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HMRC internal manual

Corporate Intangibles Research and Development Manual

From: [HM Revenue & Customs](#)
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CIRD270200 - Patent Box: patent pending calculation: Are my qualifying IP rights in the old or new regime? CTA10/ s357BP

S357BP CTA10 -This section now only applies to certain calculations relating to patents pending.

All qualifying IP rights will have entered the ‘new regime’ by 1 July 2021. This means that the ‘nexus requirements’ of streaming relevant IP income and applying an R&D Fraction to those streams and sub-streams are now a required part of the Patent Box calculation.

However, it may still be the case that companies which elected into the Patent Box prior to 1 July 2016 have patents granted which were applied for before 1 July 2016. Relevant IP profits from those patent pending years are included in the computation in the year of grant, but the calculation of those profits may follow the old rules applicable in those years.

The 'old rules' will not be applicable if:

- a company is a new entrant as all its qualifying IP rights will also be regarded as new.
- a company is not a new entrant but has qualifying IP rights which are new qualifying rights. There are different ways of treating new IP rights depending on conditions under which they are acquired (there are separate rules if they form part of a transfer of a trade see [CIRD240160 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird240160\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird240160)) or are combined with old IP rights (see [CIRD271600 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird271600\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird271600)) but the first step is to identify whether they are to be regarded as new. The qualifying IP rights are new if they meet any one of the following conditions:

A : the right was granted or issued to the company in response to an application filed on or after the relevant date.

B : the right was assigned to the company on or after the relevant date

C: an exclusive licence in respect of the right was granted to the company on or after the relevant date.

In most cases the relevant date will be 1 July 2016, however, in the following circumstances the relevant date will be 2 January 2016. This is when the person or company who assigned the right or granted the licence:

- was connected to the company at the time of the assignment or grant, as defined in s1122 CTA 2010 and
- was not within the charge to corporation tax at the time of the assignment or grant and was not liable to a foreign tax designated in Treasury regulations for the purposes of this section and
- the main purpose, or one of the main purposes, of the assignment of the right or the grant of the licence was the avoidance of any foreign tax

The countries which have a foreign tax designated in these Treasury regulations are:

Belgium, China, Colombia, Cyprus, France, Hungary, Israel, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Portugal, South Korea, Spain, Switzerland (Canton of Nidwalden) and Turkey

If there is any doubt about whether this restriction should apply the company should approach their CCM or Incentive and Reliefs Team.

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