

## Patent Box: Inventing a way to reduce Corporation Tax

Most companies would like to invent a way to reduce their corporation tax liability. The UK Patent Box scheme provides a way to do just that by offering a reduced corporation tax rate of 10% for profits arising from patented inventions. This tax saving through innovation is actively encouraged by the UK government, so it makes sense to try to benefit.

For innovative companies that earn substantial profits from patented products and services (or patent licensing), the currently available Patent Box tax reductions can make an enormous contribution to offsetting R&D costs (and the savings often dwarf the cost of obtaining the patents that qualify them for this tax reduction).

In March 2021, the UK government announced a plan to increase corporation tax by 6% from 19% to 25%, without a corresponding increase to the reduced 'Patent Box rate' of 10%. This means that the Patent Box benefit will be even greater if corporation tax does rise in 2023 as planned, and the 6% increase was repeated in the UK government's October 2021 budget.

Why pay Corporation Tax at 25% on all of your profits when the government is encouraging innovative UK companies to pay only 10% on at least some?

## What is the UK Patent Box?

In the UK, the Patent Box incentive was first introduced in 2013 to encourage innovative companies to develop, keep and commercialise intellectual property in the UK. A UK-based company that has **elected into** the Patent Box can apply a reduced corporation tax rate of 10% to profits earned from patented inventions. Currently this represents a 9% reduction to the tax rate, but if the tax rate does increase by 6% in 2023 it will provide a 15% reduction, more than halving the tax liability on qualifying profits.

The system became a little more complex in 2016, but the significant tax saving justifies navigating the complexities.

We hope the summary below is helpful, but would always suggest that you seek advice from specialist tax advisors before making any election, or claim, under the Patent Box. We can help you to obtain the patents that qualify for the scheme, and introduce you to tax advisors with expertise in Patent Box and R&D tax credits.

## Who can benefit from the Patent Box?

To benefit, a company must be a **qualifying company** that has **elected into** the Patent Box.

A **qualifying company** is UK-based company that is:

- the holder of a **qualifying intellectual property (IP) right**; or

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- the holder of an exclusive licence for a **qualifying IP right** (subject to certain conditions).

If the company is a member of a group it can still qualify if it owns the patented invention and take a significant role in managing the portfolio of eligible patents

A **qualifying IP right** must be in force and will typically be:

- a patent that has been granted by the UK Intellectual Property Office (UKIPO) or the European Patent Office (EPO); or
- a patent that has been granted by the national Patent Office of: Austria, Bulgaria, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Poland, Portugal, Romania, Slovakia or Sweden.

Certain other rights can also qualify, including Supplementary Protection Certificates (SPC) granted by the UKIPO or EPO, UK or European plant variety or plant breeder's rights and data exclusivity rights.

Note that patent *applications* are *not* qualifying IP rights. However, when a patent application grants, it can become a qualifying IP right and the Patent Box tax reduction can be applied retrospectively to profits earned in accounting periods up to six years before the grant, provided that the company **elected into** the Patent Box for those accounting periods.

The company (or another group company) must also have undertaken development for the patent and made a significant contribution to either:

- the creation or development of the patented invention; or
- a product incorporating the patented invention.

## Election into the Patent Box

Entry into the Patent Box is not automatic, a company must **elect into** the Patent Box. An election can be made by writing to the tax office and there is no prescribed wording, or form to complete. For particular profits to benefit the election must be made within 2 years after the end of the accounting period in which the relevant profits and income arose.

## Which profits are eligible for the reduced tax rate?

The Patent Box benefit can apply to worldwide revenues, even if the patent(s) concerned only exist in the UK (or in certain EEA countries). The reduced tax rate can apply to the profit made from sales of a product that incorporates a patented component, even where the patented component is itself only a minor part of the product. This means that the profit from an entire range of products that each incorporate a particular patented component can be included in the Patent Box.

As a result, a single UK patent can be enough for all the worldwide profits generated by a particular product to benefit from the Patent Box, even if the profits are from sales in countries where no patent is held.

As a general summary, the reduced tax rate can be applied to profits derived from:

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- worldwide sales of products and services incorporating the patented invention, including bespoke spare parts;
- use of the patented invention in the company's trade (the relevant profits in this case are calculated on a notional royalty basis);
- worldwide licensing, or selling, qualifying IP rights; and,
- court-awarded compensation payments for infringement, such as damages or an account of profits that would have been earned, and insurance proceeds.

## Government Guidance

The official government guidance for how to use the Patent Box to reduce your Corporation Tax on profits can be found [here](#).

## What does this mean for IP Strategy, and how can AA Thornton help?

The potential savings offered by the Patent Box may well shift the results of a cost-benefit analysis for many UK companies in favour of seeking patent protection for innovations that would otherwise not justify such protection.

Inventions that previously would have been kept confidential (e.g. as trade secrets) may now justify patent protection due to the savings afforded by the Patent Box over the lifetime of a patent. This, of course, needs to be balanced against the fact that all patent applications are published 18 months from filing, meaning that details of the invention are released into the public domain.

Inventions where the potential scope of patent protection is likely to be so narrow that they would previously not have justified the cost of seeking patent protection may now merit more detailed consideration. Although the patent may be easy for a third party to work around, and so provide minimal practical commercial protection for the invention, if the patent covers a product or service it can still provide significant commercial value through tax savings.

Our attorneys have extensive experience in drafting patent applications in a wide-range of technical fields. We prosecute significant numbers of patent applications directly at the UKIPO and EPO, and we are in close working relationship with a worldwide network of associate attorney firms in order to offer our clients the option to obtain patent protection anywhere in the world.

Our attorneys are happy to advise and assist with regards to both obtaining a patent in general, as well as specifically with the Patent Box in mind. To speak with an attorney to discuss the possibilities, complete our enquiry form below, and a member of our team will be in contact.