Distributions out of income from patent royalties. CTA76 s170; FA92 s19(2); FA96 s32(2) and (3)(b); FA97 s146(1) and Sch9 par10(9) 141.—(1) In this section—

“disregarded income” means—

(a) as respects distributions made out of specified income accruing to a company on or after the 28th day of March, 1996—

(i) income from a qualifying patent which by virtue of section 234 (2) has been disregarded for the purposes of income tax, and

(ii) income from a qualifying patent which by virtue of section 234 (2) and section 76 (6) has been disregarded for the purposes of corporation tax,

but does not include income (in this section referred to as “specified income”) from a qualifying patent ) which would not be income from a qualifying patent if paragraph (a) of the definition of “income from a qualifying patent” in section 234 (1) had not been enacted, and

(b) as respects any other distributions—

(i) income which by virtue of section 234 (2) has been disregarded for the purposes of income tax, and

(ii) income which by virtue of section 234 (2) and section 76 (6) has been disregarded for the purposes of corporation tax;

“eligible shares”, in relation to a company, means shares forming part of the ordinary share capital of the company which—

(a) are fully paid up,

(b) carry no present or future preferential right to dividends or to the company's assets on its winding up and no present or future preferential right to be redeemed, and

(c) are not subject to any different treatment from the treatment which applies to all shares of the same class, in particular different treatment in respect of—

(i) the dividend payable,

(ii) repayment,

(iii) restrictions attaching to the shares, or

(iv) any offer of substituted or additional shares, securities or rights of any description in respect

of the shares;

“other profits” includes a dividend or other distribution of a company resident in the State, but does not include a distribution to which subsection (3)(a)(ii) applies.

(2) Where a distribution for an accounting period is made by a company in part out of disregarded income and in part out of other profits, the distribution shall be treated as if it consisted of 2 distributions respectively made out of disregarded income and out of other profits.

(3) (a) So much of any distribution as has been made out of disregarded income—

(i) shall, subject to subsection (4)(a), not be regarded as income for any purpose of the Income Tax Acts, and

(ii) shall, where the recipient of that distribution is a company and the distribution is in respect of eligible shares, be deemed for the purposes of this section to be disregarded income.

(b) The recipient of any distribution, including part of a distribution treated under subsection (2) as a distribution, made out of disregarded income shall not be entitled to a tax credit in respect of that distribution.

(4) (a) Subsection (3)(a)(i) shall not apply to any distribution received by a person unless it is a distribution—

(i) in respect of eligible shares, or

(ii) made out of disregarded income, being income (in this subsection referred to in relation to a person as “relevant income”) which is referable to a qualifying patent in relation to which the person carried out, either solely or jointly with another person, the research, planning, processing, experimenting, testing, devising, designing, development or other similar activity leading to the invention which is the subject of the qualifying patent.

(b) For the purposes of paragraph (a), where a distribution for an accounting period is made by a company to a person in part out of relevant income, in relation to the person, and in part out of other disregarded income, the distribution shall be treated as if it consisted of 2 distributions respectively made out of relevant income and out of other disregarded income.

(5) (a) In this subsection—

“the amount of aggregate expenditure on research and development incurred by a company in relation to an accounting period” means the amount of expenditure on research and development activities incurred in the State by the company in the accounting period and the previous 2 accounting periods; but, where in an accounting period a company incurs expenditure on research and development activities and not less than 75 per cent of that expenditure was incurred in the State, all of that expenditure shall be deemed to have been incurred in the State;

“the amount of the expenditure on research and development activities”, in relation to expenditure incurred by a company in an accounting period, means non-capital expenditure incurred by the company, being the aggregate of the amounts of—

(i) such part of the emoluments paid by the company to employees of the company engaged in carrying out research and development activities related to the company's trade as is laid out for the purposes of those activities,

(ii) expenditure incurred by the company on materials or goods used solely by the company in the carrying out of research and development activities related to the company's trade, and

(iii) a sum paid to another person, not being a person connected with the company, in order that such person may carry out research and development activities related to the company's trade,

but, where the company (in this definition referred to as “the first company”) is a member of a group, then, for the purposes of this section, the amount of expenditure on research and development activities incurred in an accounting period by another company which in the accounting period is a member of the group shall, on a joint election in writing being made on that behalf by the first company and the other company, be treated as being expenditure incurred on research and development activities in the accounting period by the first company and not by the other company;

“research and development activities” has the same meaning as in section 766.

(b) For the purpose of this subsection—

(i) 2 companies shall be deemed to be members of a group if both companies are wholly or mainly under the control of the same individual or individuals or if one company is a 75 per cent subsidiary of another company or both companies are 75 per cent subsidiaries of a third company and, in determining whether one company is a 75 per cent subsidiary of another company, the other company shall be treated as not being the owner of—

(I) any share capital which it owns directly in a company if a profit on sale of the shares would be treated as a trading receipt of its trade, or

(II) any share capital which it owns indirectly and which is owned directly by a company for which a profit on the sale of the shares would be a trading receipt;

(ii) a company shall be wholly or mainly under the control of an individual or individuals if not less that 75 per cent of the ordinary share capital of the company is owned directly or indirectly by the individual or, as the case may be, by individuals each of whom owns directly or indirectly part of that share capital;

(iii) sections 412 to 418 shall apply for the purposes of this paragraph as they apply for the purposes of Chapter 5 of Part 12 and, where 2 companies are deemed to be members of a group by reason that both companies are wholly or mainly under the control of the same individual or individuals, those sections shall

apply as they would apply for the purposes of that Chapter if the references in those sections to a parent company included a reference to an individual or individuals who hold shares in a company.

(c) Where for an accounting period a company makes one or more distributions out of specified income which accrued to the company on or after the 28th day of March, 1996, so much of the amount of that distribution, or the aggregate of such distributions, as does not exceed the amount of aggregate expenditure on research and development incurred by the company in relation to the accounting period shall be treated as a distribution made out of disregarded income.

(d) (i) Notwithstanding paragraph (c) but subject to subparagraph (ii), if in an accounting period the beneficial recipient (in this paragraph referred to as “the recipient”) of the specified income shows in writing to the satisfaction of the Revenue Commissioners that the specified income is income from a qualifying patent in respect of an invention which—

(I) involved radical innovation, and

(II) was patented for bona fide commercial reasons and not primarily for the purpose of avoiding liability to taxation,

the Revenue Commissioners shall, after consideration of any evidence in relation to the matter which the recipient submits to them and after such consultations (if any) as may seem to them to be necessary with such persons as in their opinion may be of assistance to them, determine whether all distributions made out of specified income accruing to the recipient for that accounting period and all sub sequent accounting periods shall be treated as distributions made out of disregarded income and the recipient shall be notified in writing of the determination.

(ii) A recipient aggrieved by a determination of the Revenue Commissioners under subparagraph (i) may, by notice in writing given to the Revenue Commissioners within 30 days of the date of notification advising of the determination, appeal to the Appeal Commissioners and the Appeal Commissioners shall hear and determine the appeal made to them as if it were an appeal against an assessment to income tax, and the provisions of the Income Tax Acts relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law shall apply accordingly with any necessary modifications.

(e) The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions authorised by this subsection to be performed or discharged by the Revenue Commissioners, and references in this subsection to the Revenue Commissioners shall, with any necessary modifications, be construed as including references to an officer so nominated.

(6) (a) Where a company makes a distribution, including part of a distribution treated under subsection (2) as a distribution, in respect of any right or obligation to which section 139 relates and the distribution is made out of disregarded income, the company shall make a supplementary distribution of an amount equal to the amount of the tax credit which would have applied in respect of the distribution if subsection (3)(b) had not been enacted.

(b) Subsection (3) shall apply to a supplementary distribution under this subsection as if that

supplementary distribution were a distribution made wholly out of disregarded income.

(7) In relation to any distribution (not being a supplementary distribution under this section), including part of a distribution treated under subsection (2) as a distribution, made by a company out of disregarded income, section 152 shall apply to the company so that the statements provided for by that section shall show as respects each such distribution, in addition to the particulars required to be given apart from this section, that the distribution is made out of disregarded income.

(8) In relation to any supplementary distribution under subsection (6), section 152 shall apply to the company so that the statement required by subsection (1) of that section shall show, in addition to the particulars required to be given apart from this section, the separate amount of such supplementary distribution.

(9) Where a company makes a distribution for an accounting period, the distribution shall be regarded for the purposes of this section as having been made out of the distributable income (8)) of that period to the extent of that income and, in relation to the excess of the distributions over that income, out of the most recently accumulated income.

(10) Subsections (6) and (7) of section 145 shall apply for the purposes of this section as they apply for the purposes of that section.