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HMRC internal manual

Corporate Intangibles Research and Development Manual

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CIRD220490 - Patent Box: relevant IP profits: marketing assets return figure CTA10/S357BK

If a company does not elect for small claims treatment ([CIRD220470 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird220470\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird220470)) there are provisions to exclude the profit from marketing assets to arrive at the relevant IP profits. This is to focus the benefit of the Patent Box on technologies covered by relevant IP rights and

should exclude the profit attributable to marketing assets.

To calculate the profit attributable to such assets, known as the 'marketing assets return figure', the legislation uses the formula:

"NMR - AMR"

"where,"

"NMR is the notional marketing royalty
([CIRD220500 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird220500\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird220500)),"

"AMR is the actual marketing royalty
([CIRD220530 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird220530\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird220530)),"

The marketing assets return figure is nil if:

- AMR is greater than NMR, or
- the difference between NMR and AMR is less than 10% of QRP for the accounting period. As AMR will be nil in most cases this means that the marketing asset return will normally be nil if NMR is less than 10% of QRP.

This rule is intended to avoid further consideration of the value of the marketing assets where they make only a small contribution to the overall profit.

The nature of the business will indicate whether the marketing activities are likely to make a significant contribution to the generation of profit. Generally a pragmatic approach should be taken. S357BKA(5) requires that the 'appropriate percentage' used to compute NMR be determined in accordance with Article 9 of the OECD Model Tax Convention and the OECD Transfer Pricing Guidelines. Paragraph 1.13 of the latter stresses that "transfer pricing is not an exact science but does require the exercise of judgement". If NMR is likely to be minimal and within 10% of the QRP or a company is paying an arm's length AMR then it

should not be necessary to insist that a computation of NMR is undertaken to prove the marketing assets return figure is nil.

This is more likely to be the case if the company sells its goods or provides services to other companies, businesses or bodies who make their purchasing decisions on the basis of technical or regulatory requirements. For instance, a company whose market consists wholly of public bodies that make their purchasing decisions on the basis of specified cost and technical specifications is not likely to have a marketing asset return figure in excess of 10% of QRP.

Each case needs to be considered on the basis of its own particular facts but other possible indicators that NMR is likely to be minimal and within 10% of QRP (none of which will necessarily be conclusive in and of themselves) include:

- a low level of marketing expenditure, both in absolute terms and relative to research and development expenditure, incurred by the patent box company concerned (this evaluation needs to reflect multiple-year data and take into account that, for a particular product, expenditure on research and development will generally be incurred prior to marketing expenditure),
- the absence of significant market competition (a business which is in a monopolistic position with regard to its patented products is likely to be less reliant on advertising and marketing than a company which has a number of competitors producing similar types of product).

The converse also applies and if the nature of the business indicates that a significant proportion of profit is likely to derive from marketing activities then there will be a need to compute NMR. This is particularly likely to be so in the case of direct to consumer products but may also be the case even if the company sells to another business - for example, if the purchaser wishes to associate

itself with the seller's brand, such as a hotel chain purchasing luxury items on behalf of guests.

Where the relevant IP income of the patent box company consists entirely of a notional royalty computed under s357BHA(see [CIRD220250](https://www.gov.uk/hmrc-internal-manuals/cird220250) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird220250>)) it can be accepted that NMR is nil as the assumptions made in computing the notional royalty result in it representing income arising solely from exploitation of the patent in question.

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