

Patent Box

Benefits for the financial services 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 this apply to the financial services industry?

Not patently obvious

Both the UK Patents Act and the European Patent Convention state that computer programs, business methods and mathematical algorithms are not inventions for which patents can be granted. However, this exclusion is limited and it does not mean that all inventions that are used to provide financial services are excluded from the patent system.

If the new idea is a business method for buying or selling shares electronically and the invention really is in the business rules that define how the shares are traded (and the implementation in software of those rules is technically straightforward, although time-consuming), the invention is unlikely to be patentable. However, if in the implementation of the business method in software, a technical problem was encountered and solved with a new and clever technical solution, that solution may be patentable.

A stroke of genius

Case law has shown that in order to determine whether a software-related invention is patentable, companies need to look beyond the computer code and assess whether the contribution the invention makes to 'human knowledge' is technical and inventive. If that is the case, the patent application will not be refused for the mere fact that the invention is implemented and claimed as a computer program or used in business. To determine whether new technology is patentable, the facts of each case will have to be considered in detail and the Deloitte team, which includes patent experts, can work with you to identify patentable developments.

It's a royalty thing

Although companies in the financial services industry wouldn't typically sell products covered by patents, there are other ways they can benefit from the Patent Box. These companies may instead receive licence income from their patentable technology, either from group companies or from customers, or they may use the technology internally to provide services to customers. The Patent Box benefit would depend, in the case of licence income, on the royalty paid to the holder of the IP or, in the case of internally used technology, the arm's length notional royalty the company would be prepared to pay another company, if that company owned the IP instead.

Deloitte's Innovation tax team includes transfer pricing experts with significant experience in determining an appropriate royalty for the right to use complex technology and have market leading experience of agreeing an appropriate transfer price with HMRC.

Make your move

It is recognised that companies may wish to crystallise income from qualifying IP by creating IP holding companies.

HMRC has set out (in its guidance) that undertaking practical and commercially appropriate transactions, including restructuring to create an IP holding company, should not trigger the anti-avoidance legislation. However, there are various considerations when deciding whether to restructure in this way. These include determining the trading status of such a holding company (Patent Box applies to trading profits) as well as deciding whether there are any corporation tax or withholding tax implications of moving patents around the group.

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**
- **Commercial and business strategy experience.**
- **Corporation tax and transfer pricing specialists** – with specific focus on notional royalty and notional marketing royalty expertise by industry

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