

Patent Box Benefits for the retail industry

The Patent Box legislation has been introduced to encourage innovation in the UK. Under the regime, and from April 2013, a lower effective rate of corporation tax applies on profits attributable to certain UK or European patents – by 2017 the tax rate for such profits will be as low as 10%. But how does Patent Box benefit retailers?

The power of brands

An analysis of the key value drivers for a retailer would typically recognise the significant role played by the brand. For this reason, many consumer-facing businesses might assume that the Patent Box regime would not be applicable to them given the notional marketing royalty which needs to be deducted. However, for many, the value of the brand is itself a function of the quality of their products. It is therefore necessary to understand the often complex interaction between the role played by product quality, and the role of advertising and marketing, in order to derive an accurate valuation of the brand for Patent Box purposes.

Brands can be valued using methodologies such as the profit split approach. Under this approach, the profit in the value chain is split between the various components which generate value for the business, whether they are 'routine' activities or valuable intangible assets. Such an approach often demonstrates the role of product quality, and in particular, how the patented technology contributes to the value of the brand.



What if my patents relate to a service rather than a product?

Where patents enable the provision of a service rather than being incorporated into a product that is sold, Patent Box can still be of benefit. In such cases a company will have to use transfer pricing principles to calculate the Patent Box benefit (notional royalty).

Mapping made easier

Income from product sales will qualify for Patent Box if those products either incorporate a patented item or are wholly or mainly designed to be incorporated into a patented item. Retailers selling a wide range of products may find the process to connect patents and products daunting.

Deloitte's patent specialists have experience of mapping patents to products and have methodologies to simplify the process. These processes allow the compliance burden to be managed whilst ensuring that the claim should be acceptable to HMRC. Deloitte can help a company identify the most suitable approach to carrying out the mapping exercise based on the facts and circumstances for that company.

Can I qualify if I am a distributor?

HMRC has set out in its guidance, that a licence which only grants the licensee the right to purchase and sell a patented product, does not, in their view, give the licensee any rights in respect of the underlying patented technology. As such, even an exclusive buy/sell licence agreement, would not meet the Patent Box definition of an exclusive licence.

However, there may be commercial and legal reasons why a distributor requires a formal licence under the patent for the territory in order to carry out the duties assigned to it by its principal. Therefore, the facts of each situation need to be considered when establishing whether a company, which acts as a distributor, can also be considered an exclusive licensee. This is not only in terms of the content of the licensing agreement itself, but also in terms of the practice of the agreement and the general principles established in UK patent law.

Where the licence grants other exclusive rights, such as the right to manufacture the patented product, then this should meet the exclusive licence definition.

Why Deloitte?

Implementing a successful Patent Box program requires a range of specialist skills as well as a multi-disciplinary approach. The Deloitte Innovation tax team has the following capabilities:

- **In-depth Patent Box technical knowledge** – of the legislation and how it applies in practice.
- **IP strategy capabilities** – from the combined team of patent specialists and a patent attorney.
- **Experience in securing Patent Box agreements with HMRC** – including issues such as notional royalty, notional marketing royalty and general methodology.
- **Technology, R&D and Engineering specialists.**
- **Corporation tax and transfer pricing specialists** – with specific focus on notional royalty and notional marketing royalty expertise by industry.
- **Commercial and business strategy experience.**



Case study: Use of patents in IT systems

Deloitte has advised a retail group whose patents claim their core technology which enables the provision of their sales. Deloitte has agreed the application of the notional royalty with HMRC which has secured a multimillion pound Patent Box benefit for the group.

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