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## HMRC internal manual

# Corporate Intangibles Research and Development Manual

From: [HM Revenue & Customs](#)  
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Published 11 March 2016

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

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## CIRD210210 - Patent Box: qualifying companies: groups: active ownership condition

### CTA10/S357BE

The active ownership condition only has to be met by companies that are members of a group (S357B(1)(b)). (See [CIRD260140](#) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird260140>) for meaning of ‘group’).

The condition requires the company to have either developed its IP portfolio itself or be actively managing it. Those companies which do not pass the test will not be qualifying companies.

Only qualifying IP rights ([CIRD210110](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird210110) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird210110>)) and exclusive licences ([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>)) are considered when determining whether this condition is met. Non-qualifying rights are ignored.

The condition itself is that all or almost all of the qualifying IP rights are rights in respect of which either:

- During the accounting period the company performs a significant amount of management activity in relation to the rights, or
- The company meets the development condition in relation to the rights by virtue of having itself carried out the qualifying development ([CIRD210190](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird210190) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird210190>)).

The test does not apply for singleton companies outside a group, because the company will itself have to meet the development condition. If it does so it will have to have undertaken significant activity and so will not be passive.

However, a company which satisfies the development condition only because of the activity of a fellow group company must show that it plays an active role in managing the qualifying IP rights it holds. This means it must be involved in the planning and decision making activities associated with developing or exploiting substantially all of its qualifying IP portfolio.

Activities such as deciding on whether to maintain protection in particular jurisdictions, grant licences, research alternative applications for the innovation

or licensing others to do so, count as management activity.

Similarly, where the rights are being exploited by incorporating the item into products, activities such as deciding on which products will go to market, what features those products will have and how and where they will be sold will also count as management activity.

Whether what is done is a significant amount of management activity is to be determined in the light of all the relevant circumstances, given:

- The resources the company employs,
- The breadth of its responsibilities for the IP,
- The nature of the IP rights held and the amount of management they require, and
- The significance and impact of the decisions and plans it, as opposed to other group companies, makes in relation to that IP.

Normally it will be reasonably clear in practice whether the company's activity is significant.

The company does not necessarily have to take all decisions relating to the IP's management, particularly if normal group governance requires reference to the parent Board. But it must be actively involved in whatever activity is necessary in terms of making plans and decisions and have clear substantive responsibilities. Neither does there have to be activity in each accounting period in relation to each right, if this is commercially unnecessary for the group's holding of that right. A minimal amount of activity could then be significant in relation to the right.

Groups sometimes have a centralised Board for managing the companies' IP portfolios. Provided that directors of the Patent Box companies are represented on the Board, and are active in the decision-making processes in relation to the development and exploitation of rights, then the active ownership condition is likely to be met.

In some cases the company may hold patents which do not require management activity. For example, it may hold patents that it does not exploit because it has not yet found a market for them. In such a case, simply renewing the patent annually would meet the active ownership test.

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