



Finance Act 2016

2016 CHAPTER 24

PART 1

INCOME TAX

Deduction at source

41 Deduction of income tax at source: intellectual property - tax avoidance

(1) In Part 15 of ITA 2007 (deduction of income tax at source), after section 917 insert—

“Tax avoidance

917A Tax avoidance arrangements

- (1) This section applies if and to the extent that—
- a person (“the payer”) makes an intellectual property royalty payment,
 - the payment is received by a person (“the payee”) who is connected with the payer, and
 - the payment is made under DTA tax avoidance arrangements.
- (2) Any duty under Chapter 6 or 7 to deduct a sum representing income tax at any rate applies without regard to any double taxation arrangements.
- (3) Any income tax deducted by virtue of subsection (2) may not be set off under section 967 or 968 of CTA 2010.
- (4) In this section—
- “arrangements” (except in the phrase “double taxation arrangements”) includes any agreement, understanding, scheme, transaction or series of transactions, whether or not legally enforceable;

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“DTA tax avoidance arrangements” means arrangements where, having regard to all the circumstances, it is reasonable to conclude that—

- (a) the main purpose, or one of the main purposes, of the arrangements was to obtain a tax advantage by virtue of any provisions of a double taxation arrangement, and
- (b) obtaining that tax advantage is contrary to the object and purpose of those provisions;

“intellectual property royalty payment” means a payment referred to in section 906(2)(a) or (3)(a);

“receive” means receive—

- (a) directly or indirectly;
- (b) by one payment or by a series of payments;

“tax advantage” is to be construed in accordance with section 208 of FA 2013.

- (5) For the purposes of this section the payer is connected with the payee if the participation condition is met as between them.
 - (6) Section 148 of TIOPA 2010 (when the participation condition is met) applies for the purposes of subsection (5) as for the purposes of section 147(1)(b) of that Act, but as if references to the actual provision were to the provision made or imposed between the payer and the payee in respect of the arrangements under which the payment is made.”
- (2) The amendment made by this section has effect in respect of a payment made on or after 17 March 2016 under arrangements entered into at any time (including arrangements entered into before that date).
 - (3) In relation to payments made (under any such arrangements) on or after 17 March 2016 and on or before the day on which this Act is passed, section 917A of ITA 2007 as inserted by subsection (1) has effect as if the definition of “intellectual property royalty payment” in that section were as follows—
 - ““intellectual property royalty payment” means—
 - (a) a payment of a royalty or other sum in respect of the use of a patent,
 - (b) a payment specified in section 906(1)(a) (as originally enacted), or
 - (c) a payment which is a “qualifying annual payment” for the purposes of Chapter 6 by virtue of section 899(3)(a)(ii) (royalties etc from intellectual property);”.
 - (4) In relation to payments made (under any such arrangements) on or after 28 June 2016 and on or before the day on which this Act is passed, section 917A of ITA 2007 as inserted by subsection (1) has effect as if “intellectual property royalty payment” also included (so far as it would not otherwise do so) any payments referred to in section 906(2)(a) or (3)(a) of ITA 2007 as substituted by section 40.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 19 para. 12(5)(b) inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(c\)](#)
- Sch. 19 para. 12(5)(a) word inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(b\)](#)
- Sch. 19 para. 51(8)(b) words inserted by [2017 c. 32 Sch. 14 para. 48\(2\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(a\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(b\)](#)
- Sch. 19 para. 12(5)(a) words renumbered as Sch. 19 para. 12(5)(a) by [2017 c. 32 Sch. 14 para. 49\(2\)\(a\)](#)
- Sch. 19 para. 58(1) words substituted by [2017 c. 32 Sch. 14 para. 48\(5\)](#)
- Sch. 20 para. 1(4)(e) inserted by [2021 c. 26 Sch. 27 para. 47\(2\)](#)
- Sch. 20 para. 3(3)(d) and word inserted by [2021 c. 26 Sch. 27 para. 47\(3\)\(b\)](#)
- Sch. 20 para. 5(5) inserted by [2021 c. 26 Sch. 27 para. 47\(5\)](#)
- Sch. 22 para. 2(4B) inserted by [2021 c. 26 Sch. 27 para. 48\(2\)\(c\)](#)
- Sch. 22 para. 3(4A) inserted by [2021 c. 26 Sch. 27 para. 48\(3\)](#)