

## New Clause 9: Receipts from intellectual property: territorial scope

### Summary

The new clause amends the rules in Part 5 of the Income Tax (Trading and other Income) Act 2005 (ITTOIA) on the charge to income tax on receipts from intellectual property by inserting new section 577A. It introduces changes to the territorial scope of charges under Part 5 in respect of receipts from intellectual property.

### Details of the clause

1. Subsection (1) of the clause inserts a new subsection in section 577 making reference to new section 577A.
2. Subsection (2) of the clause inserts new section 577A into Chapter 1 of Part 5 of ITTOIA. Section 577A includes within the territorial scope of charges under Part 5 income arising where royalties or other sums in respect of intellectual property are paid by a non-resident in connection with a trade carried on by them through a permanent establishment in the UK.
3. Subsection (1) of new section 577A provides that income arising from certain payments of royalties or other sums in respect of intellectual property will be income which is from a source in the UK.
4. Subsections (2) and (3) of new section 577A provide for the apportionment, on a just and reasonable basis, of payments of royalties or other sums that are made in connection with a trade that is only partly carried on through a permanent establishment in the UK.
5. Subsection (4) of new section 577A provides for an anti-avoidance rule which disregards arrangements which circumvent the effect of subsection (1) of new section 577A.
6. Subsection (5) of new section 577A of new section 577A defines terms used in the section. In particular, the definition of "permanent establishment" explains how that expression is to be read in the context of companies and other persons.
7. Subsection (3) of the clause provides the commencement provisions.
8. Subsection (4) of the clause provides that the anti-avoidance rule in subsection (4) of new section 577A applies regardless of when arrangements were entered into.
9. Subsections (5) and (6) of the clause prevent payments being accelerated to circumvent the effect of subsection (1) of new section 577A.
10. Subsection (7) of the clause sets out the circumstances in which arrangements entered into before 28 June 2016 with the main purpose, or a main purpose, of obtaining a benefit under a

double taxation arrangements between countries other than the UK are to be regarded as "DTA tax avoidance arrangements" for the purposes of section 917A ITA.

11. Subsection (8) of the clause defines terms used in subsection (7) of the clause.
12. Subsection (9) of the clause sets out circumstances in which relief under the EU Interest and Royalties Directive can be denied under arrangements entered into before 28 June 2016.

## Background note

13. Tax rules in the Income Tax (Trading and Other Income) Act 2005 define the territorial scope of the charge to income tax on royalties and other income from intellectual property. In the case of income arising to a non-UK resident, a charge arises only if the income is from a source in the UK.
14. This measure broadens the scope of payments of royalties and other income from intellectual property that will be considered to come from a source in the UK. This will now include payments made by persons that are non-UK resident person where those payments are connected with a trade carried out by that person through a permanent establishment in the UK. As a result such payments will now be subject to the deduction of income tax at source rules in Part 15 of the Income Tax Act 2007.