
Status: Point in time view as at 06/04/2005. This version of this provision has been superseded.

Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Paragraph 36. (See end of Document for details)

SCHEDULES

SCHEDULE 7

CONSEQUENTIAL AMENDMENTS: GENERAL

Income and Corporation Taxes Act 1988 (c. 1)

- 36 (1) The Income and Corporation Taxes Act 1988 is amended as follows.
- (2) In section 83 (fees and expenses deductible in computing profits and gains of trade) for “the extension of the period of copyright in a design” substitute “ an extension of the period for which the right in a registered design subsists ”.
- (3) ^{F1}.....
- (4) In section 387 (carry forward as losses of certain payments made under deduction of tax), in subsection (3) (payments to which the section does not apply), in paragraph (e) (copyright royalties) after “applies” insert “ or royalties in respect of a right in a design to which section 537B applies ”.
- (5) In section 536 (taxation of copyright royalties where owner abroad), for the definition of “copyright” in subsection (2) substitute—
““copyright” does not include copyright in—
(i) a cinematograph film or video recording, or
(ii) the sound-track of such a film or recording, so far as it is not separately exploited; and”.
- (6) In Chapter I of Part XIII (miscellaneous special provisions: intellectual property), after section 537 insert—

“ Designs

537A Relief for payments in respect of designs.

- (1) Where the designer of a design in which design right subsists assigns that right, or the author of a registered design assigns the right in the design, wholly or partially, or grants an interest in it by licence, and—
- (a) the consideration for the assignment or grant consists, in whole or in part, of a payment to which this section applies, the whole amount of which would otherwise be included in computing the amount of his profits or gains for a single year of assessment, and
- (b) he was engaged in the creation of the design for a period of more than 12 months,
- he may, on making a claim, require that effect shall be given to the following provisions in connection with that payment.

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- (2) If the period for which he was engaged in the creation of the design does not exceed 24 months, then, for all income tax purposes, one-half only of the amount of the payment shall be treated as having become receivable on the date on which it actually became receivable and the remaining half shall be treated as having become receivable 12 months before that date.
- (3) If the period for which he was engaged in the creation of the design exceeds 24 months, then, for all income tax purposes, one-third only of the amount of the payment shall be treated as having become receivable on the date on which it actually became receivable, and one-third shall be treated as having become receivable 12 months, and one-third 24 months, before that date.
- (4) This section applies to—
 - (a) a lump sum payment, including an advance on account of royalties which is not returnable, and
 - (b) any other payment of or on account of royalties or sums payable periodically which does not only become receivable more than two years after articles made to the design or, as the case may be, articles to which the design is applied are first made available for sale or hire.
- (5) A claim under this section with respect to any payment to which it applies by virtue only of subsection (4)(b) above shall have effect as a claim with respect to all such payments in respect of rights in the design in question which are receivable by the claimant, whether before or after the claim; and such a claim may be made at any time not later than 5th April next following the expiration of eight years after articles made to the design or, as the case may be, articles to which the design is applied were first made available for sale or hire.
- (6) In this section—
 - (a) “designer” includes a joint designer, and
 - (b) any reference to articles being made available for sale or hire is to their being so made available anywhere in the world by or with the licence of the design right owner or, as the case may be, the proprietor of the registered design.

537B Taxation of design royalties where owner abroad.

- (1) Where the usual place of abode of the owner of a right in a design is not within the United Kingdom, section 349(1) shall apply to any payment of or on account of any royalties or sums paid periodically for or in respect of that right as it applies to annual payments not payable out of profits or gains brought into charge to income tax.
- (2) In subsection (1) above—
 - (a) “right in a design” means design right or the right in a registered design,
 - (b) the reference to the owner of a right includes a person who, notwithstanding that he has assigned the right to some other person, is entitled to receive periodical payments in respect of the right, and
 - (c) the reference to royalties or other sums paid periodically for or in respect of a right does not include royalties or sums paid in respect

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of articles which are shown on a claim to have been exported from the United Kingdom for distribution outside the United Kingdom.

- (3) Where a payment to which subsection (1) above applies is made through an agent resident in the United Kingdom and that agent is entitled as against the owner of the right to deduct any sum by way of commission in respect of services rendered, the amount of the payment shall for the purposes of section 349(1) be taken to be diminished by the sum which the agent is entitled to deduct.
- (4) Where the person by or through whom the payment is made does not know that any such commission is payable or does not know the amount of any such commission, any income tax deducted by or assessed and charged on him shall be computed in the first instance on, and the account to be delivered of the payment shall be an account of, the total amount of the payment without regard being had to any diminution thereof, and in that case, on proof of the facts on a claim, there shall be made to the agent on behalf of the owner of the right such repayment of income tax as is proper in respect of the sum deducted by way of commission.
- (5) The time of the making of a payment to which subsection (1) above applies shall, for all tax purposes, be taken to be the time when it is made by the person by whom it is first made and not the time when it is made by or through any other person.
- (6) Any agreement for the making of any payment to which subsection (1) above applies in full and without deduction of income tax shall be void.”.
- (7) In section 821 (payments made under deduction of tax before passing of Act imposing income tax for that year), in subsection (3) (payments subject to adjustment) after paragraph (a) insert—
 - “(aa) any payment for or in respect of a right in a design to which section 537B applies; and”.
- (8) In Schedule 19 (apportionment of income of close companies), in paragraph 10(4) (cessation or liquidation: debts taken into account although creditor is participator or associate), in paragraph (c) (payments for use of certain property) for the words from “tangible property” to “extend)” substitute—
 - “(i) tangible property,
 - (ii) copyright in a literary, dramatic, musical or artistic work within the meaning of Part I of the Copyright, Designs and Patents Act 1988 (or any similar right under the law of a country to which that Part does not extend), or
 - (iii) design right.”.
- (9) In Schedule 25 (taxation of UK-controlled foreign companies: exempt activities), in paragraph 9(1)(a) (investment business: holding of property) for “patents or copyrights” substitute “or intellectual property” and after that subparagraph insert—
 - “(1A) In sub-paragraph (1)(a) above “intellectual property” means patents, registered designs, copyright and design right (or any similar rights under the law of a country outside the United Kingdom).”.

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Textual Amendments

- F1** [Sch. 7 para. 36\(3\)](#) repealed (6.4.2005 with effect as mentioned in s. 883 of the repealing Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), ss. 883, 884, [Sch. 3](#) (with savings and transitional provisions in [Sch. 2](#))

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Changes to legislation:

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