

Innovation & Technology

'PATENT BOX' TAX RELIEF



UK 'PATENT BOX' TAX INCENTIVE

The Government expressed for some time a desire to introduce a 'Patent Box' into UK tax legislation, to reduce the rate of company tax on profits from patents and sales of patented products. This took effect from 1 April 2013.

The Patent Box complements existing, valuable tax incentives for Research and Development (R&D), by providing further tax incentives for the commercial exploitation of patented products and inventions. In principle, therefore, tax incentives are now available for the whole of the innovation lifecycle.

Under this scheme, innovative companies effectively pay tax on their Patent Box profits at just 10%, half the main rate of company tax.

The new rules came into effect from 1 April 2013, and the benefits from the Patent Box are initially being phased in over a five year period.

KEY FEATURES OF THE PATENT BOX

The Patent Box is a generous incentive. Broadly, the 10% tax rate applies to worldwide profits arising from the exploitation of UK patents, patents granted by the European Patent Office and patents granted by certain other EU member states,

or from an exclusive licence over such patent rights.

The 10% tax rate is available regardless of how the company exploits its patent rights. Consequently, eligible Patent Box profits can arise from various income sources, including:

- sales of patented products;
- sales of products incorporating patented items;
- sales of bespoke spare parts for such products;
- licence fees or royalties for granting rights over patents and other associated IP rights;
- income from the sale of patent rights or exclusive licences over patent rights;
- income received as damages for infringement or alleged infringement of patent rights;
- deemed 'notional royalty' income for patented tools and patented processes used to create non-patented services or products for sale;
- insurance payments in respect of patented products.

WHICH COMPANIES ARE ELIGIBLE?

Despite what you may have heard, the Patent Box is not just a tax break for large pharmaceutical companies; it is not 'sector specific'. All innovative companies generating profits from patents and patented products are eligible, whatever their industry sector.

To qualify for the Patent Box, a company/group must have created or made a significant contribution to the innovation underlying the patent or its commercial application, or to the development of a product incorporating the patented invention.

Special rules apply for groups of companies. In this context, it is important to note that passive patent-holding companies do not qualify for the 10% tax rate.

IMPORTANT POINTS AND OPPORTUNITIES

Some important planning points arise from the details of the Patent Box legislation:

- **The Patent Box is optional and does not apply automatically.**
It must actively be claimed in the company's corporation tax return.
- **Company/group structures can affect the amount of Patent Box tax savings.**
It may be appropriate to review existing corporate structures to ensure that the tax position is optimised.
- **Profits earned in the 'patent pending' period can qualify for the 10% tax rate.**
However, this will require appropriate consideration and action in advance of the patent being granted.

In light of these points, companies that might qualify for the Patent Box are recommended to seek specialist tax advice at the earliest opportunity so that eligibility and appropriate planning may be considered.

It may also be appropriate for companies to revisit their IP protection and exploitation strategies. The potential Patent Box tax savings may offer a further justification for the costs of obtaining patents.

RECENT DEVELOPMENTS

Some important changes are due to be made to the UK Patent Box to take effect from 1 July 2016.

In essence, the new rules will tie the Patent Box benefit more closely to underlying R&D expenditure and could limit the Patent Box relief for companies which have acquired patents or have subcontracted the underlying R&D to related parties.

In particular, group companies should consider how the new rules could affect them. Full details of the changes are set out in our separate release on this topic.

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We are proud winners of the British Accountancy Awards 2015 Top 50 Tax Team of the Year, and were finalists in the Tolley's Taxation Awards 2015 and 2016 Best Tax Practice in a Regional Firm.



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