



# Finance Act 2016

## 2016 CHAPTER 24

### PART 1

#### INCOME TAX

##### *Receipts from intellectual property*

#### **42 Receipts from intellectual property: territorial scope**

(1) In section 577 of ITTOIA 2005 (territorial scope of Part 5 charges), at the end insert—

“(5) See also section 577A (territorial scope of Part 5 charges: receipts from intellectual property).”

(2) After that section insert—

##### **“577A Territorial scope of Part 5 charges: receipts from intellectual property**

(1) References in section 577 to income which is from a source in the United Kingdom include income arising where—

- (a) a royalty or other sum is paid in respect of intellectual property by a person who is non-UK resident, and
- (b) the payment is made in connection with a trade carried on by that person through a permanent establishment in the United Kingdom.

(2) Subsection (3) applies where a royalty or other sum is paid in respect of intellectual property by a person who is non-UK resident in connection with a trade carried on by that person only in part through a permanent establishment in the United Kingdom.

(3) The payment referred to in subsection (2) is to be regarded for the purposes of subsection (1)(b) as made in connection with a trade carried on through a

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permanent establishment in the United Kingdom to such extent as is just and reasonable, having regard to all the circumstances.

(4) In determining for the purposes of section 577 whether income arising is from a source in the United Kingdom, no regard is to be had to arrangements the main purpose of which, or one of the main purposes of which, is to avoid the effect of the rule in subsection (1).

(5) In this section—

“arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

“intellectual property” has the same meaning as in section 579;

“permanent establishment”—

(a) in relation to a company, is to be read (by virtue of section 1007A of ITA 2007) in accordance with Chapter 2 of Part 24 of CTA 2010, and

(b) in relation to any other person, is to be read in accordance with that Chapter but as if references in that Chapter to a company were references to that person.”

(3) The amendments made by subsections (1) and (2) have effect in relation to royalties or other sums paid in respect of intellectual property on or after 28 June 2016.

(4) It does not matter for the purposes of subsection (4) of section 577A of ITTOIA 2005 (as inserted by this section) whether the arrangements referred to in that subsection are entered into before, or on or after, 28 June 2016.

(5) Where arrangements are disregarded under subsection (4) of section 577A of ITTOIA 2005 (as inserted by this section) in relation to a payment of a royalty or other sum which—

(a) is made before 28 June 2016, but

(b) is due on or after that day,

the payment is to be regarded for the purposes of subsection (1) of that section as made on the date on which it is due.

(6) In determining the date on which a payment is due for the purposes of subsection (5), disregard the arrangements referred to in that subsection.

(7) Where—

(a) an intellectual property royalty payment within the meaning of section 917A of ITA 2007 is made on or after 28 June 2016,

(b) the payment is made under arrangements (within the meaning of that section) entered into before that day,

(c) the arrangements are not DTA tax avoidance arrangements for the purposes of that section,

(d) it is reasonable to conclude that 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 foreign double taxation arrangement, and

(e) obtaining that tax advantage is contrary to the object and purpose of those provisions,

the arrangements are to be regarded as DTA tax avoidance arrangements for the purposes of section 917A of ITA 2007 in relation to the payment.

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(8) In subsection (7)—

“foreign double taxation arrangement” means an arrangement made by two or more territories outside the United Kingdom with a view to affording relief from double taxation in relation to tax chargeable on income (with or without other tax relief);

“tax advantage” is to be construed in accordance with section 208 of FA 2013 but as if references in that section to “tax” were references to tax chargeable on income under the law of a territory outside the United Kingdom.

(9) Where—

- (a) a royalty is paid on or after 28 June 2016,
- (b) the right in respect of which the royalty is paid was created or assigned before that day [<sup>F1</sup>under arrangements (within the meaning of section 917A of ITA 2007) entered into before that day],
- <sup>F2</sup>(c) ..... and
- (d) it is reasonable to conclude that the main purpose, or one of the main purposes, of any person connected with the creation or assignment of the right was to take advantage, by means of that creation or assignment, of the law of any territory giving effect to Council Directive 2003/49/EC of 3rd June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different member States,

[<sup>F3</sup>the arrangements are to be regarded as DTA tax avoidance arrangements for the purposes of section 917A of ITA 2007].

#### Textual Amendments

- F1** Words in s. 42(9)(b) inserted (with effect in accordance with s. 34(8) of the amending Act) by [Finance Act 2021 \(c. 26\), s. 34\(6\)\(a\)](#)
- F2** S. 42(9)(c) omitted (with effect in accordance with s. 34(8) of the amending Act) by virtue of [Finance Act 2021 \(c. 26\), s. 34\(6\)\(b\)](#)
- F3** Words in s. 42(9) substituted (with effect in accordance with s. 34(8) of the amending Act) by [Finance Act 2021 \(c. 26\), s. 34\(6\)\(c\)](#)

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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\(3\)](#)