA 2009 apply for the purposes of establishing connection.
217. The third condition is that company A has a major interest in company B or vice-versa. Major interest has the same meaning as in sections 473 and 474 of CTA 2009.
218. The fourth condition is that company A and a third company meet the consolidation condition and that third company has a major interest in company B.
219. The fifth condition is that company A and a third company are connected and that that third company has a major interest in company B.
220. New section 357D(9) defines the consolidation condition in terms of the financial results of any two companies which :
  - Are required to be consolidated into group accounts,
  - if they are not required to be consolidated in such accounts, then this is due to a specific exemption, or
  - whether or not there is a requirement for them to be consolidated, are actually comprised in group accounts.
221. New section 357D(10) specifies that group accounts means accounts prepared under section 399 of the Companies Act 2006 or any corresponding provision of the law of a territory outside of the United Kingdom.

**Part 2: Amendments of other legislation**

222. Paragraphs 2 to 6 make changes to the transfer pricing rules contained in the Taxation (International and Other Provisions) Act (TIOPA) 2010 including changes to the exemption from the requirement to calculate profits and losses of a potentially advantaged person in accordance with arm's length principles where that person is a small or medium sized enterprise for a chargeable period.
223. Paragraph 4 inserts a new section 167A to TIOPA 2010.
224. New section 167A provides an exception to the general exemption from transfer pricing requirements for a company that is a small enterprise in the chargeable period. This exception applies where the Commissioners for Her Majesty's Revenue and Customs have issued a transfer pricing notice to the company. Such a notice may relate only to provisions affecting the calculation of relevant IP profits under Part 8A of CTA 2010. A medium sized enterprise can already be required to use arm's length principles in respect of any provision where a notice to that effect is issued under section 168 TIOPA.

**Part 3: Commencement and transitional provisions**

225. Paragraphs 7 and 8 set out the commencement and transitional provisions.
226. Paragraph 7 applies the changes made by the Schedule to income arising on or after 1 April 2013. Where the first accounting period to which an election under new section 357A relates straddles the commencement date, only income and expenses arising after commencement is to be taken into account for the purposes of computing its relevant IP profits. Where it is necessary to apportion income or expenses between pre- and post-commencement periods, then this may be done on any basis that provides a just and reasonable result.
227. Paragraph 8(1) provides for the benefits of an election under new section 357A to be progressively increased in relation to relevant IP profits arising in each of the Financial Years 2013 to 2017. For 2013, relevant IP profits to be included in the calculation set out in new section 357A(3) are 60 percent of the amount otherwise calculated in accordance with the Schedule. This rises by 10 percent in each succeeding Financial Year up to and including Financial Year 2017.
228. Paragraphs 8(2) to (4) set out how to determine the set-off amount in respect of an accounting period in the Financial Years affected by the phasing in rule in paragraph 8(1). Where a set-off amount is carried forward to a later accounting period under new section 357EB or 357EC, the amount brought forward is reduced incrementally by 10

per cent per annum, the rate at which benefits are phased in under paragraph 8(1), to give the actual set-off amount.

229. Paragraph 8(5) provides for an apportionment to be made of the profits of an accounting period that falls within more than one Financial Year.

### BACKGROUND NOTE

230. The new Patent Box regime will allow companies to elect to apply a 10 per cent rate of corporation tax, starting from 1 April 2013 on a progressively incremental basis with the full rate applying from 1 April 2017, to all profits attributable to qualifying patents, and certain other IP rights.
231. The regime will also apply to other qualifying intellectual property rights such as regulatory data protection (also called data exclusivity), supplementary protection certificates and plant variety rights.
232. Other non-qualifying profits in these companies will continue to be taxed at the main rate of corporation tax.
233. The Patent Box regime will potentially benefit a wide range of companies which receive royalties in respect of qualifying IP rights, sell products, or use patented processes as part of their business.
234. Two consultation documents have been published:
- November 2010: *The Taxation of Innovation and Intellectual Property*. This sets out the high level principles for the Patent Box design and;
  - June 2011: *Consultation on the Patent Box*. This is the Stage 2 consultation document which gives more detail on the design proposals.
235. A consultation response document is being published in December 2011, along with a *Technical Note and Guide to the Draft Legislation*.
236. If you have any questions about this change, or comments on the legislation, please contact Richard Rogers on 020 7147 2625 (email: richard.rogers@hmrc.gsi.gov.uk) or Ian Valentine on 020 7147 3428 (email: ian.valentine@hmrc.gsi.gov.uk)

**2012 No.**

**CORPORATION TAX**

**The Corporation Tax (Profits Arising from the Exploitation of Patents, etc) (Description of Rights) Order 2012**

<i>Made</i>	- - - -	***
<i>Laid before the House of Commons</i>		***
<i>Coming into force</i>	- -	***

The Treasury make the following Order in exercise of the powers conferred by section 357BB(1)(c) of the Corporation Tax Act 2010(a):

**Citation and commencement**

1. This Order may be cited as the Corporation Tax (Profits Arising from the Exploitation of Patents, etc) (Description of Rights) Order 2012 and comes into force on...

**Rights to which Part 8A applies**

2. The rights described in this Order are, for the purpose of section 357BB of the Corporation Tax Act 2010, rights to which Part 8A(b) of that Act applies.

**Medicinal products**

3.—(1) The rights conferred by a marketing authorisation in relation to a medicinal product which has been granted in accordance with Chapters 1, 2 and 2a of Directive 2001/83/EC of the European Parliament and Council of 6 November 2001 on the Community Code relating to medicinal products for human use (as amended by Directives 2002/98/EC, 2004/24/EC and 2004/27/EC of the European Parliament and of the Council) (“Directive 2001/83/EC”)(c).

(2) The rights conferred by the authorisation of a new indication for a well-established substance which has been granted in accordance with article 10.5 of Directive 2001/83/EC.

(3) The rights conferred on a company where—

- (a) an authorisation of a change of classification of a medicinal product has been granted in accordance with Title VI to Directive 2001/83/EC, and
- (b) article 74a of that Directive applies.

(4) A market exclusivity right which arises in relation to an orphan medical product in accordance with Article 8 of Regulation (EC) No 141/2000 of the European Parliament and of the Council on 16 December 1999 on orphan medical products (“Regulation 141/2000”)(d).

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(a) 2010 c. 4. Section 357BB was inserted by [section xx] of the Finance Act 2012 (c. XX).  
(b) Part 8A was inserted by Schedule X of the Finance Act 2012.  
(c) OJ L 311, 28.11.2001, p. 67.  
(d) OJ L 18, 22.1.2000, p. 1.

(5) An extension of a right under Article 8 of Regulation 141/2000 which has been granted in accordance with Article 37 of EC Regulation 1901/2006 of the European Parliament and of the Council of 12 December 2006 on products for paediatric use and amending Regulation (EEC) No 1768/92, Directives 2001/20/EC and 2001/83/EC, and Regulation (EC) No 726/2004 (“Regulation 1901/2006”)(a).

(6) A supplementary protection certificate granted in accordance with article 13 of 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(b).

(7) An extension of the rights conferred by a patent or supplementary protection certificate to which the holder of a patent or supplementary protection certificate is entitled under article 36 of Regulation 1901/2006.

(8) The rights conferred by a paediatric-use marketing authorisation (within the meaning of article 30 of Regulation 1901/2006) in relation to a medicinal product.

### **Veterinary products**

**4.**—(1) The rights conferred by a marketing authorisation in relation to a veterinary product which has been granted in accordance with Chapters 1 and 2 of Directive 2001/82/EC of the European Parliament and Council of 6 November 2001 on the Community Code relating to veterinary medical products(c).

(2) The rights conferred by a marketing authorisation in relation to a veterinary product which has been granted in accordance with Schedule 1 to the Veterinary Medicines Regulations 2009 or 2011(d).

### **Rights in relation to plants**

**5.**—(1) The rights conferred by an authorisation for placing on the market and use of a plant protection product which has been granted in accordance with Chapter 3 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 and repealing Council Directives 79/117/EEC and 91/414/EEC(e).

(2) The right to advertise or sell a pesticide which has been granted under regulation 6 of the Control of Pesticides Regulations 1986(f).

(3) A right granted to a plant breeder in accordance with Chapter 1 of Part 1 of the Plant Varieties Act 1997(g).

(4) A right in relation to a plant variety which has been granted in accordance with Council Regulation (EC) 2100/94 of 27 July 1994 on Community plant variety rights(h).

(5) A supplementary protection certificate granted in accordance with 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(i).

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order describes rights to which Part 8A of the Corporation Tax Act 2010 applies.

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(a) OJ L 378, 27.12.2006, p. 1.

(b) OJ L 152, 16.6.2009, p. 1.

(c) OJ L 311, 28.11.2001, p. 1.

(d) S.I. 2009/2297 and S.I. 2011/2159.

(e) OJ L 309, 24.11.2009, p. 1.

(f) S.I. 1986/1510 as amended by S.I. 1997/188. The instrument has been amended on other occasions, none of which are relevant.

(g) 1997 c. 66.

(h) OJ L 227, 1.9.1994, p. 1.

(i) OJ L 198, 8.8.1996, p. 30.

Article 1 provides for citation, commencement and effect and article 2 introduces the rights described by the Order.

Articles 3, 4 and 5 specify (respectively) rights in relation to medicinal products, veterinary products and plants which are subject to Part 8A of the Corporation Tax Act 2010.

**EXPLANATORY MEMORANDUM TO**  
**THE CORPORATION TAX (PROFITS ARISING FROM THE EXPLOITATION OF**  
**PATENTS, ETC) (DESCRIPTION OF RIGHTS) ORDER 2012**

2012 No. [XXXX]

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 This Order describes certain rights which are rights to which Part 8A of the Corporation Tax Act 2010 applies.

3. **Matters of special interest to the Select Committee on Statutory Instruments**

- 3.1 None

4. **Legislative Context**

- 4.1 Part 8A of the Corporation Tax 2010 was inserted by the Finance Act 2012 and provides for a lower rate of corporation tax on the profits of income from qualifying intellectual property. The rights described in this Order specify rights in addition to those set out in section 357BB of the Corporation Tax Act 2010, the income from which is subject to the tax regime in Part 8A.

5. **Territorial Extent and Application**

- 5.1 This instrument applies to all of the United Kingdom.

6. **European Convention on Human Rights**

- 6.1 The Financial Secretary to the Treasury has made the following statement regarding Human Rights:

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. **Policy background**

- *What is being done and why*

- 7.1 This instrument helps to implement the "Patent Box", which will provide an additional incentive for companies in the UK to retain and commercialise existing patents and to develop new innovative patented products. It will

achieve this by taxing the profits from such activities at a lower rate of corporation tax. The Patent Box legislation provides this benefit in respect of profits from the exploitation of patents granted by the UK Intellectual Property Office (IPO) and the European Patent Office (EPO).

- 7.2 There are other areas of innovation which have a similarly strong link to R&D and high-tech activity as patents but where patenting is not permitted. The Order provides for protected rights in other such innovations to benefit from the Patent Box legislation in the same way as patents granted by the IPO or EPO where these are afforded a similar level and scrutiny and protection as patents granted by the IPO or EPO.

- *Consolidation*

- 7.2 Not applicable

## **8. Consultation outcome**

8.1 The scope of intellectual property rights to which the Patent Box can be applied was included in a public consultation document issued in June 2011. Additionally, HMRC and HM Treasury officials have met with a number of representative bodies and companies to seek views on the matter.

8.2 The consultation document proposed including supplementary protection certificates, regulatory data protection and plant variety rights in the regime, which has been welcomed in the consultation responses. The Order provides for Part 8A of the Corporation Tax Act 2010 to apply to these.

## **9. Guidance**

9.1 HMRC will issue detailed guidance on the Patent Box, including the matters referred to in the Order [prior to the commencement of the regime on 1 April 2013]. In addition HMRC is proposing to hold a number of events aimed at explaining the regime to practitioners and companies who are proposing to elect into the regime during 2012.

## **10. Impact**

10.1 The impact on business is set out in the Tax Information and Impact Note.

10.2 The impact on the public sector is set out in the Tax Information and Impact Note.

10.3 A Tax Information and Impact Note covering this instrument was published on [6 December 2011] alongside draft legislation on profits arising from the exploitation of patents etc. and is available on the HMT website at [insert link/doc].

**11. Regulating small business**

11.1 The legislation applies to small business.

11.2 The impact on small businesses is set out in the Tax Information and Impact Note.

**12. Monitoring & review**

12.1 The measure will be monitored and assessed alongside other measures in the Government's package of corporate tax reforms.

**13. Contact**

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