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Corporate Intangibles Research and Development Manual

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CIRD276150 - Patent Box: How CSA companies can prepare for the Patent Box calculation

Patent Box: how CSA members may prepare for the Patent Box calculation

It would be helpful for a company wishing to use the CSA rules to have the following information about the CSA available while using this section of the Patent Box guidance.

- The date the CSA commenced

- Details of how income and costs are shared
 - An understanding of the company's role(s) within the CSA
 - The date(s) of any change of members
 - The dates that any qualifying IP rights/ exclusive licenses were introduced to the CSA or acquired by any member of the CSA
 - Details of intra CSA income received and expenditure payments
 - Details of external third party subcontractor payments made under the CSA, and each party's role in respect of this.
1. Tracking and tracing R&D expenditure and acquisition costs
 2. The R&D expenditure and acquisition costs must be tracked and traced as described in [CIRD272000 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird272000\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird272000). The starting dates and relevant periods are set out in [CIRD272200 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird272200\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird272200). There are no different rules for a CSA.
 3. Each party to a CSA is required to track and trace its own expenditure, where relevant.
 4. It is a question of fact whether other parties to the CSA are connected or unconnected to the Patent Box company. CTA10/S357GCZC provides specific rules to ensure that payments made by a company within the Patent Box are appropriately treated in the R&D fraction when another CSA member carries out or subcontracts R&D on its behalf, described in section 4 below.
 5. Treatment when a company is, or more than one companies are, operating wholly or partly as a 'pass through' intermediary company is provided in [CIRD276100 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird276100\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird276100).

6. Companies within a CSA electing into the Patent Box will be required to produce an R&D fraction for each sub-stream as required by CTA10/s357BF(2) Step 2. There are no different rules for a CSA.
7. The requirements to track and trace expenditure to identify what should go into the R&D fraction are no different to those for companies outside a CSA, but the interaction of payment flows between CSA members can make it appear more complex. Section 4 below describes the basis for calculating the components of the R&D fraction.
8. Relevant IP income from a CSA

There is no amalgamation of the CSA profits themselves from other CSA members as the Patent Box position of each CSA member needs to be considered in its own right. However, these CSA rules require that a company takes into consideration the whole CSA's R&D activity, and acquisition costs in calculating R&D fractions because of the interaction between the CSA members.

In order to determine the relevant IP income for each sub-stream, the rules described in [CIRD271500 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird271500\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird271500) still apply with reference to streaming by qualifying IP rights, product or product family. Relevant IP income from the CSA should include:

- a just and reasonable amount of any income received as consideration for entering the CSA with its IP (CTA10/S357GCZF(1))
- a just and reasonable amount of any income received for agreeing to allow another party to join a CSA (CTA10/S357GCZF(2))
- a just and reasonable amount of any income for agreeing to change the arrangements relating to income share (CTA10/S357GCZF(3))
- acquisition and sub-contractor receipts from other members of the CSA.

- 1. Allocating expenditure:

Similarly, in calculating profits, expenditure incurred by the Patent Box company(ies) within the CSA should be allocated to sub-streams in line with the normal calculation principles in s357BF(2) step 3 ([CIRD271500 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird271500\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird271500)). This includes any payments made for the acquisition of qualifying IP rights or exclusive licence rights between CSA members) and expenditure in relation to R&D sub-contracted costs. In the same way as for companies not in a CSA, the exception applies if the expenditure falls within the provisions at CTA10/s357BIA when certain amounts are not to be deducted from sub-streams at Step 4 of section CTA10/357BF (certain stage payments) [CIRD275200 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird275200\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird275200).

This should follow from the terms of the CSA and what is recognised in the accounts and tax computations.

Example 3 in [CIRD276200 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird276200\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird276200) explains streaming requirements further.

Routine Return [CIRD220440 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird220440\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird220440) and Marketing Asset Return [CIRD220490 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird220490\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird220490) calculations are required as part of the usual Patent Box computation in the same way as for non CSA sub-streams.

1. The R&D fraction

The principles of the rules for calculating the components of the R&D fraction are no different for a CSA. The components of the R&D fraction

are set out in [CIRD274200 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird274200\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird274200). The company must calculate the different components of the R&D fraction for each sub-stream. In the same way as for transactions where no CSA applies, the principles of 'pass through' costs can also apply (see [CIRD276100 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird276100\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird276100)).

- Component D (Direct Costs):

Direct costs of the company are included in component D of the R&D fraction as described in [CIRD274300 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird274300\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird274300) (CTA10/s357BLB). There are no differences for direct R&D expenditure within a CSA.

- Components S1 and S2 (Sub contracted costs):

Much expenditure for R&D subcontracting within a CSA will fall within the definitions within CTA10/s357BLC and CTA10/s357BLD ([CIRD274400 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird274400\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird274400)) and expenditure incurred after the relevant date for the start of tracking and tracing (generally 1 July 2016 unless an election is made for an earlier date) should be included within S1 or S2 components of the R&D Fraction as applicable.

In certain circumstances in a CSA, amounts received are set off against R&D expenditure of a similar nature to arrive at the company's net contribution to R&D expenditure for the same project within the CSA. To accommodate the likelihood of this type of collective R&D effort within a CSA where other members of the CSA incur R&D costs (direct or subcontracted) from which the Patent Box company benefits, CTA10/s357GCZC treats payments made for that R&D by the Patent Box company to other CSA members (or their own sub contractors) as being

payments for subcontracted R&D to that other CSA member when considering connected and unconnected subcontractors for the purposes of the R&D fraction. However, this section only commences from 1 April 2017 so only applies to expenditure incurred in this way after that date.

Companies for which this applies should refer to the details below, but other companies will not need to apply these more complex rules.

Examples are provided in [CIRD276200](#)

(<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird276200>) and the step by step guide in [CIRD276300](#) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird276300>) .

The rules for 'Pass through' costs are found at [CIRD276100](#) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird276100>) and may be relevant before commencing the 'netting off' rules below.

- Details regarding additional CSA rules for amounts treated as R&D sub contractor payments CTA10/ S357GCZC (applicable from 1 April 2017)

In addition to expenditure by the company which falls within CTA10/s357BLC (unconnected subcontractor payments falling within R&D fraction component S1) and CTA10/s357BLD (connected subcontractor payments falling within R&D fraction component S2) consideration must be given to more indirect transactions within the CSA.

CTA10/S357GCZC ensures that R&D undertaken by, or contracted out by, another member within the CSA is treated as if it had been contracted out to that other member by the Patent Box company – effectively aggregating the CSA's R&D effort for the purpose of the R&D fraction. The purpose of this is to ensure that to the extent a company is getting the benefit of IP, under the CSA, through making financial contributions to a connected

person (or covering acquisitions) rather than carrying out R&D, this is reflected in the R&D fraction as though it were acquiring the IP, or subcontracting R&D to a connected person. It also ensures that payments covering R&D subcontracting to unconnected persons are properly reflected in the R&D fraction.

Expenditure treated as R&D subcontract payments to those other CSA members should be disregarded to the extent it can be matched with contributions received of a similar type from other CSA members, to bring only the balancing amounts (or net position) into the R&D fraction for each sub-stream. (CTA10/s357BLEA). This disregarding applies on a cumulative basis across the relevant period (as defined in CTA10/s357BLF) and is intended to bring treatment of companies within CSAs in line with those outside of a CSA for tracking and tracing purposes.

CTA10/S357BLEA(2) requires that in determining expenditure for the R&D fraction of the sub stream, payments included in that sub stream made by the company and treated as subcontracting to unconnected persons by reason of CTA10/s357GCZC (2) or (4) (that is, as S1 in the R&D fraction), are disregarded up to the amount of any receipts from unconnected parties within the CSA for R&D done or contracted out by the company.

Similarly, CTA10/S357BLEA(4) requires that in determining expenditure for the R&D fraction of the sub stream, payments included in that sub stream made by the company and treated as subcontracting to connected persons by reason of CTA10/S357GCZC(2) or (4) (that is, as S2 in the R&D fraction) and for acquisition costs of qualifying IP rights (that is, as A in the R&D fraction by reason of CTA10/s357GCZD) are disregarded up to the amount of any receipts from connected persons within the CSA for R&D undertaken or contracted out by the company, or in respect of acquisitions by the company of qualifying IP rights which fall within the same sub-stream.

This means that for direct expenditure of other CSA members, to which the company contributes, CTA10/S357GCZC(2) treats R&D undertaken by another member of the CSA (ie its direct expenditure) as being subcontracted by the Patent Box company to that member, therefore the amount of it counts either as S1 or S2 in the R&D fraction, depending whether the companies are connected. However, the amount to be included in the R&D fraction is the net amount paid after disregarding these income flows between CSA members.

For subcontracting of R&D by other CSA members, to which the company contributes, CTA10/S357GCZC(4) treats R&D subcontracted by that other member of the CSA to any third person (whether or not that third person is a member of the CSA) as being subcontracted by the company to that other party in the CSA, regardless of which company is actually paid. Whether it is classed as S1 or S2 in the R&D fraction depends on whether the company and the other party to the CSA are connected.

However, there are limits to this aggregation:

For this to apply, the other member of the CSA must actually have contracted out the R&D (ie the other member is not simply acting as an agent) and the aggregation is limited to any amounts which the company itself pays (either to the eventual subcontractor or to the other CSA member) for that R&D, not a payment for some other R&D, or for some other purpose). (CTA10/S357GCZC(3)(c)).

In a complex CSA where there is work on numerous R&D projects, payments may be made which relate to different R&D projects, even within the same sub stream, and these payments are logically distinct. (See [CIRD81100](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird81100) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird81100>) for the definition of an R&D project). It may be the case that two members of the CSA each contract out R&D to a party outside

of the CSA, but each R&D project is separate and the payments are in respect of that R&D which they have contracted out. Then these payments would be distinct and would not need to be included in the aggregation requirements described above as they do not fall within CTA10/s357GCZC(4).

The key point in this section is that the interaction between CSA members needs to be taken into account to arrive at totals for the components S1 and S2 in the R&D fraction and will only include the net amounts paid by the company to other members of the CSA where CTA10/S357GCZC (2) and (4) deems the R&D to have been subcontracted to them.

- Component A (Acquisition costs):
CTA10/s357GCZD and GCZE

CTA10/S357GCZD and CTA10/s357GCZE treat acquisition costs of qualifying IP rights related to a CSA and expenditure on the formation of a CSA as acquisition costs for the purposes of s357BLE.

If another member of the CSA acquires a qualifying IP right or an exclusive licence over a qualifying IP right, then any payment made by the company towards the acquisition, either to the other CSA member or the party from which the IP was acquired is treated as a deemed acquisition cost in the fraction for the appropriate sub-stream.

- Deemed acquisition costs CTA10/s357GCZE (applicable for expenditure on or after 1 April 2017)

These are examples where there will be deemed acquisition costs which should be included within the A component of the R&D fraction.

- If another company joins the CSA with qualifying IP rights for which the other members (or new members) make a payment, a just and reasonable amount of this payment is to be regarded as an acquisition cost (i.e. A) in the hands of the other CSA members who made the

payment, as it is a payment made to access qualifying IP rights.

- If the company itself buys into a CSA and makes a buy-in payment which gives it the right to access qualifying IP rights held by any member of the CSA, a just and reasonable amount of this payment is also an acquisition cost (i.e. A) in the hands of the new CSA member.
- If the company pays other members in order to gain access to a greater share of CSA income, a just and reasonable amount of the payment is treated as an acquisition cost (ie A) in the hands of the company.

The just and reasonable amount of any of these payments should relate to all relevant factors, in particular the extent to which the payment relates to assets other than qualifying IP rights.

There are examples at [CIRD276200](https://www.gov.uk/hmrc-internal-manuals/cird276200) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird276200>) of how the CSA rules work in various situations, and a step by step guide for more complex CSAs at [CIRD276300](https://www.gov.uk/hmrc-internal-manuals/cird276300) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird276300>).

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