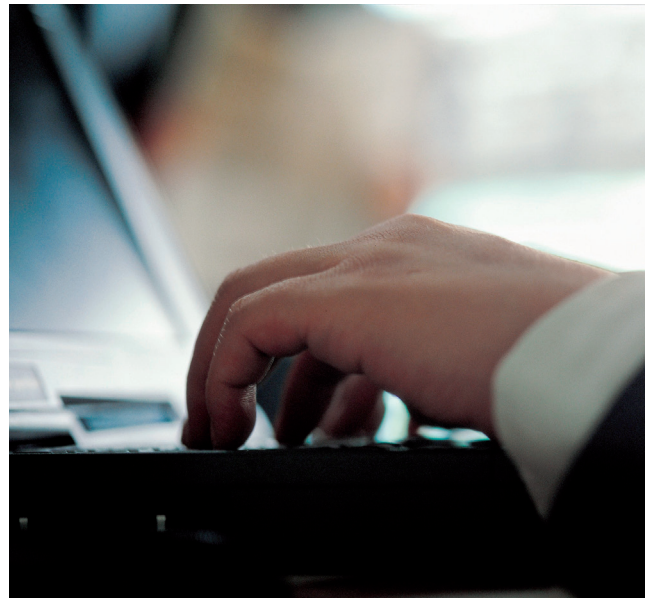


## Patent Box Benefits for the software industry



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 software industry?

### Not patently obvious

It is often said that software cannot be patented in Europe. However, although the UK Patents Act and the European Patent Convention both state that computer programs, along with business methods and mathematical algorithms, are not inventions for which patents can be granted, the scope of this exclusion is limited, and does not mean that all software-related inventions that are used in business are excluded from the patent system. In fact, many software companies do indeed manage to protect their inventions with patents.

### A stroke of genius

Case law has shown that in order to determine whether a software-related invention is patentable, it is necessary to look beyond the computer code and assess whether the contribution the invention makes to 'human knowledge' is inventive and provides technical contribution or a technical solution to a technical problem. In other words, if the technical functionality provided by the computer program is novel and inventive, the patent application will not be refused for the mere fact that the invention is implemented and claimed as a computer program.

As an example, software which digitally processes received image data in a new and inventive way, resulting in an improved image, may be patentable. The contribution to 'human knowledge' may then be a novel technique for manipulating image data and not a mere computer program. Similarly, modifications to the software in a mobile phone for improving reception, may be patentable if the modifications are novel and inventive.

### How does Patent Box apply?

A number of questions can arise when considering how Patent Box applies to software companies. If any one of these questions is a concern for your business then Deloitte can help work out how the rules impact you:

- Can I benefit if my software patents by themselves have limited value?
- How does Patent Box apply if I provide patented software 'free' of charge on my hardware?
- Patented software is only a part of the solution we provide to our clients; do we need to split our sales and profits?
- We have stopped selling hard copy versions of our software and customers download online; will this still qualify as a 'product' within Patent Box?
- We licence our software intra-group and to third parties, how will Patent Box apply to us?
- Most of the value of our software sales is in our updates, does Patent Box apply to them?
- We only sell software, that can't be patented right?
- The software we have patented is not sold to our customers but is used to make our processes more efficient, how does Patent Box apply?
- I sell my software via the cloud, will my income qualify for Patent Box?
- My patent protects the system that uses my software but I don't provide the whole system to my customers?

## How Deloitte can help



*"I am a European and chartered patent attorney, now working in the Patent Box group at Deloitte. I have experience from my past career in patent prosecution in handling patent applications for computer programs. I have worked with a number of software groups, who had not previously seen any commercial advantage in seeking patent protection for their software in Europe, to identify aspects of their technology which may be patentable. These groups are now looking to claim the Patent Box relief when their patent applications are granted."*



## 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.**

## Who to contact



**David Norton**

+44 (0)118 322 2308  
dcnorton@deloitte.co.uk



**Hannah Mitchell**

+44 (0)20 7303 3827  
hamitchell@deloitte.co.uk



**Olivia Johansson**

+44 (0)20 7007 7448  
ojohansson@deloitte.co.uk



**Jonathan Vine**

+44 (0)118 322 2356  
jonathanvine@deloitte.co.uk

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited ("DTTL"), a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see [www.deloitte.co.uk/about](http://www.deloitte.co.uk/about) for a detailed description of the legal structure of DTTL and its member firms.

Deloitte LLP is the United Kingdom member firm of DTTL.

This publication has been written in general terms and therefore cannot be relied on to cover specific situations; application of the principles set out will depend upon the particular circumstances involved and we recommend that you obtain professional advice before acting or refraining from acting on any of the contents of this publication. Deloitte LLP would be pleased to advise readers on how to apply the principles set out in this publication to their specific circumstances. Deloitte LLP accepts no duty of care or liability for any loss occasioned to any person acting or refraining from action as a result of any material in this publication.

© 2013 Deloitte LLP. All rights reserved.

Deloitte LLP is a limited liability partnership registered in England and Wales with registered number OC303675 and its registered office at 2 New Street Square, London EC4A 3BZ, United Kingdom. Tel: +44 (0) 20 7936 3000 Fax: +44 (0) 20 7583 1198.

Designed and produced by The Creative Studio at Deloitte, London. 31514A