Capital Allowances Act 2001

2001 CHAPTER 2

PART 8

PATENT ALLOWANCES

CHAPTER 1

INTRODUCTION

464 Patent allowances

(1) Allowances are available under this Part if a person incurs qualifying expenditure on the purchase of patent rights.

(2) In this Part "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.

465 Future patent rights

(1) References in this Part to expenditure incurred on the purchase of patent rights include expenditure incurred on obtaining a right to acquire future patent rights.

(2) If a person—

(a) incurs expenditure on obtaining a right to acquire future patent rights, and

(b) subsequently acquires those rights,

the expenditure is to be treated as having been expenditure on the purchase of those rights.

(3) "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.

(4) References in this Part to the proceeds of a sale of patent rights include a sum received from a person which is treated under this section as expenditure incurred by him on the purchase of patent rights.

466 Grant of licences

(1) The acquisition of a licence in respect of a patent is to be treated as the purchase of patent rights.

(2) The grant of a licence in respect of a patent is to be treated as a sale of part of patent rights.

(3) But the grant by a person entitled to patent rights of an exclusive licence is to be treated as a sale of the whole of those rights.

(4) "Exclusive licence" means a licence to exercise those rights to the exclusion of the grantor and all other persons for the period remaining until the rights come to an end.

CHAPTER 2

QUALIFYING EXPENDITURE

467 Qualifying expenditure

Expenditure is qualifying expenditure only if it is—
(a) qualifying trade expenditure, or
(b) qualifying non-trade expenditure.

468 Qualifying trade expenditure

(1) "Qualifying trade expenditure" means capital expenditure incurred by a person on the purchase of patent rights for the purposes of a trade within the charge to tax carried on by the person.

(2) The same expenditure may not be taken into account as qualifying trade expenditure in relation to more than one trade.

(3) Expenditure incurred for the purposes of a trade by a person about to carry on the trade is to be treated as if it had been incurred by him on the first day on which he carries on the trade.

(4) But subsection (3) does not apply if the person has before that day sold all the rights on the purchase of which the expenditure was incurred.

469 Qualifying non-trade expenditure

"Qualifying non-trade expenditure" means capital expenditure incurred by a person on the purchase of patent rights if—
(a) any income receivable by the person in respect of the rights would be liable to tax, and
(b) the expenditure is not qualifying trade expenditure.

CHAPTER 3

ALLOWANCES AND CHARGES

470 Pooling of expenditure

(1) Qualifying expenditure has to be pooled for the purpose of determining a person's entitlement to writing-down allowances and balancing allowances and liability to balancing charges.

(2) There is a separate pool—

(a) for each trade in respect of which the person has qualifying trade expenditure, and

(b) for all of the person's qualifying non-trade expenditure.

471 Determination of entitlement or liability

(1) Whether a person is entitled to a writing-down allowance or a balancing allowance, or liable to a balancing charge, for a chargeable period is determined separately for each pool of qualifying expenditure and depends on—

(a) the available qualifying expenditure in that pool for that period ("AQE"), and

(b) the total of any disposal receipts to be brought into account in that pool for that period ("TDR").

(2) If AQE exceeds TDR, the person is entitled to a writing-down allowance or a balancing allowance for the period.

(3) If TDR exceeds AQE, the person is liable to a balancing charge for the period.

(4) The entitlement under subsection (2) is to a writing-down allowance except for the final chargeable period when it is to a balancing allowance.

(5) The final chargeable period for a pool to which qualifying trade expenditure has been allocated is the chargeable period in which the trade is permanently discontinued.

(6) The final chargeable period for a pool to which qualifying non-trade expenditure has been allocated is the chargeable period in which the last of the patent rights on which the person has incurred qualifying non-trade expenditure—

(a) comes to an end without any of those rights being revived, or

(b) is wholly disposed of.

472 Amount of allowances and charges

(1) The amount of the writing-down allowance to which a person is entitled for a chargeable period is 25% of the amount by which AQE exceeds TDR.

(2) If the chargeable period is more or less than a year, the amount is proportionately increased or reduced.

(3) If in the case of qualifying trade expenditure the trade has been carried on for part only of the chargeable period, the amount is proportionately reduced.

(4) A person claiming a writing-down allowance may require the allowance to be reduced to a specified amount.

(5) The amount of the balancing charge to which a person is liable for a chargeable period is the amount by which TDR exceeds AQE.

(6) The amount of the balancing allowance to which a person is entitled for the final chargeable period is the amount by which AQE exceeds TDR.

473 Available qualifying expenditure

A person's available qualifying expenditure in a pool for a chargeable period consists of—

(a) any qualifying expenditure allocated to the pool for that period in accordance with section 474, and

(b) any unrelieved qualifying expenditure carried forward in the pool from the previous chargeable period under section 475.

474 Allocation of qualifying expenditure to pools

(1) The following rules apply to the allocation of a person's qualifying expenditure to a pool.

(2) An amount of qualifying expenditure is not to be allocated to the pool for a chargeable period if that amount has been taken into account in determining the person's available qualifying expenditure for an earlier chargeable period.

(3) Qualifying expenditure is not to be allocated to the pool for a chargeable period before that in which the expenditure is incurred.

(4) Qualifying expenditure incurred on patent rights is not to be allocated to the pool for a chargeable period if in any earlier period those rights—

(a) have come to an end without any of them having been revived, or

(b) have been wholly disposed of.

475 Unrelieved qualifying expenditure

(1) A person has unrelieved qualifying expenditure to carry forward from a chargeable period if for that period AQE exceeds TDR.

(2) The amount of the unrelieved qualifying expenditure is—

(a) the excess less the writing-down allowance made for the period, or

(b) if no writing-down allowance is claimed for the period, the excess.

(3) No amount may be carried forward as unrelieved qualifying expenditure from the final chargeable period.

[F1 475A Unrelieved qualifying expenditure: entry to cash basis

(1) If a person carrying on a trade enters the cash basis for a tax year, any cash basis deductible amount may not be carried forward as unrelieved qualifying expenditure in the pool for the trade from the chargeable period ending with the basis period for the previous tax year.

(2) A "cash basis deductible amount" means any amount of unrelieved qualifying expenditure for which a deduction would be allowed in calculating the profits of the

trade on the cash basis on the assumption that the expenditure was paid in the tax year for which the person enters the cash basis.

(3) Any cash basis deductible amount is to be determined on such basis as is just and reasonable in all the circumstances.

(4) Subsections (9) and (11) of section 1A (capital allowances and charges: cash basis) apply for the purposes of this section as they apply for the purposes of that section.]

Textual Amendments

F1 S. 475A inserted (with effect in accordance with Sch. 2 para. 64 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 2 para. 58**

Modifications etc. (not altering text)

C1 S. 475A(1) excluded by Income Tax (Trading and Other Income) Act 2005 (c. 5), **s. 240C(5A)** (as inserted (with effect in accordance with Sch. 2 para. 64 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 2 para. 7(7)**)

476 Disposal value of patent rights

(1) In this Chapter "disposal receipt" means a disposal value that a person is required to bring into account in accordance with—

(a) this section, or

(b) [F2section 614BS of ITA 2007] or [F3section 918 of CTA 2010 (cases where expenditure taken into account under Part 2, 5 or 8 of this Act) or] any other enactment.

(2) A person is required to bring a disposal value into account for the chargeable period in which he sells the whole or a part of any patent rights on which he has incurred qualifying expenditure.

(3) Subject to section 477, the disposal value to be brought into account is the net proceeds of the sale, so far as they consist of capital sums.

Textual Amendments

F2 Words in s. 476(1)(b) substituted (1.4.2010) (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 8 para. 236** (with Sch. 9 paras. 1-9, 22)

F3 Words in s. 476(1)(b) inserted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 357** (with Sch. 2)

477 Limit on amount of disposal value

(1) The amount of any disposal value, or the total amount of any disposal values, required to be brought into account by a person—

(a) on the sale of the whole of any patent rights, or

(b) on one or more sales of part of any patent rights,

is limited to the capital expenditure incurred by the person on purchasing the rights.

(2) But subsection (3) applies if the person acquired the rights as a result of—

(a) a transaction which was between connected persons, or

(b) a series of transactions each of which was between connected persons.

(3) That amount, or total amount, is limited to the capital expenditure on purchasing the rights incurred by whichever party to the transaction, or to any of the transactions, incurred the greatest such expenditure.

[F4 477A Persons leaving cash basis

(1) This section applies if—

(a) a person carrying on a trade leaves the cash basis in a chargeable period,

(b) the person has incurred expenditure at a time when an election under section 25A of ITTOIA 2005 (cash basis for trades) has effect in relation to the trade,

(c) some or all of the expenditure was brought into account in calculating the profits of the trade on the cash basis, and

(d) the expenditure would have been qualifying trade expenditure if an election under section 25A of that Act had not had effect at the time the expenditure was incurred.

(2) In this section the "relieved portion" of the expenditure is the amount of that expenditure for which a deduction was allowed in calculating the profits of the trade.

(3) For the purposes of determining the person's available qualifying expenditure in the pool for the trade for the chargeable period (see section 470)—

(a) the whole of the expenditure must be allocated to the pool for the trade in that chargeable period, and

(b) the available qualifying expenditure in that pool is reduced by the relieved portion of that expenditure.

(4) For the purposes of determining any disposal receipts (see section 476), the expenditure incurred by the person is to be regarded as qualifying trade expenditure.

(5) For the purposes of this section a person carrying on a trade leaves the cash basis in a chargeable period if—

(a) immediately before the beginning of the chargeable period an election under section 25A of ITTOIA 2005 had effect in relation to the trade, and

(b) such an election does not have effect in relation to the trade for the chargeable period.]

Textual Amendments

F4 S. 477A inserted (with effect in accordance with Sch. 2 para. 64 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 2 para. 59**

CHAPTER 4

GIVING EFFECT TO ALLOWANCES AND CHARGES

478 Persons having qualifying trade expenditure

An allowance or charge to which a person is entitled or liable under this Part for a chargeable period in respect of qualifying trade expenditure is to be given effect in calculating the profits of the trade, by treating—

(a) the allowance as an expense of the trade, and

(b) the charge as a receipt of the trade.

479 Persons having qualifying non-trade expenditure: income tax

(1) This section applies for income tax purposes if a person is entitled or liable under this Part to an allowance or charge for a chargeable period ("the current tax year") in respect of qualifying non-trade expenditure.

(2) An allowance is to be given effect by deducting it from or setting it off against the person's income from patents for the current tax year.

[[F5](2A) The allowance is given effect at Step 2 of the calculation in section 23 of ITA 2007.**]**

(3) If the amount to be deducted from or set off against the person's income from patents for that tax year exceeds the amount of that income, the excess must be deducted from or set off against the person's income from patents for the next tax year, and so on for subsequent tax years.

(4) A charge is to be given effect by treating the charge as income to be **[**[F6]assessed to income tax**]**.

Textual Amendments

F5 S. 479(2A) inserted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 408** (with Sch. 2)

F6 Words in s. 479(4) substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5) , s. 883(1) , **Sch. 1 para. 565** (with Sch. 2)

480 Persons having qualifying non-trade expenditure: corporation tax

(1) This section applies for corporation tax purposes if a company is entitled or liable under this Part to an allowance or charge for a chargeable period ("the current accounting period") in respect of qualifying non-trade expenditure.

(2) An allowance is to be given effect by deducting it from the company's income from patents for the current accounting period.

(3) If the amount to be deducted from the company's income from patents for that period exceeds the amount of that income, the excess must (if the company remains within the charge to tax) be deducted from its income from patents for the next accounting period, and so on for subsequent accounting periods.

(4) A charge is to be given effect by treating the charge as income of the company from patents.

CHAPTER 5

SUPPLEMENTARY PROVISIONS

481 Anti-avoidance: limit on qualifying expenditure

(1) In the two cases given below, the amount (if any) by which the capital expenditure incurred by a person ("the buyer") on the purchase of patent rights exceeds the relevant limit is to be left out of account in determining the buyer's qualifying expenditure.

(2) The first case is where the buyer and the seller are connected with each other.

(3) The second case is where it appears that the sole or main benefit which (but for this section) might have been expected to accrue to the parties from—

(a) the sale, or

(b) transactions of which the sale is one,

was obtaining an allowance under this Part.

(4) If the seller is required to bring a disposal value into account under this Part because of the sale, the relevant limit is that disposal value.

(5) If subsection (4) does not apply but the seller—

(a) receives a capital sum on the sale, and

(b) is chargeable to tax in respect of that sum in accordance with section **[**[F7]587 of ITTOIA 2005 or**][**[F8]section 912 of CTA 2009**]**,

the relevant limit is that sum.

(6) If neither subsection (4) nor subsection (5) applies, the relevant limit is whichever of the following is the smallest—

(a) the market value of the rights;

(b) if the seller incurred capital expenditure on acquiring the rights, the amount of that expenditure;

(c) if a person connected with the seller incurred capital expenditure on acquiring the rights, the amount of that expenditure.

Textual Amendments

F7 Words in s. 481(5)(b) inserted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5) , s. 883(1) , **Sch. 1 para. 566** (with Sch. 2)

F8 Words in s. 481(5)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 512** (with Sch. 2 Pts. 1, 2)

482 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 services 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 to be treated as having taken place under a licence.

(3) Sums paid in respect of the use are to be treated as having been paid under a licence.

483 Meaning of "income from patents"

For the purposes of this Part a person's "income from patents" means—

(a) royalties or other sums paid in respect of the use of a patent,

(b) balancing charges to which the person is liable under this Part, and

(c) amounts on which tax is payable under **[**[F9]section 587, 593 or 594 of ITTOIA 2005 or under**][**[F10]section 912 or 918 of CTA 2009**]** (taxation of receipts from sale of patent rights).

Textual Amendments

F9 Words in s. 483(c) inserted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5) , s. 883(1) , **Sch. 1 para. 567** (with Sch. 2)

F10 Words in s. 483(c) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 513** (with Sch. 2 Pts. 1, 2)

Status:
Point in time view as at 16/11/2017.

Changes to legislation:
There are outstanding changes not yet made by the legislation.gov.uk editorial team to Capital Allowances Act 2001. Any changes that have already been made by the team appear in the content and are referenced with annotations.