



# Finance Act 2016

## 2016 CHAPTER 24

### PART 1

#### INCOME TAX

##### *Deduction at source*

#### **39 Deduction of income tax at source**

Schedule 6 contains provisions about deduction of income tax at source.

#### **40 Deduction of income tax at source: intellectual property**

(1) Part 15 of ITA 2007 (deduction from other payments connected with intellectual property) is amended as specified in subsections (2) and (3).

(2) In section 906 (certain royalties etc where usual place of abode of owner is abroad), for subsections (1) to (3) substitute—

“(1) This section applies to any payment made in a tax year where condition A or condition B is met.

(2) Condition A is that—

- (a) the payment is a royalty, or a payment of any other kind, for the use of, or the right to use, intellectual property (see section 907),
- (b) the usual place of abode of the owner of the intellectual property is outside the United Kingdom, and
- (c) the payment is charged to income tax or corporation tax.

(3) Condition B is that—

- (a) the payment is a payment of sums payable periodically in respect of intellectual property,
- (b) the person entitled to those sums (“the assignor”) assigned the intellectual property to another person,

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- (c) the usual place of abode of the assignor is outside the United Kingdom, and
  - (d) the payment is charged to income tax or corporation tax.”
- (3) For section 907 substitute—

**“907 Meaning of “intellectual property”**

- (1) In section 906 “intellectual property” means—
- (a) copyright of literary, artistic or scientific work,
  - (b) any patent, trade mark, design, model, plan, or secret formula or process,
  - (c) any information concerning industrial, commercial or scientific experience, or
  - (d) public lending right in respect of a book.
- (2) In this section “copyright of literary, artistic or scientific work” does not include copyright in—
- (a) a cinematographic film or video recording, or
  - (b) the sound-track of a cinematographic film or video recording, except so far as it is separately exploited.”
- (4) The amendments made by subsections (2) and (3) have effect in respect of payments made on or after 28 June 2016.
- (5) In determining whether section 906 of ITA 2007 applies to a payment, no regard is to be had to any arrangements the main purpose of which, or one of the main purposes of which, is to avoid the effect of the amendments made by this section.
- (6) Where arrangements are disregarded under subsection (5) in relation to a payment which—
- (a) is made before 28 June 2016, and
  - (b) is due on or after that day,
- the payment is to be regarded for the purposes of section 906 of ITA 2007 as made on the date on which it is due.
- (7) In determining the date on which a payment is due for the purposes of subsection (6), disregard the arrangements referred to in that subsection.
- (8) In this section “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable and whether entered into before, or on or after, 28 June 2016).

**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—

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- (a) a person (“the payer”) makes an intellectual property royalty payment,
  - (b) the payment is received by a person (“the payee”) who is connected with the payer, and
  - (c) 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;
  - “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

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- (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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