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Corporate Intangibles Research and Development Manual

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CIRD210140 - Patent Box: qualifying companies: exclusive licence: exclusivity requirement

Examples of licences that meet or do not meet the exclusivity requirement

Example 1

A company develops and patents an active ingredient that can be used medicinally in the

treatment of cardiac problems in adults.

Recognising that other companies may wish to develop other applications, it grants a licence to another company to develop the product for the use in treatment of cardiac problems in children. It also grants a separate licence allowing another company to use the ingredient in the treatment of head injuries.

As each application is distinct the licensees will be treated as having an exclusive licence.

A licence that retains rights for the owner to licence others to sell the same mixture under a different brand name (or to do so itself), or with minor differences, but to use for essentially the same application, would not provide exclusive rights over the patented invention. Here the rights in relation to the invention would be substantially the same: to use the compound in a mixture with substantially the same outcome.

Example 2

A company develops and patents a computer chip. It grants one company an exclusive right to use the chip in mobile telephones and another company the right to use it in laptop production.

Again each application is distinct so each licence can qualify as an exclusive one.

Example 3

Prior to the Patent Box regime coming into effect, a company is party to an intra-group licence that confers exclusive rights in a patent in the UK. However, the agreement expressly prevents the company from bringing infringement proceedings and is silent on whether any damages for infringement would be paid to the company. In anticipation of electing into the Patent Box regime, it amends the licence so that the right to bring infringements is expressly conferred.

Provided that the agreement reflects a genuine change, CTA10/S357F will not apply. The change has been made because the old arrangement would have given rise to a tax disadvantage. This could not have been anticipated at the time the arrangement was made. The change merely ensures it is in no worse a position than a company that had entered into a licence that met the conditions of S357B.

Example 4

After the Patent Box regime comes into force, a company enters into an intra-group licence that confers exclusive rights in a patent in the UK. At the same time it enters into a separate licence with the licensor granting mirror rights back to the licensor. The company will retain a margin of the income received based on various administrative functions it performs.

Evidence available suggests that the intra-group arrangement was entered into for the main purpose of securing that Patent Box profits would arise in the UK. CTA10/S357F therefore applies, and the licence will not be treated as an exclusive one.

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