



# Corporation Tax Act 2009

## 2009 CHAPTER 4

### PART 9

#### INTELLECTUAL PROPERTY: KNOW-HOW AND PATENTS

### CHAPTER 1

#### INTRODUCTION

#### **907 Overview of Part**

- (1) This Part applies the charge to corporation tax on income to—
  - (a) profits from disposals of know-how (see Chapter 2), and
  - (b) profits from sales of patent rights (see Chapter 3).
- (2) This Part also provides for relief from corporation tax on patent income (see Chapter 4).
- (3) Chapter 5 contains supplementary provision relevant to Chapters 2 to 4.
- (4) This Part needs to be read in the light of Part 8 (intangible fixed assets).
- (5) See in particular the following provisions of Part 8, which are relevant to the application of that Part—
  - (a) section 713 (meaning of “intangible fixed asset”),
  - (b) Chapter 16 (which limits the application of Part 8 to assets which are not pre-FA 2002 assets within the meaning of section 881), and
  - (c) section 906 (which contains a rule about the priority of Part 8 for corporation tax purposes).

*Status: Point in time view as at 22/04/2009.*

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## CHAPTER 2

### DISPOSALS OF KNOW-HOW

#### 908 Charge to tax on profits from disposals of know-how

- (1) The charge to corporation tax on income applies to profits arising where consideration is received by a company—
  - (a) for the disposal of know-how, or
  - (b) for giving, or wholly or partly fulfilling, an undertaking which—
    - (i) is given in connection with a disposal of know-how, and
    - (ii) restricts or is designed to restrict any person's activities in any way.
- (2) For the purposes of subsection (1)(b), it does not matter whether or not the undertaking is legally enforceable.
- (3) Subsection (1) is subject to the exceptions in section 909.
- (4) In this Chapter “know-how” means any industrial information or techniques likely to assist in—
  - (a) manufacturing or processing goods or materials,
  - (b) working a source of mineral deposits (including searching for, discovering or testing mineral deposits or obtaining access to them), or
  - (c) carrying out any agricultural, forestry or fishing operations.
- (5) In subsection (4)—
  - (a) “mineral deposits” includes any natural deposits capable of being lifted or extracted from the earth and for this purpose geothermal energy is treated as a natural deposit, and
  - (b) “source of mineral deposits” includes a mine, an oil well and a source of geothermal energy.

#### 909 Exceptions to charge under section 908

- (1) Section 908 does not apply in the following cases.
- (2) Case A is if the consideration is brought into account under section 462 of CAA 2001 (disposal values).
- (3) Case B is if the consideration is dealt with in relation to the company receiving it as a trading receipt under section 177(2) (disposal of know-how if trade continues to be carried on).
- (4) Case C is if the consideration is dealt with in relation to the person receiving it as a capital receipt for goodwill under section 178(2) (disposal of know-how as part of disposal of all or part of a trade).
- (5) Case D is if the disposal of the know-how is by way of a sale and—
  - (a) the buyer is a body of persons over which the seller has control,
  - (b) the seller is a body of persons over which the buyer has control, or
  - (c) the buyer and the seller are both bodies of persons and another person has control over both of them.

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(6) In subsection (5) “body of persons” includes a firm.

## **910 Profits charged under section 908**

- (1) The profits charged under section 908 are—
  - (a) the amount of the consideration, less
  - (b) any expenditure incurred by the company wholly and exclusively in the acquisition or disposal of the know-how.
- (2) Such expenditure may not be taken into account more than once, whether under this section or otherwise.
- (3) This section needs to be read with section 926 (contributions to expenditure).

## **CHAPTER 3**

### **SALES OF PATENT RIGHTS**

#### *Introductory*

## **911 Overview of Chapter**

- (1) This Chapter—
  - (a) applies the charge to corporation tax on income to profits from sales of patent rights (see sections 912 and 913),
  - (b) contains provision about how the amount chargeable is taxed (see sections 914 to 918), and
  - (c) contains related provision, including provision relevant to the application of the Chapter (see sections 919 to 923).
- (2) Section 848 of ITA 2007, under which a sum representing income tax deducted under section 910 of that Act (deduction from payment to non-UK residents in respect of sale of patent rights) is treated as income tax paid by the recipient, is also relevant to the tax treatment of payments made to non-UK resident companies in respect of sales of patent rights.

#### *Charge to tax*

## **912 Charge to tax on profits from sales of patent rights**

- (1) The charge to corporation tax on income applies to profits from sales by a company of the whole or part of any patent rights.
- (2) Subsection (1) applies in the case of a non-UK resident company if the patent is granted under the laws of the United Kingdom.
- (3) In this Chapter “patent rights” means the right to do or authorise the doing of anything which, but for the right, would be an infringement of a patent.

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### **913 Profits charged under section 912**

- (1) A company's profits from the sale of the whole or part of patent rights are—
  - (a) any capital sum comprised in the proceeds of sale, less
  - (b) the deductible costs.
- (2) The deductible costs are—
  - (a) the capital cost (if any) of the rights sold, and
  - (b) any incidental expenses incurred by the company in connection with the sale.
- (3) If—
  - (a) the company acquired the rights sold, or the rights out of which they were granted, by purchase,
  - (b) the company has previously sold part of the purchased rights, and
  - (c) the proceeds of that sale, after deducting any incidental expenses, consisted wholly or partly of a capital sum,
 the capital cost is reduced by that sum.
- (4) References in this Chapter to the capital cost of patent rights are to any capital sum included in any price paid by the company to purchase—
  - (a) the rights, or
  - (b) the rights out of which they were granted.
- (5) This section needs to be read with sections 924 (relief for expenses: patent income) and 926 (contributions to expenditure).

#### *Spreading of charge to tax*

### **914 UK resident companies: proceeds of sale not received in instalments**

- (1) This section applies if a company liable for tax under section 912—
  - (a) is UK resident, and
  - (b) does not receive the proceeds of sale in instalments.
- (2) The appropriate fraction of the amount chargeable is taxed—
  - (a) in the accounting period in which the company receives the proceeds of sale (“the period of receipt”), and
  - (b) in successive accounting periods, until the expiry of the 6-year period beginning at the start of the period of receipt.
- (3) The appropriate fraction is the same fraction of the amount chargeable as the accounting period in question is of 6 years (or, in the last period, such smaller fraction of that amount as has not already been taxed).
- (4) The company may elect that the whole of the amount chargeable is to be taxed instead in the period of receipt.
- (5) An election under subsection (4) must be made within the two-year period beginning at the end of the period of receipt.

### **915 UK resident companies: proceeds of sale received in instalments**

- (1) This section applies if a company liable for tax under section 912—

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- (a) is UK resident, and
  - (b) receives the proceeds of sale in instalments.
- (2) The appropriate fraction of the amount chargeable in respect of each instalment is taxed—
- (a) in the accounting period in which the company receives the instalment (“the period of receipt”), and
  - (b) in successive accounting periods, until the expiry of the 6-year period beginning at the start of the period of receipt.
- (3) The appropriate fraction of the amount chargeable in respect of an instalment is the same fraction of that amount as the accounting period in question is of 6 years (or, in the last period, such smaller fraction of the amount as has not already been taxed).
- (4) The company may elect that the whole of any instalment is to be taxed instead in the period of receipt.
- (5) An election under subsection (4) must be made within the two-year period beginning at the end of the period of receipt.

#### **916 Non-UK resident companies: proceeds of sale not received in instalments**

- (1) This section applies if a company liable for tax under section 912—
- (a) is not UK resident, and
  - (b) does not receive the proceeds of sale in instalments.
- (2) The whole of the amount chargeable is taxed in the accounting period in which the company receives the proceeds (“the period of receipt”).
- (3) The company may elect instead that the amount chargeable—
- (a) is to be treated as arising rateably in the accounting periods ending 6 years from the start of the period of receipt, and
  - (b) is taxed accordingly.
- (4) An election under subsection (3) must be made within the two-year period beginning at the end of the period of receipt.
- (5) The election has effect in relation to accounting periods of the company during which the company is within the charge to corporation tax in respect of any proceeds of the sale not consisting of a capital sum.
- (6) Such repayments and assessments are to be made for each of the accounting periods affected as are necessary to give effect to the election.
- (7) Subsection (6) is subject to the qualifications in section 920 (adjustments where tax has been deducted).

#### **917 Non-UK resident companies: proceeds of sale received in instalments**

- (1) This section applies if a company liable for tax under section 912—
- (a) is not UK resident, and
  - (b) receives the proceeds of sale in instalments.

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- (2) The amount chargeable in respect of each instalment is taxed in the accounting period in which the company receives the instalment (“the period of receipt”).
- (3) The company may, for any instalment, elect instead that the amount chargeable in respect of the instalment—
  - (a) is to be treated as arising rateably in the accounting periods ending 6 years from the start of the period of receipt, and
  - (b) is taxed accordingly.
- (4) An election under subsection (3) must be made within the two-year period beginning at the end of the period of receipt.
- (5) The election has effect in relation to accounting periods of the company during which the company is within the charge to corporation tax in respect of any proceeds of the sale not consisting of a capital sum.
- (6) Such repayments and assessments are to be made for each of the accounting periods affected as are necessary to give effect to the election.
- (7) Subsection (6) is subject to the qualifications in section 920 (adjustments where tax has been deducted).

## **918 Winding up of a body corporate**

- (1) If a body corporate which is liable for tax under section 912 commences to be wound up, any amounts falling within subsection (2) are taxed in the accounting period in which the winding up commences.
- (2) The amounts are—
  - (a) any amounts which would have been chargeable in later accounting periods under section 914(2) or 915(2) (UK resident companies: spreading of charge to tax), and
  - (b) any amounts which would have been chargeable in later accounting periods under section 916(3) or 917(3) (non-UK resident companies: election to spread charge to tax).

### *Miscellaneous*

## **919 Deduction of tax from payments to non-UK resident companies**

- (1) This section applies if a non-UK resident company is liable for tax under section 912 on profits from the sale of the whole or part of any patent rights.
- (2) The rules in section 913 allowing the capital cost (if any) of the rights sold to be deducted in calculating the profits from the sale do not affect the amount of income tax which is to be deducted under section 910 of ITA 2007.
- (3) No election made by the company under section 916(3) or 917(3) (election to spread charge to tax) in relation to the proceeds of sale or any instalment affects the amount of income tax which is to be deducted under section 910 of ITA 2007.

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## **920 Adjustments where tax has been deducted**

Where any sum has been deducted from a payment under section 910 of ITA 2007, any adjustment necessary—

- (a) because of section 919(2), or
  - (b) because of an election under section 916(3) or 917(3),
- must be made by way of repayment of tax.

## **921 Licences connected with patents**

- (1) The acquisition of a licence in respect of a patent is treated for the purposes of this Chapter as a purchase of patent rights.
- (2) The grant of a licence in respect of a patent is treated for the purposes of this Chapter as a sale of part of patent rights.
- (3) But the grant by a person entitled to patent rights of an exclusive licence is treated for the purposes of this Chapter as a sale of the whole of those rights.
- (4) In subsection (3) “exclusive licence” means a licence to exercise the rights to the exclusion of the grantor and all other persons for the period remaining until the rights come to an end.

## **922 Rights to acquire future patent rights**

- (1) If a sum is paid to obtain a right to acquire future patent rights, then for the purposes of this Chapter—
  - (a) the payer is treated as purchasing patent rights for that sum, and
  - (b) the recipient is treated as selling patent rights for that sum.
- (2) If a person—
  - (a) pays a sum to obtain a right to acquire future patent rights, and
  - (b) subsequently acquires those rights,the expenditure is to be treated for the purposes of this Chapter as having been expenditure on the purchase of those rights.
- (3) In this section “a right to acquire future patent rights” means a right to acquire in the future patent rights relating to an invention in respect of which the patent has not yet been granted.

## **923 Sums paid for Crown use etc treated as paid under licence**

- (1) This section applies if an invention which is the subject of a patent is used by or for the service of—
  - (a) the Crown under sections 55 to 59 of the Patents Act 1977 (c. 37), or
  - (b) the government of a country outside the United Kingdom under corresponding provisions of the law of that country.
- (2) The use is treated for the purposes of this Chapter as having taken place under licence.
- (3) Sums paid in respect of the use are treated for the purposes of this Chapter as having been paid under a licence.

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## CHAPTER 4

### RELIEF FROM CORPORATION TAX ON PATENT INCOME

#### **924 Relief for expenses: patent income**

- (1) Relief may be claimed under this section for patent application and maintenance expenses.
- (2) In this section “patent application and maintenance expenses” means expenses incurred by a company in connection with—
  - (a) the grant or maintenance of a patent,
  - (b) the extension of the term of a patent, or
  - (c) a rejected or abandoned application for a patent,
 but not incurred for the purposes of any trade carried on by the company.
- (3) Relief may not be claimed under this section for patent application and maintenance expenses unless they are expenses which would, if incurred for the purposes of a trade, have been allowable as a deduction in calculating the profits of the trade.
- (4) This section needs to be read with section 926 (contributions to expenditure).

#### **925 How relief is given under section 924**

- (1) This section sets out how relief for expenses is given where a company makes a claim under section 924.
- (2) The amount of the expenses must be deducted from or set off against the company's income from patents for the accounting period in which the expenses were incurred.
- (3) If the amount to be allowed is greater than the amount of the company's income from patents for that accounting period, then (so long as the company remains within the charge to corporation tax) the excess must be deducted from or set off against the company's income from patents for the next accounting period, and so on for subsequent accounting periods, without the need for a further claim.
- (4) In this section “income from patents” means—
  - (a) royalties or other sums paid in respect of the use of a patent,
  - (b) amounts on which tax is payable under section 912, 918 or 1272, and
  - (c) amounts on which tax is payable under—
    - (i) section 472(5) of CAA 2001 (patent allowances: balancing charges),  
or
    - (ii) paragraph 100 of Schedule 3 to that Act (balancing charges in respect of pre-1st April 1986 expenditure on purchase of patent rights),
 but does not include any amount chargeable to income tax.
- (5) In this section references to a company's income from patents are to the income after any allowance has been deducted from or set off against it under section 480 of CAA 2001 (certain allowances against income from patents).



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## CHAPTER 5

### SUPPLEMENTARY

#### 926 Contributions to expenditure

- (1) For the purposes of sections 910, 913 and 924, the general rule is that a company is to be regarded as not having incurred expenditure so far as it has been, or is to be, met (directly or indirectly) by—
  - (a) a public body, or
  - (b) a person other than the company.
- (2) In this Chapter “public body” means the Crown or any government, local authority or other public authority (whether in the United Kingdom or elsewhere).
- (3) The general rule does not apply to the expenses mentioned in section 913(2)(b) (incidental expenses incurred by a seller of patent rights).
- (4) The general rule is subject to the exception in section 927.

#### 927 Contributions not made by public bodies nor eligible for tax relief

- (1) A company is to be regarded as having incurred expenditure (despite section 926(1)) so far as the requirements in subsections (2) and (3) are met in relation to the expenditure.
- (2) The first requirement is that the person meeting the company's expenditure (“X”) is not a public body.
- (3) The second requirement is that—
  - (a) no allowance can be made under Chapter 2 of Part 11 of CAA 2001 (contribution allowances) in respect of X's expenditure, and
  - (b) the expenditure is not allowed to be deducted in calculating the profits of a trade, profession or vocation carried on by X.
- (4) When determining for the purposes of subsection (3)(a) whether such an allowance can be made, assume that X is within the charge to tax.

#### 928 Exchanges

- (1) In this Part references to the sale of property include the exchange of property.
- (2) In this section—
  - references to property include know-how, and
  - references to the sale of property include the disposal of know-how.
- (3) For the purposes of subsection (1), any provision of this Part referring to a sale has effect with the necessary modifications, including, in particular, those in subsections (4) and (5).
- (4) References to the proceeds of sale and to the price include the consideration for the exchange.
- (5) References to capital sums included in the proceeds of sale include references to so much of the consideration for the exchange as would have been a capital sum if it had been a money payment.

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## **929 Apportionment where property sold together**

- (1) Any reference in this Part to the sale of property includes the sale of that property together with other property.
- (2) In this section—
  - references to property include know-how, and
  - references to the sale of property include the disposal of know-how.
- (3) For the purposes of subsection (1), all property sold as a result of one bargain is to be treated as sold together even though—
  - (a) separate prices are, or purport to be, agreed for separate items of that property, or
  - (b) there are, or purport to be, separate sales of separate items of that property.
- (4) If an item of property is sold together with other property, then, for the purposes of the charges under sections 908 and 912—
  - (a) the net proceeds of the sale of that item are treated as being so much of the net proceeds of the sale of all the property as, on a just and reasonable apportionment, is attributable to that item, and
  - (b) the expenditure incurred on the provision or purchase of that item is treated as being so much of the consideration given for all the property as, on a just and reasonable apportionment, is attributable to that item.

## **930 Questions about apportionments affecting two or more persons**

- (1) Any question about the way in which a sum is to be apportioned under section 929 must be determined in accordance with section 563(2) to (6) of CAA 2001 (procedure for determining certain questions affecting two or more persons) if it materially affects two or more taxpayers.
- (2) For the purposes of subsection (1) a question materially affects two or more taxpayers if at the time when the question falls to be determined it appears that the determination is material to the liability to tax (for whatever period) of two or more persons.

## **931 Meaning of “capital sums” etc**

Section 4 of CAA 2001 (meaning of “capital sums” etc) applies in relation to this Part as it applies in relation to that Act.

**Status:**

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