

**Beta** This part of GOV.UK is being rebuilt – [find out what beta means \(/help/beta\)](#)

## HMRC internal manual

# Corporate Intangibles Research and Development Manual

From: [HM Revenue & Customs](#)  
([/government/organisations/hm-revenue-customs](#))

Published 11 March 2016

Updated: 10 September 2025 - [See all updates](#)

[Back to contents](#) > [CIRD200000](#) > [CIRD220000](#)

## CIRD220510 - Patent Box: relevant IP profits: marketing assets return figure: notional marketing royalty: assumptions

### Assumptions for the notional marketing royalty

The NMR will be determined using Article 9 of the OECD Model Tax Convention and OECD transfer pricing guidelines. The following assumptions will be made:

1. That an agreement can be made for the company to exploit the assets to the exclusion of all others including the notional owner, even if the assets cannot in fact be separately transferred or assigned;
2. The company and the notional IP owner are dealing at arm's length;
3. The company has the right to exploit the marketing assets, to the exclusion of all others including the notional IP owner;
4. The right to exploit the marketing assets is conferred at the start of the accounting period or, if later, when the relevant assets were acquired;
5. The rights to the assets being notionally considered are the same as in fact exist; and
6. The appropriate percentage figure for the royalty, as a percentage of relevant IP income is determined at the start of the accounting period and it is to be assumed that it will remain unchanged for the time that the company holds the rights in fact; meaning that the marketing assets royalty is deemed to have an even profile over its life. Even though, the royalty needs to be reassessed for each accounting period, using the same assumptions. In practice it is expected that the percentage royalty might well stay the same for several years.
7. All other facts and circumstances relevant to the valuation of the NMR will remain as they are in reality. For example, the location of the marketing expenses may influence the amount of royalty which would be payable at arm's length. Where marketing expenses are in fact borne by the Patent Box company, this may need to be taken into account when assessing the royalty figure.
8. A company may exploit its marketing assets either by using them to sell products or by licensing them out to other parties. However, in the latter case the income received will in many cases be outside RIPI, and where it is within RIPI (for example because a licence covers the

rights to both a trademark and a patent used in a single product), the NMR will normally equal the trademark royalties received.

9. The characteristics of the hypothetical counterparty to the transaction, 'P', is not defined. This is because the notional royalty is intended to capture the full economic value of the marketing assets to the business.
10. The royalty calculated under this clause should therefore be the maximum amount that the company would be willing to pay to be able to use the marketing assets in an arm's length situation. The company is not therefore required to consider the relative bargaining positions of the two parties is not required. However, all other provisions of the OECD guidelines, including for example the circumstances of the actual company and the need to have regard to other options realistically available, should be considered in determining the level of the notional royalty.
11. Where it is necessary, the determination of the appropriate arm's length royalty rate is likely to require application of either the comparable uncontrolled price methodology (see [/manual/international-manual/intm421030](#) (<https://www.gov.uk/hmrc-internal-manuals/international-manual/intm421030>) ) or profit split methodology (see [/manual/international-manual/intm421070](#) (<https://www.gov.uk/hmrc-internal-manuals/international-manual/intm421070>) ) as detailed in the OECD Transfer Pricing Guidelines. Paragraph 2.109 of those Guidelines suggest that a profit split methodology might be the most appropriate method (where comparable uncontrolled prices cannot be found) "where both parties to a transaction make unique and valuable contributions (e.g. contribute unique intangibles) to the transaction". This will be the case, where a patent box company actually possesses significant 'marketing assets' as, for the purposes of the assumption to be made under S357BKA: the patent box company will be assumed to still own the patent, but

- a hypothetical other person ('P') is assumed to own the 'marketing assets',
- When a profit split methodology is adopted factors that it may be appropriate to consider in deciding appropriate allocation keys include (but are not limited to):

- relevant expenditure on research & development marketing and marketing,

- the degree of innovation of the patent/ qualifying IP rights in question,

- the existence, extent and nature of competitor products.

Any enquiries by HMRC into the computation and determination of the notional marketing royalty will be subject to the transfer pricing governance process detailed in the International Manual at </manual/international-manual/intm481000> (<https://www.gov.uk/hmrc-internal-manuals/international-manual/intm481000>) onwards. This includes real time working discussions. As with the calculation of notional royalty ([CIRD220250](/manual/cird220250)) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird220250>), HMRC will normally seek to reach agreement on the amount of a notional marketing royalty on the basis that the agreement can remain in force for a period of years.

← **Previous page**

(</hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird220500>)

→ **Next page**

(</hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird220520>)



**OGL**

All content is available under the Open Government Licence v3.0, except where otherwise stated



© Crown copyright