

Certain income derived from patent royalties. FA73 s34; CTA76 s140(1) and Sch2 Ptl par35; FA81 s19; FA92 s19(1); FA94 s28; FA96 s32(1) and (3)(a) and s132(1) and Sch5 Ptl par7; FA97 s146(1) and Sch9 Ptl par6(2) 234.—(1) In this section—

“income from a qualifying patent” means any royalty or other sum paid in respect of the user of the invention to which the qualifying patent relates, including any sum paid for the grant of a licence to exercise rights under such patent, where that royalty or other sum is paid—

(a) for the purposes of activities which—

(i) would be regarded, otherwise than by virtue of paragraph (b) or (c) of section 445 (7) or section 446, as the manufacture of goods for the purpose of relief under Part 14, or

(ii) would be so regarded if they were carried on in the State by a company,

but, as respects a royalty or other sum paid on or after the 23rd day of April, 1996, where the royalty or other sum exceeds the royalty or other sum which would have been paid if the payer of the royalty or other sum and the beneficial recipient of the royalty or other sum were independent persons acting at arm's length, the excess shall not be income from a qualifying patent,

or

(b) by a person who—

(i) is not connected as it applies for the purposes of capital gains tax) with the person who is the beneficial recipient of the royalty or other sum, and

(ii) has not entered into any arrangement in connection with the royalty or other sum the main purpose or one of the main purposes of which was to satisfy subparagraph (i);

“qualifying patent” means a patent in relation to which the research, planning, processing, experimenting, testing, devising, designing, developing or similar activity leading to the invention which is the subject of the patent was carried out in the State;

“resident of the State” means any person resident in the State for the purposes of income tax and not resident elsewhere;

a company shall be regarded as a resident of the State if it is managed and controlled in the State.

(2) (a) A resident of the State who makes a claim in that behalf and makes a return in the prescribed form of his or her total income from all sources, as estimated in accordance with the Income Tax Acts, shall be entitled to have any income from a qualifying patent arising to him or her disregarded for the purposes of the Income Tax Acts.

(b) In paragraph (a), the reference to a return of total income from all sources as estimated in accordance with the Income Tax Acts shall apply for corporation tax as if it were or included a reference to a return under section 884.

(3) Notwithstanding subsection (2), an individual shall not be entitled to have any amount of income from a qualifying patent arising to him or her disregarded for any purpose of the Income Tax Acts unless the individual carried out, either solely or jointly with another person, the research, planning, processing, experimenting, testing, devising, designing, developing or other similar activity leading to the invention which is the subject of the qualifying patent.

(4) Where, under section 77 of the Patents Act, 1992, or any corresponding provision of the law of any other country, an invention which is the subject of a qualifying patent is made, used, exercised or vended by or for the service of the State or the government of the country concerned, this section shall apply as if the making, user, exercise or vending of the invention had taken place in pursuance of a licence and any sums paid in respect of the licence were income from a qualifying patent.

(5) Where any income arising to a person is by virtue of this section to be disregarded, the person shall not be treated, by reason of such disregarding, as having ceased to possess the whole of a single source within the meaning of section 70 (1).

(6) For the purpose of determining the amount of income to be disregarded under this section for the purposes of the Income Tax Acts, the Revenue Commissioners may make such apportionments of receipts and expenses as may be necessary.

(7) The relief provided by this section may be given by repayment or otherwise.

(8) Subsections (3) and (4) of section 459 and paragraph 8 of Schedule 28 shall, with any necessary modifications, apply in relation to exemptions from tax under this section.