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HMRC internal manual

Corporate Intangibles Research and Development Manual

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CIRD250130 - Patent Box: anti-avoidance: tax advantage schemes CTA10/S357FB

This applies where a company which is entitled to make a deduction under S357A is party to a scheme and one of the main purposes of the scheme is to obtain a relevant tax advantage.

A relevant tax advantage arises where:

- relevant IP profits are increased as a result of the scheme; and

- the scheme is of a specified type.

Specified types of schemes are:

- schemes designed to avoid the application of any provision in Part 8A; or
- schemes designed to create a mismatch between the expense of acquiring or developing a qualifying IP right (or an exclusive licence over a qualifying IP right) and the income arising from that right or licence. Such a mismatch would occur if the expense is incurred whilst the company (or a company with which it is grouped) is outside the regime, whilst the income arises once the company has elected in to the regime; or
- schemes that are designed to artificially inflate the amount of relevant IP income brought into account in calculating the profits of the trade. This might happen, for instance, if a single agreement is made for the sale of both qualifying and non-qualifying items and the sale proceeds are allocated unreasonably towards the qualifying items, or where the company enters into an agreement to generate relevant IP income that will be substantially matched by an increase in debits that correspond to that income.
- schemes designed to inflate the R&D fraction (CIRD250140)

When these powers should not be used

Undertaking practical and commercially appropriate transactions will not be taken to be tax advantage schemes even if they have the effect of creating or enhancing Patent Box benefits.

For instance, the following transactions will not be tax advantage schemes:

- making an election under 357A ([CIRD201020](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird201020) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird201020>));

- delaying an election under 357A until such time as the company begins to make relevant IP profits rather than relevant IP losses;
- electing out of the regime once relevant IP profits become relevant IP losses (though of course no further S357A election will be possible within 5 years ([CIRD260110](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird260110) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird260110>)));
- creating IP holding companies to crystallise income from qualifying IP in the form of royalties;
- separating trades with profitable qualifying IP income streams and those with non profitable income streams into different companies to allow decisions about whether or not to elect in to the regime to be made more easily;
- inbound businesses creating separate IP development companies for overseas tax reasons and transferring the successfully developed IP within the UK group in order to manage their overseas CFC position; or
- bringing qualifying IP into the UK.

Companies may wish to make changes to their commercial arrangements in order to take advantage of the Patent Box. In general, where the resulting arrangements would not have been taken to be tax advantage schemes if they had been in place from scratch, then reasonable and commercially appropriate steps taken to restructure group arrangements to maximise benefits from the Patent Box will not be taken to be a tax avoidance scheme to which S357F to S357FB will apply.

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