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## HMRC internal manual

# Corporate Intangibles Research and Development Manual

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## CIRD220540 - Patent Box: relevant IP profits: profits arising before grant of right

### CTA10/s357BM

A company holding, or who held, a qualifying IP right or an exclusive licence in respect of certain qualifying IP rights can, for the accounting period in which the right was granted, elect under s357BM(2) to obtain the benefit of the Patent Box on profits arising from exploiting the right prior to the right being granted. This election must be

made in writing within 12 months of the fixed filing date of the return for the accounting period in which the right is granted.

Profits can only qualify if they relate to periods during which the company was a qualifying company ([CIRD210100 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird210100\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird210100)) and for which an election under S357A(1) had effect (so a Patent Box 'entry' election (under s357A(1)) must have been made for these years and time limits apply - see [CIRD260100 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird260100\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird260100)). For this purpose a company is treated as a qualifying company where it would have been one but for the fact that the right had not been granted at the relevant time.

The s357BM election is made on a right by right basis, bring in patents as they are granted, and covers the whole of the period from the application for grant of the right (or date the licence is granted to the company) to the date the right is granted. This period is limited to up to 6 years before the right is granted. It only applies to qualifying IP rights falling within subsections a), b) and c) of s357BB which are: patents granted under the Patents Act 1977, patents granted under the European Patent Convention and a right of a specified description which corresponds to one of those rights and is granted under the law of a specified EEA state. It is not available for supplementary protection certificates, plant breeders' rights or Community plant variety rights which are regarded as qualifying IP rights only once the right has been granted.

In the year of grant, the earlier relevant IP profits will be calculated and included within that year's computation, using the rules (including any taper relief ) from each previous year of calculation. The Patent Box deduction is given in the year of grant. Earlier years are not amended.

It is not possible for profits arising before 1 April 2013 to benefit from this look-back, because the

regime as a whole only has effect in relation to accounting periods that begin after 1 April 2013 (accounting periods that straddle 1 April 2013 are treated for this purpose as two separate notional periods).

Where a company has elected into the Patent Box on or before 30 June 2016 and the qualifying IP right was applied for on or before 30 June 2016 the calculation of relevant IP profits may use the grandfathered rules if it can be regarded as an 'old IP right' for certain years prior to 30 June 2021. The criteria may be found at [CIRD271000](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird271000) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird271000>), [CIRD270200](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird270200) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird270200>) and [CIRD270300](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird270300) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird270300>). No R&D fraction will be applied to the years in which grandfathering applies, even if the amounts are included in a computation for a period after 30 June 2021.

Prior to 2017 taper relief also restricted the relevant IP profits and that should be applied where relevant: FY 2016 90%, FY 2015 80%, FY 2014 70% and FY 2013 from 1 April 2013 60% of the relevant IP profits qualified. This restriction does not apply for FY2017 onwards. (FA2012, Sch 2 para7 and 8).

Examples:

1. A company applies for a patent on 14 April 2017 but the patent is not granted until 1 December 2020. The company makes a s357A(1) election (within its tax computation) for its accounting period ending 31 December 2017 even though it cannot receive any benefit until the year of grant. It needs to track and trace R&D and acquisition expenditure ready for the computation in the year of grant. In the accounting period ending 31 December 2020 the patent has been granted and the company can obtain the benefit of the Patent

Box on profits that have arisen from exploiting the patented invention during the 'patent pending' period.

2. A company may also elect to obtain the benefit of the Patent Box on profits arising from exploiting a right or exclusive licence in respect of a right prior to the right being granted where the right or licence is disposed of before the right is granted. The company is deemed to be a qualifying company in the accounting period in which the right is granted if it would be but for the right or licence being disposed of.

3. A company applies for a patent on 14 April 2017 in a qualifying country ( [CIRD210160](#) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird210160>) ) and subsequently files for a patent in the UK on 18 April 2018 claiming 'priority' on the earlier patent filing. The qualifying country patent is granted on 1 December 2020 and the UK patent is granted on 16 December 2020. The company makes a s357A (1) election for its accounting period ending 31 December 2017 so that it becomes a new entrant to the Patent Box. When the qualifying country patent is granted, the company can obtain the additional benefit of the Patent Box on profits that have arisen from exploiting the patented invention since 14 April 2017. If the company had originally filed in a non-qualifying patent jurisdiction then only profits from 18 April 2018 would be included in the Patent Box because the UK filed patent is the first qualifying IP right. It is the application date of a patent in a qualifying patent jurisdiction and not the priority date that determines from when Patent Box benefits can be obtained.

For information on how the relief is given see the next page: CIRD220550

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