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Corporate Intangibles Research and Development Manual

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CIRD210200 - Patent Box: qualifying companies: qualifying IP rights: development conditions A to D

Overview

There are four ways that a company can pass the development condition. Two (conditions A and B) apply when the company has undertaken the development itself. The other two (C and D) allow a company to qualify if another group company has undertaken the significant development.

Condition A deals with the case where the Patent Box company has undertaken the development itself and does not join or leave a group after carrying out the development on the patented invention.

Condition C deals with the case where the development was done by another company while it was a member of the group of which the Patent Box company is currently a member.

Conditions B and D set out additional requirements if a company that has performed qualifying development joins or leaves a group after the development has been carried out.

Condition A

The company must have carried out the qualifying development activity and since that time not ceased to be, or become, a controlled member of a group.

A company ceases to be a controlled member of a group if all of the companies which controlled it or held a major interest in it cease to do so and in consequence the company ceases to be associated with any of them. When this occurs, any companies which it controls or has a major interest in also leave the group, but the companies that remain in the old group do not cease to be members of that group.

A company becomes a controlled member of a group if another company ('P') becomes the holder of a major interest in it or begins to control it and immediately before that time the company was not associated with P or any company associated with P.

This means that a company becomes a member of a group when a new parent company not initially associated with it begins to control or hold a major interest in it. For example where an existing group, or an existing singleton company, acquires ownership of the company. However, this

will not apply where, for instance, a company's ownership is transferred within a group, or where a new company is formed within a group to which ownership of the company is immediately transferred.

A company that is a singleton company itself carried out qualifying development and later incorporates a subsidiary does not as a result become a controlled member of a group.

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Condition B

The company has carried out the qualifying development activity and has ceased to be, or become, a controlled member of a group but has, for 12 months from the day it has ceased to be, or become, a controlled member of a group, performed activities of the same type as those that constituted the qualifying development activities.

This condition allows a group, which acquires a company with a patent that requires no further development, to benefit from the Patent Box so long as that acquired company continues to be engaged in the activities which led to the creation of the patented invention for at least 12 months.

For example, in 2009 a company which manufactures metal widgets developed and patented a new process that allows stronger widgets to be produced. It exploits the patent in the UK market and has licensed the process to widget manufacturers in a number of overseas territories. In 2013 it is acquired by a larger group, after which it no longer carries out any development activity on the patented process. It is still engaged in manufacturing widgets throughout the following 12 months, and is actively engaged in researching new manufacturing techniques for lighter and stronger metal products. It still receives licence fees from other manufacturers. All its relevant IP income, including the licence income,

qualifies for the Patent Box after it joins the new group.

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Condition C

A company within a group satisfies the ownership requirements where another company in the group carried out the qualifying development activity at a time when that other company was a member of that group.

This accommodates arrangements within groups where, for example, one group company carries out R&D activity, but the IP arising out of that activity is owned by, or transferred to, another group company which holds the group's intangible assets. In this context it is worth bearing in mind that the Patent Box definition of a group in S357GD is wider than for many other tax purposes, so that development activity carried out by a company that is a CFC, for example, would be regarded as carried out by a member of the group.

A company may qualify under condition C even if it was not a member of the group at the time that the qualifying development was performed. All that is required is that the qualifying development was performed within the group of which the Patent Box company is currently a member.

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Condition D

Condition D extends condition B to allow a group which acquires a company which developed the patent to transfer the qualifying IP to another company in the group. Qualifying development undertaken prior to joining the group satisfies the development condition if the company joining the group, or another company within the group, continues with the same qualifying development

for a further 12 months after the original company joined the group.

Condition D also allows an acquiring group to transfer the qualifying IP to another company in the group and transfer the trade of the acquired company also, either to the same company which acquires the qualifying IP or to another group company which for example might be the entity in which the acquiring group habitually locates its R&D work.

This will cater for situations where one group acquires another group. In such cases the larger group might wish to rationalise its structure and either centralise its R&D activities in one company and/or consolidate its IP holdings in a different company. Without condition D the larger group might be forced to mothball the activities of the acquired companies before beginning any reorganisation. However, condition D will allow the acquired IP and R&D functions to be separated, provided that the group as a whole continues qualifying development of the same description as that which led to the development of the qualifying IP for a period of at least 12 months following the original acquisition/merger.

As for condition B, S357BC(11) ensures that condition D can be satisfied during the relevant 12 month period.

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Definitions of terms used:

1. Qualifying development activity [CIRD210190](#) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird210190>) CTA10/s357BD
2. Group [CIRD260140](#) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird260140>) CTA10/s357GD

3. Associated [CIRD260140](#)

<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird260140> s357GD(3)

4. Control CTA09/s472

5. Major Interest CTA09/s473 and s474

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