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HMRC internal manual

Corporate Intangibles Research and Development Manual

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CIRD220530 - Patent Box: relevant IP profits: marketing assets return figure: actual marketing royalty

CTA10/S357BKB

The actual marketing royalty (AMR) is to be subtracted from the notional marketing royalty to give the deduction from QRP. This is so that the marketing assets return is limited to profits which accrue to the company. The actual marketing royalty is the part of the return to marketing assets which accrues to third parties.

It is defined as a proportion of the aggregate amounts paid in order to use the relevant marketing assets and brought into account as debits in the corporation tax computation for the accounting period. This amount could be a royalty paid to use a marketing asset or an amortisation charge in relation to an acquired marketing asset.

Where the ‘participation condition’ of TIOPA10/S149 is met in respect of the claimant company and the third party to whom the actual marketing royalty is payable, the amount of that royalty will potentially be subject to the transfer pricing requirements of TIOPA10/S147.

The total marketing amounts paid are split between RIPI and non-RIPI on the same basis as other expenses. So AMR will be the amount of actual royalties paid which have been allocated to the RIPI sub streams on a just and reasonable basis.

Notional marketing royalty compared to actual marketing royalty

It should be borne in mind that the definition of ‘marketing assets’ provided by S357BKA(7)(a) is wider than merely trademarks (registered or unregistered). In particular, by virtue of its reference to “anything in respect of which proceedings for passing off could be brought”, it includes goodwill.

Consequently, even where an actual marketing royalty is paid at an arm’s length rate or at an amount agreed to be equivalent to arm’s length, it will be necessary to consider whether the claimant company holds further ‘marketing assets’ as defined by S357BKA(7)(a) such as goodwill which are additional to those in respect of which the actual marketing royalty has been paid and, consequently, whether NMR is significantly greater than AMR.

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