

Technology Matters

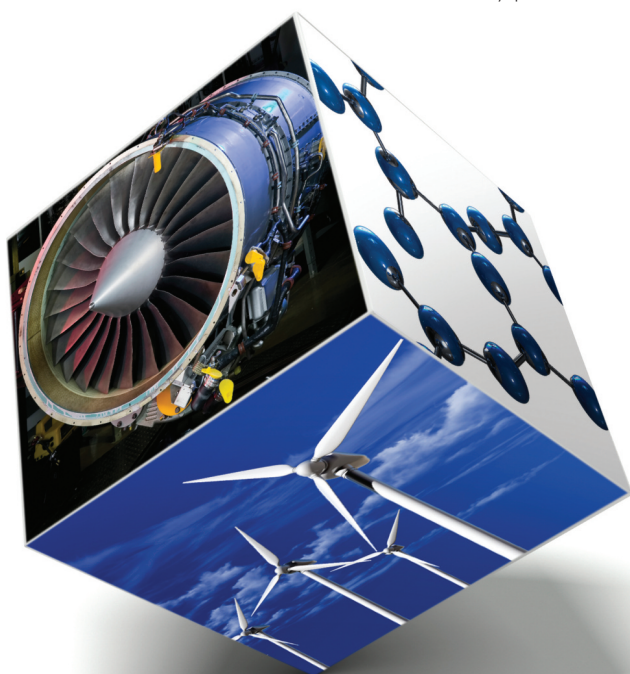
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New UK Patent Box - reduced company tax on Patent profits

The Government has for some time expressed 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 came a step closer on 6 December 2011, with the publication of draft Patent Box legislation.

The Patent Box will complement 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 could potentially be available for the whole of the innovation lifecycle.

Under these proposals, innovative companies will pay tax on their Patent Box profits at just 10%, less than half the main rate of company tax. Although this is subject to further technical consultation, it is expected that the new rules should be effective from 1 April 2013, with the benefits from the Patent Box being initially phased in over a five year period.



Key features of the Patent Box

The Patent Box proposals are generous. Broadly, the 10% tax rate will apply to worldwide profits arising from the exploitation of UK patents and patents granted by the European Patent Office, or from an exclusive licence over such patent rights.

The intention is that the 10% tax rate will be 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.

Which companies are eligible?

The Patent Box is not 'sector specific'; all innovative companies generating profits from patents and patented products are eligible, whatever their industry sector.

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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 our review of the details of the Patent Box proposals:

■ The Patent Box will be optional and will 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 action in advance of the patent being granted.

■ Beneficial interaction with R&D tax incentives.

A valid R&D tax relief claim will not only reduce the company's total taxable profits but will also move more of that taxable profit into the 10% Patent Box rate.

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.

For further details please contact David Clift on 01452 634800 or david.clift@hazlewoods.co.uk.



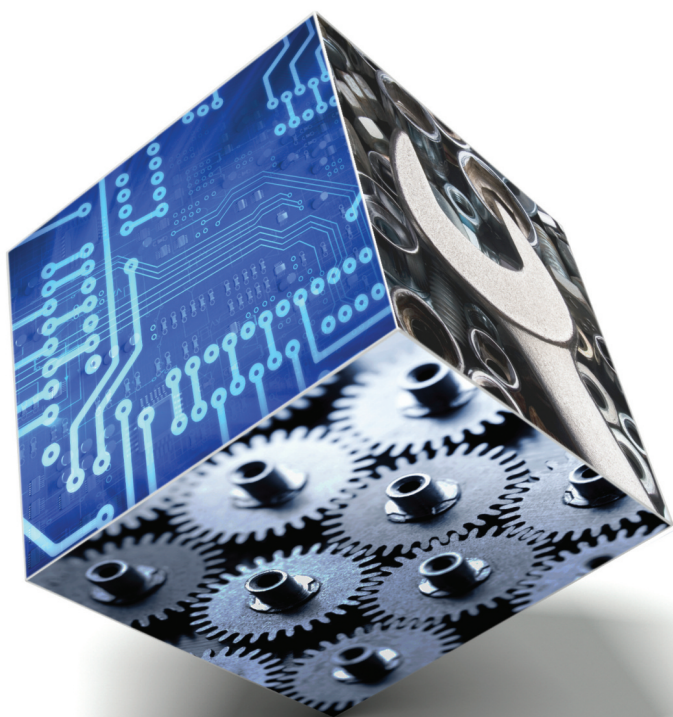
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