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HMRC internal manual

Corporate Intangibles Research and Development Manual

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

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CIRD220310 - Patent Box: relevant IP profits: relevant IP income: software: introduction

It is HMRC's understanding that computer programs (along with discoveries, mathematical methods, methods of doing business, etc) as such are not inventions for which UK or EPO patents can be granted. If, however, an invention in itself is patentable, implementing and claiming it as a computer program will not change that fact. So an invention that provides a new technical solution to

a technical problem may be patentable even if it is captured in a computer program.

What is the ‘qualifying item’?

If a company holds, or exclusively licences, a right in respect of a qualifying patent for an invention and the qualifying patent includes a claim directed to a computer program for implementing the invention, any set of computer-readable instructions that could reasonably be considered ‘a computer program’ and that provides the functionality defined in the patent claim (which we refer to as ‘patented software’) is a qualifying item for the purposes of Head 1 income (S357BH(2), [CIRD220170 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird220170\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird220170)).

Where a device (a piece of hardware such as a computer or mobile phone) or a system (see Example 7 at CIRD220190) is configured to execute the computer program, that device or system can be considered to be an item incorporating a qualifying item (S357BH(2)(b)). Where the patent includes a claim to the device or system in addition to, or instead of, the claim to the computer program, the device or system would be considered a qualifying item in its own right (S357BH(2)(a)).

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Exclusive licence

A company may have an exclusive licence to create copies of and distribute patented software, and/ or to sub-license other distributors to do so (as opposed to merely rights for the resale of the software). In this case, the licence will be in respect of the underlying patented technology and therefore may meet the exclusive licence definition in S357BA ([CIRD210120 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird210120\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird210120)).

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