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## HMRC internal manual

# Corporate Intangibles Research and Development Manual

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## CIRD210190 - Patent Box: qualifying companies: qualifying IP rights: meaning of 'qualifying development'

The key aim of the development condition is to limit the Patent Box to companies and groups which have been properly involved in the innovation lying behind the patent or the application of the patented invention. Accordingly, as well as holding rights specified by S357BB (or an exclusive licence in respect of such rights) the company or group must have performed qualifying

development in relation to the right in order for the right to be a qualifying one.

The definition of qualifying development set out in S357BD(1) requires:

- creating, or significantly contributing to the creation of, the patented invention; or
- performing a significant amount of activity to develop the patented invention, any product incorporating the patented invention, or any process incorporating the patented invention.

Where the ownership requirements in relation to a qualifying IP right are met by virtue of an exclusive licence being held, then it is the company holding the licence (or where relevant, the group of which it is a member) that must have performed the qualifying development.

### **‘Significant’**

Whether activity is significant will be determined in the light of all the relevant circumstances. Simply applying for a patent in respect of acquired rights, or acquiring rights to and marketing a fully developed patent or invention, or product incorporating the invention, will not be sufficient.

However there may be a number of ways in which activity could be significant. For example, it could be coming up with the breakthrough idea. Or it could be work to test or enhance the viability or usefulness of the idea. In addition, qualifying development includes developing a new application for an item - for instance, establishing a new therapeutic indication for a medicinal product.

A contribution could be significant by virtue of the costs, time or effort incurred. Alternatively, it could be significant due to the value or impact of the contribution.

### **Timing**

In certain circumstances a company may acquire fully developed qualifying IP as part of a wider project. For this reason the development condition can be met if the development activity took place before or after acquisition of, or licensing-in, the qualifying IP.

For example, a company conducts a project to develop a more efficient light bulb and undertakes a significant amount of research and development. But then the project discovers that the design of the light source they intended to use is already the subject of a third party patent which the company then acquires.

The development activity will satisfy the development test, even though it took place before acquiring the patent.

### **Limited activities**

By way of contrast, if the company's only activity in relation to the development of the patented invention relates to commercialisation of a product or process that is otherwise fully developed, then this will not satisfy the test of contributing to significant development of the item. The same will apply where activities are limited to other commercial and legal matters, such as the negotiation of a licence, or the challenging or defending of a patent.

For example, a company specialises in finding customers for innovative technological products, researching the market and bringing together inventor and potential customers. The company is sometimes rewarded for this by way of a share of future royalties from licensing of the patented technology.

The commercial development activity that the company performs in return for an interest in the patent will not satisfy the development test - the company or group must have carried out qualifying development in relation to the right.

## Technology transfer companies

Technology transfer companies may provide researchers with commercial advice, such as identifying markets for technology that relate to patents that have been fully developed. This will not constitute qualifying development. By contract, the test will be met where such companies find new ways of using or applying the technology.

## Commissioning

Qualifying development may include the commissioning of external research to develop a patented invention, for example clinical trials of a substance by a Clinical Research Organisation. It is assumed the company already had creative input into the development of the substance.

A company that outsources all development activity and merely provides the finance would not meet the qualifying development condition. Such a company is in no different a position than one that acquires the patent outright from a third party. On the other hand, a company that merely commissions external research to help develop some aspects of the invention, including resolution of particular technical difficulties, would still meet the qualifying development condition. In such a case, the company clearly makes a significant contribution to creation of the invention, albeit that another party also does so.

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