HMRC internal manual

# Corporate Intangibles Research and Development Manual

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# CIRD260160 - Patent Box: supplementary: interaction with TIOPA 2010

## Transfer Pricing

In the context of the Patent Box there is a risk of UK taxpayers shifting profits from one entity (the advantaged person) to another entity (the disadvantaged person) who is a Patent Box claimant. The shifted profit benefits from the differential between the normal CT rate and the beneficial 10% rate.

However, there is an exemption from transfer pricing rules for the vast majority of transactions carried out by businesses that are EU small or medium enterprises. There are some exceptions to this in TIOPA10/S167 and S168. S168 can require a medium sized enterprise to use arm’s length principles on receipt of a notice from HMRC.

TIOPA10/S167A provides another exception to the small enterprises exemption. This allows HMRC to issue transfer pricing notices to reapply TIOPA10/Part 4 to provisions of a small enterprise where at least one provision involves a transaction taken into account in an affected person’s calculation of Patent Box profits.

## Double Taxation Relief

TIOPA10/S44 to 48 allows double taxation relief (‘DTR’) for withholding tax (‘WHT’) on patent royalties up to the amount of corporation tax payable on the transaction, arrangement or asset in respect of which the royalties are paid.

The Patent Box deduction will be bought into the DTR calculation and by reducing the CT chargeable may result in a restriction of the DTR available.

### Example

A simple example of a DTR calculation including the Patent Box is given below:

A company has royalty income of £1000 from licensing one of its patents.

£400 of this comes from overseas territories, on which the company has suffered a total of £30 of overseas WHT.

The company incurs costs of £400 to generate its royalties, incurred equally for all royalties. It elects into Patent Box and calculates its Patent Box tax deduction as £300. The company has no routine costs or marketing assets.

The company's DTR calculation under section 44 would look be as follows:

Royalty = £400

Share of costs = (£400/£1000) x £400= (£160)

Share of Patent Box tax deduction = (£400/£1000) x £300 = (£120)

Corporation tax profit = £120

Corporation Tax @ 21% = £25

WHT Suffered = £30

The company's DTR is therefore limited to £25 and the CT computation will be as follows:

Royalties = £1000

Costs = (£400)

Patent Box deduction = (£300)

Corporation tax profit = £300

Corporation tax @21% = £63

DTR = (£25)

CT Payable = £38

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