

# Patent Box Update

7 December 2011

## Reduced 10% corporate tax rate on profits from patents and patented products

The Government has for some time expressed a desire to introduce a 'Patent Box' to reduce the rate of company tax on profits from patents and patented products. This has now come a step closer, with the publication on 6 December 2011 of draft Patent Box legislation. Although this is subject to further technical consultation, it is expected that the new rules should be effective from 1 April 2013.

### What IP will it apply to?

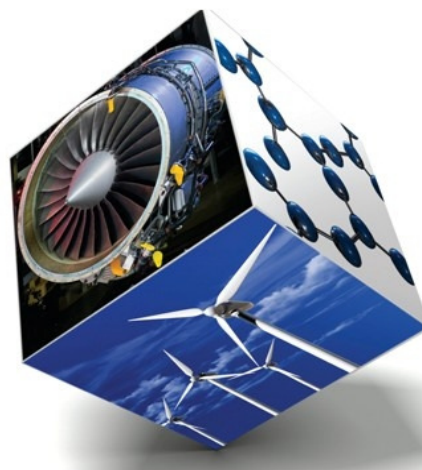
It is proposed that intellectual property ('IP') qualifying for the Patent Box will include:

- UK patents,
- Patents granted by the European Patent Office,
- Certain other IP rights which are treated in the same way as patents under UK legislation, and
- Patents granted by certain other EU member states; the Government will compile a list of qualifying EU member states whose patent regimes are comparable to the UK.

As a result of the consultation exercise, **existing as well as new IP will be eligible for the 10% tax rate.** Patent Box benefits will be phased in over five years from 1 April 2013.

Acquired IP will also be eligible for the 10% tax rate provided that the claimant company has done further work in developing the IP or the product into which it is incorporated.

Patent rights licensed in by a company will also be eligible for the patent box, provided that the licence provides exclusivity.



### What income will be taxed at only 10%?

It should be noted that the Patent Box regime will be optional. A company will have to claim the benefit in its corporation tax returns.

The intention is that UK businesses will be eligible for the lower tax rate regardless of how they use their patents. Consequently, worldwide profits that can be put into the Patent Box will include those derived from:

- Sales of patented products or items incorporating patented items;
- Licence fees and royalties derived from rights in the qualifying IP;
- Income arising from the sale of qualifying IP rights or exclusive licences in respect of such rights;
- Amounts received in respect of infringement or alleged infringement of qualifying IP rights;
- Income derived from the exploitation of IP rights, for example from selling non-patented goods that are produced using a patented process

The rules recognise that the patenting process takes some time. Profits from the IP during the last 6 years of the 'patent pending' phase can be included in the tax calculation for the year when the patent is granted.

### How will the tax calculations work?

Tax is seldom straightforward! The draft Patent Box provisions do not simply apply a 10% tax rate to the profits identified with eligible IP assets.

Instead, an adjustment will be made to deduct an amount from the company's taxable profits, such that the effect will be the same as taxing the patent profits at a reduced rate of 10%.

A set method is proposed for calculating the deduction to be made from taxable profits. Efforts have now been made to simplify these calculations, especially for smaller claims. There is still a degree of complexity in the detail of the calculations and it will be important to ensure that the rules are followed closely.



### Suggested action now

Companies with existing or proposed patents are strongly recommended to take professional advice, both from their patent attorneys and from their tax advisers.

Although patents may be more expensive than other forms of IP protection, this may be a worthwhile investment in view of the proposed future tax savings under the Patent Box.

As the tax savings should continue for the life of the patent, the financial impact could be substantial.

### For further information or advice, please contact:



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