

Corporation Tax Reform: Patent Box

Who is likely to be affected?

Companies within the charge to corporation tax that actively hold qualifying patents and some other forms of intellectual property ('IP'). Patents are used by a wide variety of businesses, but particular sectors likely to benefit are pharmaceuticals, life sciences, manufacturing, electronics, and defence.

General description of the measure

The Patent Box will allow companies to elect to apply a 10 per cent rate of corporation tax from 1 April 2013 to all profits attributable to qualifying patents, whether paid separately as royalties or embedded in the sales price of products. The regime will also apply to other qualifying intellectual property rights such as regulatory data protection (also called "data exclusivity"), supplementary protection certificates (SPCs) and plant variety rights. Other non-qualifying profits in these companies will continue to be taxed at the main rate. The Patent Box will potentially benefit a wide range of companies which receive patent royalties, sell patented products, or use patented processes as part of their business.

Policy objective

The Patent Box is part of the Government's growth agenda (as detailed in the *Plan for Growth* document published in March 2011). The aim of the Patent Box is to provide an additional incentive for companies to retain and commercialise existing patents and to develop new innovative patented products. This will encourage companies to locate the high-value jobs associated with the development, manufacture and exploitation of patents in the UK and maintain the UK's position as a world leader in patented technologies.

Background to the measure

A number of documents have been published:

- November 2010: *The Taxation of Innovation and Intellectual Property*. This sets out the high level principles for the Patent Box design;
- June 2011: *Consultation on the Patent Box*. This is the stage 2 consultation document which gives more detail on the design proposals; and
- December 2011: Draft legislation and explanatory notes, *Patent Box, response to consultation*, and *The Patent Box: Technical Note and Guide to the Draft Legislation*.

This Tax Information and Impact Note updates and replaces the note published on 6 December 2011.

Detailed proposal

Operative date

The measure will have effect in relation to profits made or after 1 April 2013.

Proposed Changes

Legislation will be introduced in Finance Bill 2012 to introduce a new regime: the Patent Box.

The Patent Box will allow companies to elect to apply a 10 per cent rate of corporation tax from 1 April 2013 to all profits attributable to qualifying intellectual property (IP).

Qualifying IP includes patents granted by the UK Intellectual Property Office ('IPO') and the European Patent Office ('EPO'), as well as supplementary protection certificates, regulatory data protection and plant variety rights.

In addition to patents granted by the IPO and EPO the Government intends to extend the Patent Box to other EU Member States which have similar examination and patentability criteria as the UK. A list of qualifying patent jurisdictions will be published as secondary legislation in 2012.

The Patent Box will apply to existing as well as new IP, and to acquired IP provided that the group has further developed the IP or the product which incorporates it.

The legislation sets out a structured approach to calculate the profits from qualifying IP.

For companies selling patented products or licensing their patents, the calculation starts from the total profit from the sale of products incorporating the patented invention or the profit from licensing the invention. The full rate of corporation tax will still be charged on a 10 per cent routine return on certain costs and on any part of those profits which is attributable to marketing intangibles. Companies making smaller claims can choose a simpler calculation avoiding the need to value their brand. All remaining profit will be eligible for the Patent Box rate.

Companies which use the IP to perform processes or provide services will benefit from the Patent Box up to the level of an arm's length royalty for the use of the qualifying IP.

Summary of impacts

Exchequer impact (£m)	2012-13	2013-14	2014-15	2015-16	2016-17
	-	-350	-720	-820	-910
	These figures are presented in Table 2.2 of the Budget. The Office for Budget Responsibility has included these numbers in its forecast.				
Economic impact	<p>UK sectors such as pharmaceuticals, life sciences, manufacturing, electronics and defence use patents and are likely to benefit from the Patent Box.</p> <p>Where revenue-generating patents are held by unincorporated businesses, the introduction of the Patent Box will likely increase the incentive to incorporate. This is likely to be tempered as businesses will normally have already incorporated to qualify for the Research and Development Tax Relief.</p> <p>The introduction of the Patent Box is likely to encourage investment and economic growth as well as prevent the movement of intellectual property offshore by innovative businesses who otherwise might invest elsewhere.</p>				
Impact on individuals and households	This measure is aimed at the corporate sector so there is no impact on individuals.				
Equalities impacts	The Government has carefully considered whether this measure impacts on people with protected characteristics and have not identified any impacts.				

<p>Impact on business including civil society organisations</p>	<p>The Patent Box will be available to patents granted by the Intellectual Property Office (IPO) and European Patent Office. Some businesses who don't currently patent through these routes will therefore need to apply for patents and will incur additional costs. The IPO fees to acquire a UK patent, including application and annual renewal fees, are £950 for ten years and £4770 for the maximum 20 years. The Patent Box requires only one patent over a product in order for the associated profits to qualify, reducing the impact of this requirement.</p> <p>The Government has developed a largely formulaic approach to calculating the net profit from patents to improve certainty and reduce administrative burdens. Although the regime is elective there is some unavoidable complexity which will impose an additional administrative burden on those who choose to elect in.</p> <p>The Government recognises that some small companies may not have experience of identifying the relative contribution of patents and brand IP. This is addressed by the option of an election for the attribution of profits to patent and brand IP in claims of up to £1 million a year which can be used by small companies.</p> <p>The policy does not have a fixed term and administrative burdens are presented on an average annual basis.</p> <table border="1" data-bbox="419 936 1402 1451"> <thead> <tr> <th></th> <th>Cost</th> <th>Time Period (yrs)</th> </tr> </thead> <tbody> <tr> <td colspan="3">Compliance Costs</td> </tr> <tr> <td>One-off Costs</td> <td>£2-2.5m</td> <td>N/A</td> </tr> <tr> <td>Average Annual Costs</td> <td>£24-28m</td> <td>N/A</td> </tr> <tr> <td>Total Costs (PV)</td> <td>£26-30.5m</td> <td>N/A</td> </tr> <tr> <td colspan="3">Compliance Benefits</td> </tr> <tr> <td>One-off Benefit</td> <td>0</td> <td>N/A</td> </tr> <tr> <td>Average Annual Benefit</td> <td>0</td> <td>N/A</td> </tr> <tr> <td>Total Benefit (PV)</td> <td>0</td> <td>N/A</td> </tr> <tr> <td>Net Benefit (NPV)</td> <td>0</td> <td>N/A</td> </tr> <tr> <td colspan="3">Impact on Administrative Burden (included in Net Benefit)</td> </tr> <tr> <td>Increase</td> <td>Decrease</td> <td>Net Impact</td> </tr> <tr> <td>+\$26-30.5m</td> <td>0</td> <td>+\$26-30.5m</td> </tr> </tbody> </table>		Cost	Time Period (yrs)	Compliance Costs			One-off Costs	£2-2.5m	N/A	Average Annual Costs	£24-28m	N/A	Total Costs (PV)	£26-30.5m	N/A	Compliance Benefits			One-off Benefit	0	N/A	Average Annual Benefit	0	N/A	Total Benefit (PV)	0	N/A	Net Benefit (NPV)	0	N/A	Impact on Administrative Burden (included in Net Benefit)			Increase	Decrease	Net Impact	+\$26-30.5m	0	+\$26-30.5m
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<p>Operational impact (£m) (HMRC or other government departments)</p>	<p>Indicative estimated annual costs of HMRC administering the regime are in the range of £2 million to £5 million. Training and familiarisation on the new legislation will be required.</p> <p>There may be some operational impact on the IPO, as the regime may encourage increased patenting in the UK. Several aspects of the proposals have been designed to minimise this impact, including the proposed model design, which requires only one patent over a product in order for the associated profits to qualify. Additional patent examiners may be required to deal with the projected additional demand.</p> <p>It is not anticipated that there will be any significant operational impacts on other government departments.</p>																																							
<p>Other impacts</p>	<p><u>Competition assessment:</u> The Patent Box is not sector specific and is generous in its scope by also including SPCs and data exclusivity. Any company with eligible patents and qualifying income may be able to take advantage of the Patent Box.</p>																																							

Monitoring and evaluation

The measure will be monitored and assessed alongside other measures in the Government's package of corporate tax reforms.

Further advice

If you have any questions about this change, please contact Anna Floyer-Lea or Richard Rogers via e-mail: corporatetaxreform@hmtreasury.gsi.gov.uk