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HMRC internal manual

Corporate Intangibles Research and Development Manual

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CIRD220325 - Patent Box: relevant IP profits: relevant IP income: patented software: further examples

Example 3A: Licence of patented software

Company Y holds a patent that includes a claim to a computer program. It licences to a distributor the right to copy, reproduce and sell software corresponding to the computer program, and in return receives a royalty from the distributor. The

income under the licence agreement will be relevant IP income under Head 2.

The licence agreement also provides for Company Y to run a training course for the distributor's salesmen. Since this is a supply of services, the income will not be relevant IP income.

The company must therefore apportion the total income in accordance with the mixed sources of income rules(S357BHC, [CIRD220290](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird220290) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird220290>)).

Example 3B: Maintenance and updates relating to licensed software

Extending example 3A, under the same licence agreement, Company Y also grants the distributor the right to sell maintenance contracts under which the end users will receive software updates and a support service. Company Y would provide the software updates and perform the support services. The right to sell software updates is not granted in respect of qualifying IP rights but is granted for the same purpose as the licence over the qualifying IP right in respect of the main software product so the royalty income is relevant IP income under Head 2 (S357BH(6)).

However, the income derived from the commitment to provide support services to the end user would not be relevant IP income. Company Y must therefore apportion its income in accordance with the mixed sources of income rules.

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Example 3C: Licence of patented software via a distributor where no

IP rights are granted to the distributor

Company Z holds a patent that includes a claim to a computer program. It appoints a distributor for the distribution of software corresponding to the computer program but no IP rights are granted under the distribution agreement. The distributor is remunerated by retaining a percentage of the amount invoiced to the end user, with the remaining amount being paid on to Company Z.

Although the income earned by Company Z is paid by the distributor (because the end user pays his or her licence fee under the EULA to the distributor) the income can be directly traced to each licence granted by Company Z to the end user. Each EULA grants a right in respect of the patent held by Company Z so the licence fee income earned by Company Z (via its distributor) is relevant IP income under Head 2.

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Example 4: Provision of a service

A company, which owns or exclusively licences a patent for the software it has developed, provides services to customers using the patented software rather than selling or licensing the software. For example, the company processes data provided by its customers on the company's servers, which may be described as being performed 'in the cloud'. The income earned by the company does not fall within any of the heads of S357BH but the notional royalty rules may apply (S357BHA, [CIRD220250 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird220250\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird220250)).

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Example 5: 'Cloud computing' - Licence

A company which owns a patent for the software it has developed licences end-users the right to use the patented software themselves to carry out data processing tasks, in return for a licence fee.

Instead of transferring a copy of the software to the end-users computers, the software is run on servers owned or controlled by the company, to which the end users have access 'via the cloud'.

The income under this licence agreement will be relevant IP income under Head 2.

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