



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART XIII

#### MISCELLANEOUS SPECIAL PROVISIONS

#### CHAPTER I

#### INTELLECTUAL PROPERTY

##### *Patents and know-how*

#### **520 Allowances for expenditure on purchase of patent rights: post-31st March 1986 expenditure.**

- (1) <sup>M1</sup>Subject to subsection (3) below, where a person incurs capital expenditure after 31st March 1986 on the purchase of patent rights, allowances and charges shall, in accordance with subsections (4) and (6) below, be made to and on him in respect of that expenditure.
- (2) No allowance shall be made to a person under subsection (1) above in respect of any expenditure unless—
  - (a) the allowance falls in accordance with section 528(1) to be made to him in taxing his trade; or
  - (b) any income receivable by him in respect of the rights would be liable to tax.
- (3) <sup>M2</sup>For the purposes of this section and section 521 any expenditure incurred for the purposes of a trade by a person about to carry it on shall be treated as if it had been incurred by that person on the first day on which he does carry it on, unless, before that first day, he has sold all the rights on the purchase of which the expenditure was incurred.

*Status: Point in time view as at 01/02/1991.*

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- (4) <sup>M3</sup>For any chargeable period for which a person within subsection (1) above has qualifying expenditure which exceeds any disposal value to be brought into account by him in accordance with section 521(2) there shall be made to him—
- (a) except where paragraph (b) or (c) below applies, a writing-down allowance of an amount equal, subject to subsection (5) below, to—
    - (i) 25 per cent. of the excess; or
    - (ii) a proportionately reduced percentage of the excess if the period is part only of a year, or if, in a case where the period is a year of assessment and the allowance falls to be made in taxing a trade, the trade has been carried on for part only of that year;
  - (b) if an allowance falls to be made to that person in taxing his trade and the period is the chargeable period related to the permanent discontinuance of the trade, a balancing allowance equal to the whole of the excess; and
  - (c) if paragraph (b) above does not apply but the period is the chargeable period in which the last of the relevant patent rights comes to an end without any of those rights being revived, a balancing allowance equal to the whole of the excess.
- (5) For the purposes of subsection (4)(c) above the “relevant patent rights” at any time are those—
- (a) on the purchase of which the person concerned has incurred capital expenditure which has been taken into account in determining his qualifying expenditure for any chargeable period; and
  - (b) which he has not wholly disposed of.
- (6) For any chargeable period for which a person’s qualifying expenditure is less than the disposal value which he is to bring into account, there shall be made on him a balancing charge and the amount on which the charge is made shall be an amount equal to the difference.

#### **Marginal Citations**

- M1** Source - 1970 s.378(1); 1985 s.64(1)  
**M2** Source - 1970 s.378(2)(c); 1985 s.64(2)(b)  
**M3** Source - 1985 Sch.18 Part I 1

### **521 Provisions supplementary to section 520.**

- <sup>M4</sup>(1) For the purposes of section 520(4) to (6), a person’s qualifying expenditure for a chargeable period is the aggregate of the following amounts—
- (a) any capital expenditure incurred by him on the purchase of patent rights, being expenditure incurred during the chargeable period or its basis period or at any previous time, other than expenditure which, or any part of which, has formed part of his qualifying expenditure for any previous chargeable period; and
  - (b) if, for the chargeable period immediately preceding the chargeable period in question, there was an excess of qualifying expenditure over disposal value, the balance of that excess after deducting any writing-down allowance under section 520(4)(a) made by reference to that excess.
- (2) If, in any chargeable period or its basis period, a person sells the whole or any part of any patent rights on the purchase of which he has incurred capital expenditure, then, for

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the purposes of section 520(4) to (6) and subsection (1) above, he is required to bring into account for that chargeable period disposal value equal, subject to subsections (3) and (4) below, to the net proceeds to him of that sale.

- (3) The disposal value to be brought into account by any person in respect of any patent rights as a result of one or more sales falling within subsection (2) above shall not (or, as the case may be, shall not in the aggregate) exceed the capital expenditure incurred by him on the purchase of those rights.
- (4) Where the person mentioned in subsection (3) above has acquired the patent rights as a result of a transaction which was, or a series of transactions each of which was, between persons who are connected with each other within the terms of section 839, that subsection shall have effect as if it referred to the capital expenditure on the purchase of the rights incurred by whichever party to that transaction or to any of those transactions incurred the greatest such expenditure.
- (5) Where a person incurs capital expenditure on the purchase of patent rights and either—
  - (a) he and the seller are connected with each other <sup>F1</sup> . . . , or
  - (b) it appears with respect to the sale, or with respect to transactions of which the sale is one, that the sole or main benefit which, but for this subsection, might have been expected to accrue to the parties was the obtaining of an allowance under section 520(4),

there shall be disregarded for the purposes of section 520(4) and (6) and subsection (1) above so much (if any) of that expenditure as exceeds [<sup>F2</sup>the relevant amount determined in accordance with subsection (6)below].

- [<sup>F3</sup>(6) The relevant amount referred to in subsection (5) above is—
- (a) in a case in which, by virtue of subsections (2) to (4) above, a disposal value falls to be brought into account by reason of the sale, an amount equal to that disposal value,
  - (b) in a case in which no disposal value falls to be brought into account as mentioned in paragraph (a) above, but the seller receives on the sale a capital sum in respect of which he is chargeable to tax in accordance with section 524, an amount equal to that sum,
  - (c) in any other case, an amount equal to whichever of the following is the smallest—
    - (i) the price which the rights would have fetched if sold in the open market,
    - (ii) where capital expenditure was incurred by the seller on acquiring the rights, the amount of that expenditure,
    - (iii) where capital expenditure was incurred by any person connected with the seller on acquiring the rights, the amount of the expenditure incurred by that person.

- (7) Section 839 (connected persons) shall apply for the purposes of this section.]

#### Textual Amendments

**F1** Words in s. 521(5) repealed (with effect in accordance with Sch. 13 para. 27(4) of the repealing Act) by Finance Act 1989 (c. 26), Sch. 13 para. 27(2)(a), **Sch. 17 Pt. 6**,

**F2** Words in s. 521(5) substituted (with effect in accordance with Sch. 13 para. 27(4) of the amending Act) by Finance Act 1989 (c. 26), **Sch. 13 para. 27(2)(b)**

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**F3** S. 521(6)(7) substituted (with effect in accordance with Sch. 13 para. 27(4) of the amending Act) by Finance Act 1989 (c. 26), Sch. 13 para. 27(3)

#### Marginal Citations

**M4** Source - 1985 Sch.18 Part I 2-4

## 522 Allowances for expenditure on purchase of patent rights: pre-1st April 1986 expenditure.

- <sup>M5</sup>(1) Subject to subsection (2) below, where a person incurred capital expenditure before 1st April 1986 on the purchase of patent rights, there shall, subject to and in accordance with the following provisions of this Chapter, be made to him writing-down allowances in respect of that expenditure during the writing-down period.
- (2) No writing-down allowance shall be made to a person under subsection (1) above in respect of any expenditure unless—
- (a) the allowance falls in accordance with section 528(1) to be made to him in taxing his trade; or
  - (b) any income receivable by him in respect of the rights would be liable to tax.
- (3) Subject to subsections (4) to (6) below, the writing-down period referred to in subsection (1) above is 17 years beginning with the chargeable period related to the expenditure.
- (4) Where the rights are purchased for a specified period, subsection (3) above shall have effect with the substitution for the reference to 17 years of a reference to 17 years or the number of years comprised within that period, whichever is the less.
- (5) Where the rights purchased begin one complete year or more after the commencement of the patent and subsection (4) above does not apply, subsection (3) above shall have effect with the substitution for the reference to 17 years of a reference to 17 years less the number of complete years which, when the rights began, have elapsed since the commencement of the patent or, if 17 complete years have so elapsed, of a reference to one year.
- (6) Any expenditure incurred for the purposes of a trade by a person about to carry it on shall be treated for the purposes of subsections (3) to (5) above as if it had been incurred by that person on the first day on which he does carry it on, unless, before that first day, he has sold all the rights on the purchase of which the expenditure was incurred.
- (7) Subsections (2) and (3) of section [<sup>F4</sup>146 of the 1990 Act] (effect of providing for writing-down allowances during a writing-down period of a specified length) shall apply to this section as they apply to the provisions specified in subsection (1) of that section.

#### Textual Amendments

**F4** Words in s. 522(7) substituted (with effect in accordance with and with application in accordance with s. 164(1)(2) of the amending Act) by Capital Allowances Act 1990 (c. 1), Sch. 1, para. 8(25), s. 164(3)

#### Marginal Citations

**M5** Source - 1970 s.378; 1985 s.64(1)

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## 523 Lapses of patent rights, sales etc.

<sup>M6</sup>(1) Where a person incurred capital expenditure before 1st April 1986 on the purchase of patent rights and, before the end of the writing-down period under section 522, any of the following events occurs, that is to say—

- (a) the rights come to an end without being subsequently revived; or
- (b) he sells all those rights or so much of them as he still owns; or
- (c) he sells part of those rights and the net proceeds of the sale (so far as they consist of capital sums) are not less than the amount of the capital expenditure remaining unallowed,

no writing-down allowance shall be made to that person for the chargeable period related to the event or for any subsequent chargeable period.

(2) Where a person incurred capital expenditure before 1st April 1986 on the purchase of patent rights and, before the end of the writing-down period under section 522, either of the following events occurs, that is to say—

- (a) the rights come to an end without being subsequently revived, or
- (b) he sells all those rights, or so much of them as he still owns, and the net proceeds of the sale (so far as they consist of capital sums) are less than the amount of the capital expenditure remaining unallowed,

there shall, subject to and in accordance with the following provisions of this Chapter, be made to him for the chargeable period related to the event an allowance (“a balancing allowance”) equal, if the event is the rights coming to an end, to the amount of the capital expenditure remaining unallowed and, if the event is a sale, to the amount of the capital expenditure remaining unallowed less the net proceeds of the sale.

(3) Where—

- (a) a person who incurred capital expenditure before 1st April 1986 on the purchase of patent rights sells all or any part of those rights, and
- (b) the net proceeds of the sale (so far as they consist of capital sums) exceed the amount of the capital expenditure remaining unallowed, if any,

there shall, subject to and in accordance with the following provisions of this Chapter, be made on him for the chargeable period related to the sale a charge (“a balancing charge”) on an amount equal to the excess or, where the amount of the capital expenditure remaining unallowed is nil, to those net proceeds.

(4) Where a person who incurred capital expenditure before 1st April 1986 on the purchase of patent rights sells a part of those rights and subsection (3) above does not apply, the amount of any writing-down allowance made in respect of that expenditure for the chargeable period related to the sale or any subsequent chargeable period shall be the amount arrived at by—

- (a) subtracting the net proceeds of the sale (so far as they consist of capital sums) from the amount of the expenditure remaining unallowed at the time of the sale, and
- (b) dividing the result by the number of complete years of the writing-down period which remained at the beginning of the chargeable period related to the sale,

and so on for any subsequent sales.

(5) References in this section to the amount of any capital expenditure remaining unallowed shall, in relation to any event, be construed as references to the amount of that expenditure less any writing-down allowances made in respect thereof for

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chargeable periods before that related to the event, and less also the net proceeds of any previous sale by the person who incurred the expenditure of any part of the rights acquired by the expenditure, so far as those proceeds consist of capital sums.

- (6) Notwithstanding anything in subsections (1) to (5) above—
- (a) no balancing allowance shall be made in respect of any expenditure incurred before 1st April 1986 unless a writing-down allowance has been, or, but for the happening of the event giving rise to the balancing allowance, could have been, made in respect of that expenditure, and
  - (b) the total amount on which a balancing charge is made in respect of any expenditure incurred before 1st April 1986 shall not exceed the total writing-down allowances actually made in respect of that expenditure, less, if a balancing charge has previously been made in respect of that expenditure, the amount on which that charge was made.

**Modifications etc. (not altering text)**

**C1** See 1979(C) s.31(2)—*amount on which balancing charge levied not to be excluded from capital gains computation.*

**Marginal Citations**

**M6** Source - 1970 s.379; 1985 s.64(2)(c)

**524 Taxation of receipts from sale of patent rights.**

- (1) <sup>M7</sup>Subject to subsection (2) below, where a person resident in the United Kingdom sells all or any part of any patent rights and the net proceeds of the sale consist wholly or partly of a capital sum, he shall, subject to the provisions of this Chapter, be charged to tax under Case VI of Schedule D, for the chargeable period in which the sum is received by him and successive chargeable periods, being charged in each period on the same fraction of the sum as the period is of six years (or such less fraction as has not already been charged).
- (2) If the person by notice served on the inspector not later than two years after the end of the chargeable period in which the sum was received, elects that the whole of the sum shall be charged to tax for that chargeable period, it shall be charged to tax accordingly.
- (3) <sup>M8</sup>Subject to subsection (4) below, where a person not resident in the United Kingdom sells all or any part of any patent rights and the net proceeds of the sale consist wholly or partly of a capital sum, and the patent is a United Kingdom patent, then, subject to the provisions of this Chapter—
  - (a) he shall be chargeable to tax in respect of that sum under Case VI of Schedule D; and
  - (b) section 349(1) shall apply to that sum as if it was an annual sum payable otherwise than out of profits or gains charged to income tax; and
  - (c) all other provisions of the Tax Acts shall, save as therein otherwise provided, have effect accordingly.
- (4) If, not later than two years after the end of the year of assessment in which the sum is paid, the person to whom it is paid, by notice to the Board, elects that the sum shall be treated for the purpose of income tax for that year and each of the five succeeding years as if one-sixth thereof, and no more, were included in his income chargeable

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to tax for all those years respectively, it shall be so treated, and all such repayments and assessments of tax for each of those years shall be made as are necessary to give effect to the election, but—

- (a) the election shall not affect the amount of tax which is to be deducted and assessed under section 349(1) and 350; and
  - (b) where any sum is deducted under section 349(1), any adjustments necessary to give effect to the election shall be made by way of repayment of tax; and
  - (c) those adjustments shall be made year by year and as if one-sixth of the sum deducted had been deducted in respect of tax for each year, and no repayment of, or of any part of, that portion of the tax deducted which is to be treated as deducted in respect of tax for any year shall be made unless and until it is ascertained that the tax ultimately falling to be paid for that year is less than the amount of tax paid for that year.
- (5) <sup>M9</sup>In subsections (3) and (4) above, “tax” shall mean income tax or, in subsection (3) in a case where the seller of the patent rights, being a company, would be within the charge to corporation tax in respect of any proceeds of the sale not consisting of a capital sum, corporation tax.
- (6) Where subsection (3) applies to charge a company to corporation tax in respect of a sum paid to it, subsection (4) shall not apply, but the company may, by notice given to the Board not later than two years after the end of the accounting period in which the sum is paid, elect that the sum shall be treated as arising rateably in the accounting periods ending not later than six years from the beginning of that in which the sum is paid (being accounting periods during which the company remains within the charge to corporation tax in respect of any proceeds of the sale not consisting of a capital sum), and there shall be made all such repayments of tax and assessments to tax as are necessary to give effect to any such election.
- (7) <sup>M10</sup>Subject to subsections (8) and (9) below, where the person selling all or any part of any patent rights (“the seller”) acquired the rights sold, or the rights out of which they were granted, by purchase and the price paid by him consisted wholly or partly of a capital sum, the preceding provisions of this section shall apply as if any capital sum received by him when he sells the rights were reduced by the amount of that sum.
- (8) Where between the purchase and the sale the seller has sold part of the rights acquired by him and the net proceeds of that sale consist wholly or partly of a capital sum, the amount of the reduction falling to be made under subsection (7) above in respect of the subsequent sale shall be itself reduced by the amount of that sum.
- (9) Nothing in subsections (7) and (8) above shall affect the amount of income tax which is to be deducted and assessed under section 349(1) and (3) by virtue of subsection (3) above, and, where any sum is deducted under section 349(1), any adjustment necessary to give effect to the provisions of this subsection shall be made by way of repayment of tax.
- (10) <sup>M11</sup>A claim for relief under this section shall be made to the Board.

**Modifications etc. (not altering text)**

- C2** See S.I. 1970 No.488 (under  
“Double taxation relief: general”  
in Part III Vol.5) regns. 2-10—payments exempt under double taxation agreements.

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#### **Marginal Citations**

- M7** Source - 1970 s.380(1)
- M8** Source - 1970 s.380(2)
- M9** Source - 1970 s.380(3)
- M10** Source - 1970 s.380(4)
- M11** Source - 1970 s.380(5)

### **525 Capital sums: death, winding up or partnership change.**

- (1) <sup>M12</sup>Where a person on whom, by reason of the receipt of a capital sum, a charge falls or would otherwise fall to be made under section 524 dies or, being a body corporate, commences to be wound up—
  - (a) no sums shall be charged under that section on that person for any chargeable period subsequent to that in which the death takes place or the winding up commences; and
  - (b) the amount falling to be charged for the chargeable period in which the death occurs or the winding up commences shall, subject to subsection (2) below, be increased by the total amounts which, but for the death or winding up, would have fallen to be charged for subsequent chargeable periods.
- (2) In the case of a death the personal representatives may, by notice served on the inspector not later than 30 days after notice has been served on them of the charge falling to be made by virtue of subsection (1) above, require that the income tax payable out of the estate of the deceased by reason of the increase provided for by that subsection shall be reduced so as not to exceed the total amount of income tax which would have been payable by him or out of his estate by reason of the operation of section 524 in relation to that sum, if, instead of the amount falling to be charged for the year in which the death occurs being increased by the whole amount of the sums charged for subsequent years, the several amounts falling to be charged for the years beginning with that in which the capital sum was received and ending with that in which the death occurred had each been increased by that whole amount divided by the number of those years.
- (3) <sup>M13</sup>Where, under [<sup>F5</sup>section 152 of the 1990 Act] (succession to trades) as applied by section 532, a charge under section 524 falls to be made on two or more persons jointly as being the persons for the time being carrying on a trade, and that trade is discontinued, subsection (1) above shall have effect in relation to the discontinuance as it has effect where a body corporate commences to be wound up.
- (4) Where subsection (3) above applies—
  - (a) the additional sum which, under subsection (1) above, falls to be charged for the chargeable period in which the discontinuance occurs shall be apportioned among the members of the partnership immediately before the discontinuance, according to their respective interests in the partnership profits before the discontinuance, and each partner (or, if he is dead, his personal representatives) shall be charged separately for his proportion; and
  - (b) each partner (or, if he is dead, his personal representatives) shall have the same right to require a reduction of the total income tax payable by him or out of his estate by reason of the increase as would have been exercisable by the personal representatives under subsection (2) above in the case of a death, and that subsection shall have effect accordingly, but as if references to the amount of income tax which would have been payable by the deceased or out



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of his estate in the event therein mentioned were a reference to the amount of income tax which would in that event have fallen to be paid or borne by the partner in question or out of his estate.

(5) <sup>F6</sup> .....

#### Textual Amendments

- F5** Words in s. 525(3) substituted (with effect in accordance with s. 164(1)(2) and with application in accordance with s. 164(1)(2) of the amending Act) by [Capital Allowances Act 1990 \(c. 1\), Sch. 1 para. 8\(26\)](#), s. 164(3)
- F6** [S. 525\(5\)](#) repealed (with effect in accordance with Sch. 14 Pt. 8 Note 4 of the repealing Act) by Finance Act 1988 c. 39, [Sch. 14 Pt. 8](#)

#### Marginal Citations

- M12** Source - 1970 s.381(1)
- M13** Source - 1970 s.381(2)

### 526 Relief for expenses.

<sup>M14</sup>(1) Where—

- (a) a person, otherwise than for the purposes of a trade carried on by him, pays any fees or incurs any expenses in connection with the grant or maintenance of a patent, or the obtaining of an extension of a term of a patent, or a rejected or abandoned application for a patent, and
- (b) those fees or expenses would, if they had been paid or incurred for the purposes of a trade, have been allowable as a deduction in estimating the profits or gains of that trade,

there shall be made to him, for the chargeable period in which those expenses were paid or incurred, an allowance equal to the amount thereof.

- (2) Where a patent is granted in respect of any invention, an allowance equal to so much of the net amount of any expenses incurred by an individual who, whether alone or in conjunction with any other person, actually devised the invention as is properly ascribable to the devising thereof (not being expenses in respect of which, or of assets representing which, an allowance falls to be made under any other provision of the Income Tax Acts) shall be made to that individual for the year of assessment in which the expenses were incurred.

#### Marginal Citations

- M14** Source - 1970 s.382

### 527 Spreading of royalties over several years.

- <sup>M15</sup>(1) Where a royalty or other sum to which section 348 or 349(1) applies is paid in respect of the user of a patent, and that user extended over a period of six complete years or more, the person receiving the payment may on the making of a claim require that the income tax or corporation tax payable by him by reason of the receipt of that sum shall be reduced so as not to exceed the total amount of income tax or corporation tax which would have been payable by him if that royalty or sum had been paid in six

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equal instalments at yearly intervals, the last of which was paid on the date on which the payment was in fact made.

(2) Subsection (1) above shall apply in relation to a royalty or other sum where the period of the user is two complete years or more but less than six complete years as it applies to the royalties and sums mentioned in that subsection, but with the substitution for the reference to six equal instalments of a reference to so many equal instalments as there are complete years comprised in that period.

(3) <sup>F7</sup> .....

(4) Nothing in this section shall apply to any sum to which section 349(1) applies by virtue of section 524(3)(b).

#### Textual Amendments

**F7** [S. 527\(3\)](#) repealed (with effect in accordance with Sch. 14 Pt. 8 Note 5 of the repealing Act) by [Finance Act 1988 \(c. 39\)](#), [Sch. 14 Pt. 8](#)

#### Marginal Citations

**M15** Source - 1970 s.384

## 528 Manner of making allowances and charges.

<sup>M16</sup>(1) An allowance or charge under section 520, 522 or 523 shall be made to or on a person in taxing his trade if—

- (a) he is carrying on a trade the profits or gains of which are, or, if there were any, would be, chargeable to tax under Case I of Schedule D for the chargeable period for which the allowance or charge is made, and
- (b) at any time in that chargeable period or its basis period the patent rights in question, or other rights out of which they were granted, were or were to be used for the purposes of that trade.

(2) Where an allowance falls to be made to a person for any year of assessment under section 520, 522, 523 or 526 as those provisions apply for the purposes of income tax, and the allowance is not to be made in taxing a trade—

- (a) the amount of the allowance shall be deducted from or set off against his income from patents for that year of assessment, and
- (b) if the amount to be allowed is greater than the amount of his income from patents for that year of assessment, the balance shall be deducted from or set off against his income from patents for the next year of assessment, and so on for subsequent years of assessment, and tax shall be discharged or repaid accordingly.

Relief shall be given under this subsection on the making of a claim.

(3) Where an allowance falls to be made to a company for any accounting period under section 520, 522, 523 or 526 as those provisions apply for the purposes of corporation tax, and is not to be made in taxing a trade—

- (a) the allowance shall, as far as may be, be given effect by deducting the amount of the allowance from the company's income from patents of the accounting period;

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- (b) where the allowance cannot be given full effect under paragraph (a) above in that period by reason of a want or deficiency of income from patents, then (so long as the company remains within the charge to corporation tax) the amount unallowed shall be carried forward to the succeeding accounting period, and shall be treated for the purposes of that paragraph, and of any further application of this paragraph, as the amount of a corresponding allowance for that period.
- (4) Effect shall be given to any balancing charge under section 520 or 523 which is not to be made in taxing a trade—
- (a) if a charge to income tax, by making the charge under Case VI of Schedule D;
  - (b) if a charge to corporation tax, by treating the amount on which the charge is to be made as income from patents.

**Marginal Citations**

**M16** Source-1970 s.385; 1985 s.64(2)(d)-(f)

**529 Patent income to be earned income in certain cases.**

- <sup>M17</sup>(1) Subject to subsection (2) below, any income from patent rights arising to an individual where the patent was granted for an invention actually devised by him, whether alone or jointly with any other person, shall be treated for all purposes as earned income.
- (2) Where any part of the rights in question or of any rights out of which they were granted has at any time belonged to any other person, so much only of that income shall be treated as earned income as is not properly attributable to the rights which have belonged to that other person.

**Marginal Citations**

**M17** Source-1970 s.383

**530 Disposal of know-how.**

- (1) <sup>M18</sup>Subject to section 531, where after 31st March 1986 a person—
- (a) acquires know-how for use in a trade carried on by him, or
  - (b) acquires know-how, and thereafter sets up and commences a trade in which it is used,
- allowances and charges shall, in accordance with subsections (2) and (3) below, be made to and on him in respect of his expenditure on the acquisition, so far as not otherwise deducted for the purposes of corporation tax or income tax.
- (2) <sup>M19</sup>For any chargeable period for which a person within subsection (1) above has qualifying expenditure which exceeds any disposal value to be brought into account by him in accordance with subsection (5) below, there shall be made to him—
- (a) unless the period is the chargeable period related to the permanent discontinuance of the trade, a writing-down allowance of an amount equal to—
    - (i) 25 per cent. of the excess, or

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- (ii) a proportionately reduced percentage of the excess if the period is part only of a year, or if the period is a year of assessment but the trade had been carried on for part only of the year; and
  - (b) if the period is the chargeable period related to the permanent discontinuance of the trade, a balancing allowance equal to the whole of the excess.
- (3) For any chargeable period for which a person's qualifying expenditure is less than the disposal value which he is to bring into account, there shall be made on him a balancing charge and the amount on which the charge is made shall be an amount equal to the difference.
- (4) For the purposes of subsections (2) and (3) above a person's qualifying expenditure for a chargeable period is the aggregate of the following amounts—
- (a) any capital expenditure incurred by him on the acquisition of know-how, being expenditure incurred during the chargeable period or its basis period or at any previous time, other than expenditure which, or any part of which, has formed part of his qualifying expenditure for any previous chargeable period; and
  - (b) if, for the chargeable period immediately preceding the chargeable period in question, there was an excess of qualifying expenditure over disposal value, the balance of that excess after deducting any writing-down allowance under subsection (2)(a) above made by reference to that excess.
- (5) If, in any chargeable period or its basis period, a person sells any know-how on the acquisition of which for use in a trade carried on by him he has incurred expenditure falling within subsection (1) above, then, for the purposes of subsections (2) to (4) above, he is required to bring into account for that chargeable period disposal value equal to the net proceeds to him of that sale.
- (6) <sup>M20</sup>Subject to section 531, where after 19th March 1968 and before 1st April 1986 a person—
- (a) acquired know-how for use in a trade carried on by him, or
  - (b) acquired know-how, and thereafter sets up and commences a trade in which it is used,
- writing-down allowances in respect of his expenditure on the acquisition, so far as not otherwise deducted for the purposes of corporation tax or income tax, shall be made in taxing the trade during a writing-down period of six years beginning with the chargeable period related to the expenditure; and if during that period he ceases to carry on the trade, an allowance equal to the amount of that expenditure then unallowed shall be made in taxing the trade for the chargeable period related to the discontinuance.
- (7) <sup>M21</sup>For the purposes of subsections (1) and (6) above, a person incurring expenditure on know-how before the setting up and commencement of the trade in which it is used shall be treated as incurring it on that setting up and commencement.
- (8) [<sup>F8M22</sup>Subsections (2) and (3) of section 146 of the 1990 Act] (effect of providing writing-down allowances during writing-down period of a specified length) shall apply to subsection (6) above as [<sup>F8</sup>they apply] to the provisions specified in subsection (1) of that section.

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#### Textual Amendments

- F8** Words in s. 530(8) substituted (with effect in accordance with s. 164(1)(2) of the amending Act) by Capital Allowances Act 1990 (c. 1), Sch. 1 para. 8(27) (with s. 164(3))

#### Marginal Citations

- M18** Source-1970 s.386(1); 1985 s.65(1)  
**M19** Source-1985 Sch.18 Part II 5-7  
**M20** Source-1970 s.386(1); 1985 s.65(1)  
**M21** Source-1970 s.386(1)  
**M22** Source-1970 s.386(9); 1985 s.65(2)

### 531 Provisions supplementary to section 530.

- (1) <sup>M23</sup>Subject to subsection (7) below, where, after 19th March 1968, a person disposes of know-how which has been used in a trade carried on by him, and continues to carry on the trade after the disposal, the amount or value of any consideration received by him for the disposal shall—
- if it is received in respect of the disposal of know-how after 31st March 1986, so far as it is not brought into account as disposal value under section 530(5), nor is chargeable to tax as a revenue or income receipt;
  - in any other case, so far as it is not chargeable to tax as a revenue or income receipt,
- be treated for all purposes as a trading receipt.
- (2) <sup>M24</sup>Subject to subsection (3) below, where, after 19th March 1968, a person disposes of a trade or part of a trade and, together with that trade or part, of know-how used in it, any consideration received by him for the know-how shall be dealt with in relation both to him and to the person acquiring the know-how, if that person provided the consideration, and for the purposes of corporation tax, income tax and capital gains tax, as a payment for goodwill.
- (3) Subsection (2) above shall not apply—
- to either of the persons concerned if they so elect by notice given jointly to the inspector within two years of the disposal, or
  - to the person acquiring the know-how if the trade in question was, before the acquisition, carried on wholly outside the United Kingdom;
- and where know-how is disposed of with a trade or part of a trade, but that subsection is excluded in relation to the person acquiring it, section 530(1) and (6) shall apply as if that person had acquired it for use in a trade previously carried on by him.
- (4) <sup>M25</sup>Subject to subsections (5) and (7) below, any consideration received by a person for the disposal of know-how shall—
- if it is received in respect of the disposal of know-how after 31st March 1986 and is not brought into account as disposal value under section 530(5), or
  - if it is neither chargeable to tax under subsection (1) above or otherwise as a revenue or income receipt, nor dealt with in relation to him as a payment for goodwill as mentioned in subsection (2) above, (whether the disposal took place before or after 31st March 1986),
- be treated as a profit or gain chargeable to tax under Case VI of Schedule D.

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- (5) <sup>M26</sup>Where the person concerned has incurred expenditure wholly and exclusively in the acquisition or disposal of the know-how, the amount which would apart from this subsection be treated as a profit or gain chargeable to tax under Case VI of Schedule D shall be reduced by the amount of that expenditure; but a deduction shall not be twice made in respect of the same expenditure, whether under this subsection or otherwise.
- (6) Where subsection (4) above has effect in the case of an individual who devised the know-how in question, whether alone or jointly with any other person, the amount in respect of which he is chargeable to tax by virtue of that subsection shall be treated for all purposes as earned income.
- (7) Subsections (1) and (3) to (6) above and section 530(1) and (6) shall not apply on any sale of know-how where the buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control, or both the seller and the buyer are bodies of persons and some other person has control over both of them; and subsection (2) above shall apply in any such case with the omission of the words “Subject to subsection (3) below”.

In this subsection references to a body of persons include references to a partnership.

- (8) <sup>M27</sup>Where in connection with any disposal of know-how a person gives an undertaking (whether absolute or qualified, and whether legally valid or not) the tenor or effect of which is to restrict his or another’s activities in any way, any consideration received in respect of the giving of the undertaking or its total or partial fulfilment shall be treated for the purposes of this section as consideration received for the disposal of the know-how.

**Modifications etc. (not altering text)**

**C3** S. 531(2)(7) excluded (8.11.1995) by [Atomic Energy Authority Act 1995 \(c. 37\)](#), [Sch. 3 para. 19\(2\)](#)

**Marginal Citations**

**M23** Source-1970 s.386(2); 1985 s.65(3)(a)  
**M24** Source-1970 s.386(3)  
**M25** Source-1970 s.386(4); 1985 s.65(3)(b)  
**M26** Source-1970 s.386(4)-(6)  
**M27** Source-1970 s.386(8); 1985 Sch.18 Part II 8

**532 Application of the 1968 Act.**

- <sup>M28</sup>(1) Subject to subsection (2) below, the Tax Acts shall have effect as if sections 520 to 531, this section and section 533 were contained in [<sup>F9</sup>the 1990 Act], and any reference in the Tax Acts to any capital allowance to be given “by way of discharge or repayment of tax and to be available or available primarily against a specified class of income” shall include a reference to any capital allowance given in accordance with subsection (2) or (3) of section 528.
- (2) [<sup>F10</sup>Sections 157 and 158 of the 1990 Act] (special provisions as to controlled sales) shall not (by virtue of subsection (1) above) apply with respect to expenditure incurred after 31st March 1986 on the purchase of patent rights.
- (3) Subject to subsection (2) above, in [<sup>F11</sup>the 1990 Act], as applied by virtue of subsection (1) above to patent rights, the sum referred to in [<sup>F11</sup>section 158(1)(a)

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of] that Act (special provisions as to controlled sales) is the amount of any capital expenditure on the acquisition of the patent rights remaining unallowed, computed in accordance with the provisions of section 523.

- (4) The reference in [F12section 159(1) of the 1990 Act] (certain payments not to be treated as capital expenditure) to any expenditure or sum in the case of which a deduction of income tax falls or may fall to be made under sections 348 to 350 does not include a sum in the case of which such a deduction falls or may fall to be so made by virtue of section 524(3)(b).
- (5) In [F13the 1990 Act] as so applied to know-how—
- (a) references in [F13that Act] to property and its purchase or sale include references to know-how and its acquisition or disposal;
  - (b) [F14Sections 157 and 158 of that Act] (special provisions as to controlled sales), shall be omitted.

#### Textual Amendments

- F9** Words in s. 532(1) substituted (with effect in accordance with s. 164(1)(2) and with application in accordance with s. 164(1)(2) of the amending Act) by [Capital Allowances Act 1990 \(c. 1\)](#), [Sch. 1 para. 8\(28\)\(a\)](#), s. 164(3)
- F10** Words in s. 532(2) substituted (with effect in accordance with s. 164(1)(2) and with application in accordance with s. 164(1)(2) of the amending Act) by [Capital Allowances Act 1990 \(c. 1\)](#), [Sch. 1 para. 8\(28\)\(b\)](#), s. 164(3)
- F11** Words in s. 532(3) substituted (with effect in accordance with s. 164(1)(2) and with application in accordance with s. 164(1)(2) of the amending Act) by [Capital Allowances Act 1990 \(c. 1\)](#), [Sch. 1 para. 8\(28\)\(c\)](#), s. 164(3)
- F12** Words in s. 532(4) substituted (with effect in accordance with s. 164(1)(2) and with application in accordance with s. 164(1)(2) of the amending Act) by [Capital Allowances Act 1990 \(c. 1\)](#), [Sch. 1 para. 8\(28\)\(d\)](#), s. 164(3)
- F13** Words in s. 532(5) substituted (with effect in accordance with s. 164(1)(2) and with application in accordance with s. 164(1)(2) of the amending Act) by [Capital Allowances Act 1990 \(c. 1\)](#), [Sch. 1 para. 8\(28\)\(e\)](#), s. 164(3)
- F14** Words in s. 532(5)(b) substituted (with effect in accordance with s. 164(1)(2) and with application in accordance with s. 164(1)(2) of the amending Act) by [Capital Allowances Act 1990 \(c. 1\)](#), [Sch. 1 para. 8\(28\)\(e\)](#), s. 164(3)

#### Marginal Citations

- M28** Source-1970 s.387; 1985 s.64(2)(h)

### 533 Interpretation of sections 520 to 532.

- (1) <sup>M29</sup>In sections 520 to 532—
- “income from patents” means—
- (a) any royalty or other sum paid in respect of the user of a patent; and
  - (b) any amount on which tax is payable for any chargeable period by virtue of section 520(6), 523(3), 524 or 525;
- “the commencement of the patent” means, in relation to a patent, the date as from which the patent rights become effective;
- “patent rights” means the right to do or authorise the doing of anything which would, but for that right, be an infringement of a patent;



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“United Kingdom patent” means a patent granted under the laws of the United Kingdom.

- (2) Subject to subsection (3) below, in sections 520 to 532 any reference to the sale of part of patent rights includes a reference to the grant of a licence in respect of the patent in question, and any reference to the purchase of patent rights includes a reference to the acquisition of a licence in respect of a patent.
- (3) If a licence granted by a person entitled to any patent rights is a licence to exercise those rights to the exclusion of the grantor and all other persons for the whole of the remainder of the term for which the right subsists, the grantor shall be treated for the purposes of sections 520 to 532 as thereby selling the whole of the rights.
- (4) Where, under sections 46 to 49 of the Patents Act 1949 <sup>F15</sup>, sections 55 to 59 of the Patents Act 1977] or any corresponding provisions of the law of any country outside the United Kingdom, an invention which is the subject of a patent is made, used, or exercised or vended by or for the service of the Crown or the government of the country concerned, sections 520 to 532 shall have effect 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 thereof shall be treated accordingly.
- (5) Expenditure incurred in obtaining a right to acquire in the future patent rights as respects any invention in respect of which the patent has not yet been granted shall be deemed for all the purposes of sections 520 to 532 to be expenditure on the purchase of patent rights, and if the patent rights are subsequently acquired the expenditure shall be deemed for those purposes to have been expenditure on the purchase of those rights.
- (6) Any sum received from a person which by virtue of subsection (5) above is deemed to be expenditure incurred by him on the purchase of patent rights shall be deemed to be proceeds of a sale of patent rights.
- (7) <sup>M30</sup>In sections 530 and 531 “know-how” means any industrial information and techniques likely to assist in the manufacture or processing of goods or materials, or in the working of a mine, oil-well or other source of mineral deposits (including the searching for, discovery or testing of deposits or the winning of access thereto), or in the carrying out of any agricultural, forestry or fishing operations.

#### **Textual Amendments**

**F15** Words in s. 533(4) inserted (with retrospective effect) by Finance Act 1988, Sch. 13 Pt. 1 paras. 5, 1

#### **Marginal Citations**

**M29** Source-1970 s.388; 1985 s.64(2)(g)

**M30** Source-1970 s.386(8); 1985 Sch.18 Part II 8



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