

Patent Box

Benefits for companies headquartered overseas

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 benefit companies which are headquartered overseas?

To own or not to own

The aim of the new Patent Box regime is to encourage companies to locate or retain high-value jobs associated with the development, manufacture and exploitation of patents in the UK. Companies located in the UK can benefit if the IP is held by the UK company, but also if the IP is held elsewhere and the UK company has an exclusive licence to use the technology in a territory. Consequently, companies belonging to groups with an overseas headquarter may be eligible to make Patent Box claims as well as companies headquartered in the UK, as long as they have real and substantial rights to the patentable technology.

The legislation sets out a definition of exclusive licence which includes having at least one right to the exclusion of all others (including the patent holder) and specific infringement rights. There is a relaxation of these requirements where the patent rights are used intra-group.

It is therefore important to establish whether licence agreements and/or commercial arrangements meet this requirement.



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. The facts of each situation will therefore need to be considered when establishing whether a company, which acts as a distributor, can also be considered an exclusive licensee, not only in terms of the content of the licencing 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.

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 to be made when deciding whether to restructure in this way, including determining the trading status of such a holding company (Patent Box applies to trading profits) and whether there are any corporation 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 the 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.**



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