



Income and Corporation Taxes Act 1970

1970 CHAPTER 10

PART XIV

MISCELLANEOUS SPECIAL PROVISIONS

CHAPTER I

PATENTS AND KNOW-HOW

Patents

378 Writing-down allowances for capital expenditure on purchase of patent rights

- (1) Where a person incurs capital expenditure 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 as hereinafter defined:

Provided that no writing-down allowance shall be made to a person in respect of any expenditure unless—

- (a) the allowance falls in accordance with section 385(1) of this Act 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.
- (2) The writing-down period shall be the seventeen years beginning with the chargeable period related to the expenditure:

Provided that—

- (a) where the rights are purchased for a specified period, the preceding provisions of this subsection shall have effect with the substitution for the reference to seventeen years of a reference to seventeen years or the number of years comprised within that period, whichever is the less ; and

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- (b) where the rights purchased begin one complete year or more after the commencement of the patent and paragraph (a) of this proviso does not apply, the said provisions shall have effect with the substitution for the reference to seventeen years of a reference to seventeen years less the number of complete years which, when the rights begin, have elapsed since the commencement of the patent, or, if seventeen complete years have elapsed as aforesaid, of a reference to one year; and
 - (c) any expenditure incurred for the purposes of a trade by a person about to carry it on shall be treated for the purposes of this subsection as if it had been incurred by that person on the first day on which he does carry it on, unless, before the said first day, he has sold all the rights on the purchase of which the expenditure was incurred.
- (3) Subsections (2) and (3) of section 75 of the Capital Allowances Act 1968 (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 the said section 75.

379 Effect of lapses of patent rights, sales, etc.

- (1) Where a person incurs capital expenditure on the purchase of patent rights and, before the end of the writing-down period under section 378 above, 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 thereof 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 incurs capital expenditure on the purchase of patent rights and, before the end of the writing-down period under section 378 above, 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 thereof 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 (in this Chapter referred to as " 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 person who has incurred capital expenditure on the purchase of patent rights sells all or any part of those rights and 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 (in this Chapter referred to as " a balancing charge ") on an amount equal to the excess or,

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where the amount of the capital expenditure remaining unallowed is nil, to the said net proceeds.

- (4) Where a person who has incurred capital expenditure on the purchase of patent rights sells a part of those rights and subsection (3) of this section 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 the preceding provisions of 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 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 the preceding provisions of this section, no balancing allowance shall be made in respect of any expenditure 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 the total amount on which a balancing charge is made in respect of any expenditure 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.

380 Taxation as income of capital sums received for sale of patent rights

- (1) 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):

Provided that if that person, by notice in writing served on the inspector not later than two years after the end of the chargeable period in which the said amount was received, elects that the whole of the said sum shall be charged to tax for the said chargeable period, it shall be charged to tax accordingly.

References in this subsection to tax for a chargeable period shall be construed, in relation to corporation tax, as referring to the tax for any financial year which is charged in respect of that period.

- (2) 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—

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- (a) he shall be chargeable to tax in respect of that sum under Case VI of Schedule D; and
- (b) section 53 of this Act (deduction of income tax at source) 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 the other provisions of the Tax Acts shall, save as therein otherwise provided, have effect accordingly:

Provided that 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 in writing to the Board, elects that the said 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 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, so, however, that—

- (i) the election shall not affect the amount of tax which is to be deducted and assessed under the said section 53; and
 - (ii) where any sum is deducted under the said section 53, any adjustments necessary to give effect to the election shall be made by way of repayment of tax; and
 - (iii) the said 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 (other than surtax) ultimately falling to be paid for that year is less than the amount of tax (other than surtax) paid for that year.
- (3) In subsection (2) above the word " tax " shall mean income tax, unless 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; and where the subsection applies to charge a company to corporation tax in respect of a sum paid to it, the proviso shall not apply, but the company may, by notice in writing 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 as aforesaid), and there shall be made all such repayments of tax and assessments to tax as are necessary to give effect to any such election.
- (4) Where the person selling all or any part of any patent rights 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:

Provided that—

- (a) where between the said purchase and the said sale he 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 this subsection in respect of the subsequent sale shall be itself reduced by the amount of that sum;
- (b) nothing in this subsection shall affect the amount of income tax which is to be deducted and assessed under section 53 of this Act by virtue of subsection (2)

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of this section, and, where any sum is deducted under that section, any adjustment necessary to give effect to the provisions of this subsection shall be made by way of repayment of tax.

- (5) A claim for relief under this section shall be made to the Board.

381 Capital sums: death, winding-up or partnership change

- (1) 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 380 above dies or, being a body corporate, commences to be wound up—
- (a) no sums shall be charged under the said 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 be increased by the total amounts which, but for the death or winding up, would have fallen to be charged for subsequent chargeable periods ;

Provided that, in the case of a death, the personal representatives may, by notice in writing served on the inspector not later than thirty days after notice has been served on them of the charge falling to be made by virtue of this subsection, require that the income tax (including surtax) payable out of the estate of the deceased by reason of the increase provided for by this subsection shall be reduced so as not to exceed the total amount of income tax (including surtax) which would have been payable by him or out of his estate by reason of the operation of section 380 above 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 the said whole amount divided by the number of those years.

- (2) Where, under section 79 of the Capital Allowances Act 1968 as applied by section 387 below, a charge under section 380 above 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:

Provided that—

- (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 (including surtax) payable by him or out of his estate by reason of the increase as would have been exercisable by the personal representatives under subsection (1) above in the case of a death, and the proviso to that subsection shall have effect accordingly, but as if references to the amount of income tax (including surtax) which would have been payable by the deceased or out of his estate in the event therein mentioned were a reference to the amount of income tax (including

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surtax) which would in that event have fallen to be paid or borne by the partner in question or out of his estate.

- (3) In this section, any references to the income tax (including surtax) paid or borne or payable or falling to be paid or borne by a person include, in cases where the income of a wife is deemed to be income of the husband, references to the income tax (including surtax) paid or borne, or payable or falling to be paid or borne, by his wife or her husband, as the case may be.

382 Relief for expenses

- (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 thereof,

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.

383 Patent income to be earned income in certain cases

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:

Provided that 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 the said income shall be treated as earned income as is not properly attributable to the rights which have belonged to that other person.

384 Spreading of patent royalties over several years

- (1) Where a royalty or other sum to which section 52 or 53 of this Act (deduction of income tax at standard rate) 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 (including surtax) 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 (including surtax) or corporation tax which would have been payable by him if that royalty or sum had been paid in six equal instalments at yearly intervals, the last of which was paid on the date on which the payment was in fact made.

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- (2) Subsection (1) of this section 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) In this section, any reference to the income tax (including surtax) payable by a person includes, in cases where the income of a wife is deemed to be the income of the husband, references to the income tax (including surtax) payable by his wife or her husband, as the case may be.
- (4) Nothing in this section shall apply to any sum to which section 53 of this Act applies by virtue of section 380(2)(i) above.

385 Manner of making allowances and charges

- (1) An allowance or charge under section 378 or section 379 of this Act 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 378, 379 or 382 of this Act 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 378, 379 or 382 of this Act 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,
 - (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 paragraph (a) above, and of any further application of this paragraph, as the amount of a corresponding allowance for that period.

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- (4) Effect shall be given to any balancing charge under section 379 of this Act 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.

Know-how (income tax, corporation tax and capital gains tax)

386 Dealings in know-how

- (1) Subject to subsections (3) and (6) below, where after 19th March 1968 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,

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.

For the purposes of this subsection, 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.

- (2) Subject to the said subsection (6), 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, so far as it is not chargeable to tax as a revenue or income receipt, be treated for all purposes as a trading receipt.
- (3) Where after the said 19th March a person disposes of a trade or part of a trade and, together therewith, of know-how used therein, 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:

Provided that this subsection shall not apply—

- (a) to either of the persons concerned if they so elect by notice in writing given jointly to the inspector within two years of the disposal, or
- (b) 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 this subsection is excluded in relation to the person acquiring it, subsection (1) above shall apply as if that person had acquired it for use in a trade previously carried on by him.

- (4) Subject to subsection (6) below, any consideration received by a person for the disposal of know-how shall, if it is neither chargeable to tax under subsection (2) 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 (3) above, be treated as a profit or gain chargeable to tax under Case VI of Schedule D:

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Provided that, 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 proviso be treated as a profit or gain so chargeable 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 proviso or otherwise.

- (5) 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.
- (6) The preceding provisions of this section, except subsection (3), 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 the said subsection (3) shall apply on any such sale with the omission of the proviso.

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

- (7) In this section " 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 there(a), or in the carrying out of any agricultural, forestry or fishing operations.
- (8) 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.
- (9) Subsection (2) of section 75 of the Capital Allowances Act 1968 (effect of providing writing-down allowances during writing-down period of a specified length) shall apply to this section as it applies to the provisions specified in subsection (1) of that section.

Supplemental

387 Application of Capital Allowances Act 1968

- (1) The Tax Acts shall have effect as if this Chapter were contained in Part I of the Capital Allowances Act 1968, 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 subsection (3) of section 385 above.
- (2) In the said Part I as so applied to patent rights, the sum referred to in paragraph 4(1)(a) of Schedule 7 to the said 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 379 of this Act.

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- (3) The reference in section 82(1) of the Capital Allowances Act 1968 (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 Part II of this Act 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 380(2) (b) above.
- (4) In Part I of the Capital Allowances Act 1968 as so applied to know-how—
- (a) references in that Part to property and its purchase or sale include references to know-how and its acquisition or disposal,
 - (b) section 78, with Schedule 7 to the Act (special provisions as to controlled sales), shall be omitted.

388 Interpretation of provisions about patents

- (1) In this Chapter—
- " 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 379(3), section 380 or section 381 of this Act;
- " 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;
- " United Kingdom patent " means a patent granted under the laws of the United Kingdom.
- (2) In this Chapter, 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:
- Provided that 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 rights subsist, the grantor shall be treated for the purposes of this Chapter as thereby selling the whole of the rights.
- (3) Where, under sections 46 to 49 of the Patents Act 1949 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, the provisions of this Chapter 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.
- (4) Expenditure incurred on or after 9th July 1952 (the commencement of the Finance Act 1952) 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 this Chapter 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.

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- (5) Any sum received from a person which by virtue of subsection (4) 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.