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HMRC internal manual

Corporate Intangibles Research and Development Manual

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CIRD220300 - Patent Box: relevant IP profits: relevant IP income: medical use claims

It is not generally possible to patent a method of treatment of the human or animal body. Where, however, a new medical use is discovered for an existing compound or substance, this new medical use may be protected by a patent so long as the use is novel and inventive.

Before the update to the European Patent Convention ('EPC') in 2007, methods of treatment

were considered not patentable as they did not have industrial applicability. However, a 'Swiss Type' claim along the lines of, "use of a substance or composition X for the manufacture of a medicament for use in treatment of disease Y" used to be an acceptable format for covering the new use.

The updated EPC specifically spells out that methods of treatment are not patentable but it does allow patenting of a substance for a specific medical use - in effect protecting use of the product for a specific treatment. So claims along the lines of, "Substance or composition X for the use in the treatment of disease Y" may be considered novel so long as the use in the treatment of disease Y is novel. These are the new form of second medical use claims ('2MU').

HMRC's understanding is that both the old 'Swiss Type' claims and new 2MU claims are meant to be equivalent and can protect the same 'thing', which can be taken to be a pharmaceutical product packaged/ labelled for an approved medical use.

For Patent Box purposes, where there is a patent protecting a pharmaceutical product packaged/ labelled for an approved medical use, that will be an item falling under Head 1 relevant IP income (S357BH(2)) regardless of whether it is a 'Swiss Type' claim or a new 2MU claim.

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