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HMRC internal manual

Corporate Intangibles Research and Development Manual

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CIRD271500 - Patent Box: Considering streaming income requirement CTA10/ s357BF and s357BQ

This section contains details of how income can be streamed within the Patent Box regime. There are some mandatory requirements, but also several choices that companies can make to reflect the variety of IP that can fall into the Patent Box.

Examples are provided at [CIRD275200](#)
(<https://www.gov.uk/hmrc-internal-manuals/corporate->

[intangibles-research-and-development-manual/cird275200](#)) and CIRD275300

Consideration needs to be given as to how the company will stream its income because this affects how R&D expenditure should be tracked and traced,

Effect on R&D Tracking and Tracing

The underlying requirement is that the R&D is tracked and traced effectively for the sub-stream. This page should be read in conjunction with [CIRD272000 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird272000\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird272000) which provides guidance on tracking and tracing R&D expenditure.

Changing Sub-Streams

There is no restriction on a company changing the way it streams IP from year to year or streaming on different levels for different IP rights. There is an intentional choice because of the variety of IP rights and the different uses in different trade sectors, but such a change should be supported by an explanation of the underlying reason for making the change.

Mandatory Streams

1. Standard income which is not Relevant IP income
If the company has income which is not relevant IP income, there needs to be a stream of non relevant IP income. This does not form part of the Patent Box profits, but ensures that all expenses are accounted for as they are allocated across all the streams and substreams.
2. Sub Streams: Choices of how to stream relevant IP income (RIPI) are described below:

Qualifying IP right level streaming ('streaming by patent')

It is required by the OECD that this level of streaming is chosen if possible. However, in many cases where there are multiple qualifying IP rights within one product it will not be possible to split the income to this level. In other circumstances it is not possible to attribute specific R&D expenditure between the different qualifying IP rights. In these cases it is allowable to choose to stream by product or process, and apply the R&D fraction to the appropriate product or process sub-stream.

Product or Process level streaming

If the company is unable to stream by qualifying IP right it may class income properly attributable to a particular kind of IP item together in the same sub-stream. They are treated as being of a particular kind if they are intended to be, or capable of being used for, the same or substantially the same purpose. One or more IP rights may be incorporated into an item. An item may be a product or a process.

An example of where streaming by product might be more appropriate than streaming by qualifying IP right level is when a product contains several patented parts and it is not reasonably practicable to divide the profit from that product into sub-streams for the different qualifying IP items.

Product family level streaming

There will also be occasions where a company cannot split income or R&D expenditure between products and in that case it may use product family streams. If 2 or more items are of the same kind they may be grouped together. This means that they are intended to be or can be used substantially for the same purpose. A company cannot choose to place its entire relevant income within one product family, unless it is all of the same kind and is unable to otherwise separately identify income from the different IP assets. It should be noted that whilst this might be easier from an income perspective, there can be implications in applying the R&D fraction. For example, if one of the items should subsequently

be developed so it includes an acquired qualifying IP right the R&D fraction will be reduced for all of that stream.

An example where a product family might be appropriate is a Pharmaceutical company which has thousands of patents. Each patent contributes to multiple products but each product also uses multiple patents. The R&D teams each work on specific diseases and their expenditure is tracked as such. The products are used to treat specific diseases only so the different diseases may be used to form 'product families' at therapeutic area level.

Small Claims Treatment : Global Stream

There is an exception to the requirement to separate qualifying IP rights into separate streams when a company meets Small Claims Treatment criteria. This is designed to avoid numerous streams consisting of low income whereby the administrative burden might outweigh the benefits of the Patent Box.

The legislation at s357BN(3) requires a qualifying company with Qualifying Relevant Profits above £1M to make this election in the first year it meets the criteria for 'that previous accounting period within the previous 4 year relevant period' for it to apply in a subsequent period, So even if it is not required in an earlier year it may be worth making a 'protective election' if it is likely to be needed in future years. For example, a company has only one patented product but in future years plans to expand to have several patented products and is likely to still meet the criteria for Small Claims Treatment.

See [CIRD273200 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird273200\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird273200) Small Claims Treatment: Global Stream

Process Patents and other IP derived income falling within s357CD or s357BHA

A stream can consist of IP derived income from several process patents, or each could be placed in a separate sub-stream, depending on what is reasonably practicable for the company. Notional royalties will only apply where relevant IP income cannot be generated using the heads of income at s357BH for that qualifying IP right and where there remains non relevant IP income (which is not excluded income) from which it can be taken. The allocation of expenses relating to this notional income is apportioned on the same basis as with the other sub-streams.

Blue Sky R&D Expenditure

When a company starts to develop a completely new concept or product it will have R&D expenditure which is not attributable to any current relevant IP income stream and therefore cannot be allocated to an existing sub-stream. This does not refer to further development of an existing product or process, or development of a new product within an existing product family, as income from that product or process will already belong to a stream or sub-stream and any further R&D expenditure still relates to that sub-stream. But in circumstances where there is no identifiable income sub-stream for a particular accounting period then the R&D expenditure for that period should be placed within the standard stream. In future accounting periods where income is received in respect of the product or process any related R&D expenditure would then be placed within the R&D Fraction for the related sub-stream.

This does not affect the requirement to track and trace this R&D expenditure in preparation for an R&D fraction for a future sub-stream. The related expenditure would contribute to the R&D fraction for that sub-stream as explained in [CIRD274200](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird274200) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird274200>) .

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