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The Patent Box – The key points

The Patent Box allows companies to pay a significantly reduced UK corporation tax rate of up to 10% on profit which is attributable to patents.

In the fiscal year 2014-15, 1,135 companies claimed relief under the Patent Box with a total benefit value of £651.9 million– from Statistics on uptake of the Patent Box provided by HMRC. Only just over a quarter of these companies were classified as large companies.

Key Points of the Patent Box

The UK Patent Box provides a wide-reaching tax discount for patented technologies. The detailed provisions are complex but the key points are:

- 10% corporation tax on patent profits – such profits can arise from, e.g. sale of products or processes, licence income, sale of patents and awards of damages against infringers.
- Only granted patents can be used to access the Patent Box, but once a patent is granted you can claim back for the period from filing the application until grant, up to a maximum of 6 years.
- Both patent owners and exclusive licensees (but not non-exclusive licensees) can benefit.
- The Patent Box applies to UK profits from worldwide income attributed to a patented invention, not just profits from sales in countries covered by patents.
- The Patent Box applies where there is a granted UK or European patent, and also patents from a selection of other EEA countries with equivalent patentability requirements and levels of scrutiny.
- The Patent Box also covers profits attributable to supplementary protection certificates, plant breeders rights and pharmaceutical data exclusivity regulations, but not other IP rights such as trade marks or registered designs.

Changes to Patent Box from 1 July 2016

In July 2016 a modified patent box regime came into force, with rules adjusting how much a company can benefit in some circumstances. However, grandfathering provisions are available to allow some companies to continue to use the old regime for some IP assets until the end of June 2021.

- Under the new modified regime, the tax benefit related to each IP asset will be adjusted in dependence on a ratio of expenditure on qualifying R&D related to the IP asset by the claiming company and overall expenditure on R&D and acquisition costs related to the IP asset by the claiming company.
- Companies may therefore have to track the R&D expenditure related to each of their IP assets in order to benefit from the modified Patent Box regime.
- The changes to the regime are not expected to have a significant effect on level of benefit that can be claimed by companies that have all their R&D, patents and sales in one company and which have not acquired any IP assets from either related or unrelated parties. However, the companies may still be required to track their R&D expenditure related to IP assets and we would encourage companies to seek advice in respect of the application of the new regime.
- The old regime closed to new entrants from 1 July 2016. Companies already in the old regime can continue to use the old regime until the end of June 2021 for any patents/patent applications that they had already filed by 1 July 2016.

The Patent Box is a new intersection between the complexities of tax planning and intellectual property. It is essential that professional advisors from both areas work together to maximise benefit for their clients. For example, a tax specialist can advise on maximising the relevant tax relief, alongside your HGF attorney who can interpret the scope of your granted patent and advise on the extent to which a particular revenue stream can qualify for the Patent Box. If you are interested in Patent Box, then please let your attorney know.