

Treatment of Certain Patent Royalties Paid to Companies Resident Outside the State

Part 08-01-04

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1. Introduction

This manual contains, and updates, guidance set out in *Statement of Practice SP - CT 01/10 Treatment of Certain Patent Royalties Paid to Companies Resident Outside the State* which was published on 18 October 2016.

2. Tax treatment of royalties paid in respect of the user of a patent

Payments of patent royalties are subject to section 238(2) Taxes Consolidation Act 1997 (“TCA 1997”). On making a payment of a royalty or other sum paid in respect of the user of a patent, the payer is obliged to deduct out of the payment a sum representing the amount of income tax on the payment at the standard rate. However,

- Chapter 6 of Part 8 of the TCA 1997¹ provides that withholding taxes will not apply to royalty payments that meet the requirements of that Chapter. Essentially these are payments made to an associated company resident in another EU Member State².
- Section 242A TCA 1997³ provides that withholding tax will not apply to royalties paid by a company in the course of a trade or business to a company resident in a treaty country⁴.

Under section 238 TCA 1997 tax must be withheld on all patent royalty payments by a company with the exception of payments that are within in the scope of Chapter 6 of Part 8 or section 242A TCA 1997.

Under Chapter 6 of Part 8 and section 242A TCA 1997 the payee company will not be chargeable to tax in respect of patent royalty payments within the scope of that Chapter or section.

¹ Chapter 6 implements the EU Interest and Royalties Directive (Council Directive 2003/49/EC of 3 June 2003, as amended)

² For the purposes of the Statement of Practice a payment to a non-resident company is treated as not including a payment to a company carrying on a trade in the State through a branch or agency.

³ Inserted by section 55 Finance Act 2010.

⁴ The treaty country must impose a tax that applies generally to royalties receivable from sources outside that country.

3. Charge to Tax in the Case of Non-Resident Companies

A non-resident company is chargeable to income tax in respect of the profits arising or accruing from any property whatever in the State (section 18 TCA 1997). This is modified by Chapter 6 of Part 8 and section 242A TCA 1997, as mentioned above, and by the terms of double taxation agreements. To maintain a charge to income tax in the case of a royalty, paid to a non-resident, from which tax is deductible on payment, the royalty must constitute profits accruing from property in the State.

Revenue accepts that a patent royalty paid to a non-resident company does not give rise to a charge to income tax under section 18 TCA 1997 on the payee where the payment is made—

- (a) in respect of a foreign patent, i.e. a patent originally registered outside the State in relation to an invention developed outside the State, and
- (b) under a licence agreement
 - (i) executed in a foreign territory, and
 - (ii) subject to the law and jurisdiction of a foreign territory.

4. Administrative Practice

Provided the notification requirements set out in paragraph 5 are met, Revenue is prepared to accept that a company paying a royalty, out of which it would otherwise be required to deduct tax, may make the payment without deducting that tax in the following circumstances:

- (a) The payee is—
 - (i) a company which is neither resident in the State nor carrying on a trade in the State through a branch or agency (notwithstanding that the payment may be unconnected with that branch or agency), and
 - (ii) the beneficial owner of the royalty payment;
- (b) the royalty is payable—
 - (i) in respect of a foreign patent, i.e. a patent originally registered outside the State in relation to an invention developed outside the State, and
 - (ii) under a licence agreement
 - executed in a foreign territory, and
 - subject to the law and jurisdiction of a foreign territory;
- (c) the payment is being made in the course of the paying company's trade; and

- (d) the payment is not part of a back-to-back or conduit arrangement whereby the payment represents all or substantially all of the income received or receivable by the paying company in connection with licensing of the same foreign patent.

Where the conditions in 4 are satisfied, the fact that tax was not deducted on payment will not preclude the paying company from obtaining relief which would otherwise be due under section 243 TCA 1997 in respect of the payment.

5. Notification

A company that is applying this administrative practice, to pay a royalty to a non-resident company without deduction of tax on or after 18 October 2016, is required to notify Revenue that it is availing of the administrative practice. The notification should be made in writing to the Revenue district dealing with the company's tax affairs no later than the filing date of the corporation tax return for the accounting period in which the royalty is paid. A notification should be made by the company in respect of each accounting period during which royalties are paid to a non-resident company and tax is not deducted on account of the application of this administrative practice.

6. Documentation to be retained

The paying company should retain for the time period specified in section 886 TCA 1997 all necessary information and documentation required to show that –

- (a) the payee is not resident in the State and not trading in the State through a branch or agency;
- (b) the payee is the beneficial owner of the royalty payment; and
- (c) the royalty is payable—
- (i) in respect of a foreign patent, i.e. a patent originally registered outside the State in relation to an invention developed outside the State, and
 - (ii) under a licence agreement
 - executed in a foreign territory, and
 - subject to the law and jurisdiction of a foreign territory.
- (d) the payment is made by the paying company in the course of its trade; and
- (e) the payment is not part of a back-to-back or conduit arrangement whereby the payment represents all or substantially all of the income received or receivable by the paying company in connection with licensing the same foreign patent.

The practice set out in this manual should be relied upon only to the extent that the royalty payments concerned are made in good faith and for purposes that do not include tax avoidance. Revenue reserves the right to amend or withdraw this Statement of Practice as respects royalty payments made from a date not earlier than the date of notice of any amendment or withdrawal.