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HMRC internal manual

Corporate Intangibles Research and Development Manual

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CIRD260110 - Patent Box: supplementary: revocation of a Patent Box election

CTA10/S357GA and s64(10) and (11) Finance Act 2016

A company may revoke an election into the Patent Box rules by giving notice to an officer of Revenue and Customs.

The notice must specify the first accounting period of the company for which the revocation is to have effect.

The notice must be given on or before the last day on which an amendment of the company's tax return for that accounting period could be made under FA98/SCH18/PARA15. As with an election into the Patent Box, in practice this means within 12 months of the fixed filing date of the return for the first accounting period for which the company wishes the election to no longer have effect.

The revocation has effect in relation to the accounting period specified in the notice and all subsequent accounting periods of the company, and will apply to all trades of the company.

S357GA(5) provides that a s357A(1) Patent Box election does not have effect for any accounting period of the company that begins before the end of the period of 5 years beginning with the day after the last day of the accounting period specified in the notice revoking the election.

Companies revoking their Patent Box election have to apply the 5 year bar, before electing back in. This is to ensure that relevant IP losses, as well as relevant IP profits are included within the Patent Box.

There is no provision for a revocation of a S357A(1) election to be made 'late' as it is made whenever it is made. It relates to the election, so is unconnected to the CT return (even if made within it). This is why there cannot be a 'late claim' under SP05/01 (or at all).

Historical Election Exemption up to 30 June 2018

As stated above a company that revokes their election is unable to elect back to the Patent Box for a period of five years.

However, up to 30 June 2018, if a company had elected into the old rules and then subsequently revoked that election, s357GA(5) did not have effect to prevent the company from electing in again for the accounting period ending on 30 June 2016 or any subsequent accounting period.

This was to allow a company to change its mind about the revocation given the knowledge that the new rules were being brought in, and the company may elect back in for the accounting period straddling 30 June 2016 to allow the old IP assets to be grandfathered.

The usual time limits of 2 years following the end of the Accounting Period applied. As a company is no longer able to elect into the old rules, because the latest date for that election was 30 June 2018, after that date the exception to the 5 year bar no longer applies. As detailed above companies revoking their Patent Box election now have to apply the 5 year bar, before electing back in.

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