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HMRC internal manual

Corporate Intangibles Research and Development Manual

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CIRD220320 - Patent Box: relevant IP profits: relevant IP income: software: examples

Example 1: Item incorporating a patented computer program

A device uses software in respect of which a patent has been granted. The Patent Box company sells the device upon which the software is installed but the device itself is not patented. If the device and software are sold for a single price, the income from the sale is relevant IP income

under Head 1 since the software is incorporated into the device.

Example 2A: Sale of boxed or downloaded software

Company X develops and sells patented software, either in the form of a CD in a box (which is then installed on the end-user's computer) or via the internet (streamed or via an app and downloaded directly onto the end user's computer). It sometimes sells the software directly to the end user and sometimes sells the software via an intermediary third party (which simply buys and on-sells the software). In either case the income receivable from the sale of the patented software by Company X is relevant IP income under Head 1.

Example 2B: Maintenance and updates relating to the sale of boxed or downloaded software

Extending example 2A, Company X sells the software with a 12 month maintenance contract under which the end user is entitled to receive non patented software updates and telephone support. The income that derives from the sale of updates is relevant IP income under Head 1 because it is income from the sale of items that are wholly or mainly designed to be incorporated into the patented software (S357BH(2)(c)). However the income from the sale of the telephone support is not relevant IP income. Under the mixed sources of income rules (S357BHC, [CIRD220290](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird220290) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird220290>)) it would be necessary to make a just and reasonable apportionment of the total sales price between the qualifying software updates and the non-qualifying telephone support (unless that element is a trivial proportion of the total income).

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Example 2C: Maintenance and updates sold separately to the boxed or downloaded software

Extending example 2B, after the initial 12 month period of maintenance, the end user extends the maintenance contract with Company X. Again the income that derives from the sale of the non patented software updates is relevant IP income under Head 1. It does not matter if the end user bought the underlying software program from an intermediary third party (see example 2A) provided that the income from the software updates accrues to Company X (that is, the company holding the patent). Again the income that derives from the provision of the telephone support is not relevant IP income unless it is trivial.

There is a distinction between the ‘triviality test’ in examples 2B and 2C. Under example 2B, the issue of whether telephone support is trivial should be considered in the context of the sales income from the software itself plus the updates. However, what is considered trivial in example 2C is based on the telephone support in the context of the sale proceeds from the sale of the maintenance contract only. So the income from the telephone support could be trivial in one context but not in another.

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