



TAX INSIGHT UK

UK R & D Tax Reliefs

Patent Box – Can you use it?

May 2016

Tax for Innovative Companies

May 2016 Insight Patent Box Changes 2016

MARIA KITT, Corporate Tax Partner at Tax Insight LLP, takes a look at the updated Patent Box regime and the changes announced in the 2016 Finance Bill.

What's the deal?

The UK Patent Box helps RD companies enjoy a lower rate of corporation tax upon income linked to IP registrations within the UK or EEA.

The Government has issued draft legislation in this year's Finance Bill to effect proposed changes to the UK patent box regime. The aim is to bring UK rules into line with the new OECD requirements and address potential tax avoidance issues.

The changes are complex and have a number of trigger dates. Companies intending to use or continue to use the Patent Box must establish a clear link to the performance of RD and the registration of linked IP.

Key changes

As part of the Base Erosion and Profit Shifting ('BEPS') project, the Forum on Harmful Tax Practices (comprised of G20 and OECD members) specifically looked at patent box regimes

around the globe to highlight tax avoidance risks.

The key new requirement is that to benefit from a patent box regime, a company should have itself conducted the R&D that led to the intellectual property (IP) which, in turn, generated the sales that go into the 'low tax' patent box regime.

The current UK rules do not require such a link – the changes align the UK Patent Box to OECD policy.

The link between R&D and profits in the patent box - the 'R&D fraction' is identified by a detailed calculation for each type of IP from which the Company receives income.

The result is then multiplied by the patent box profit figure. Removing patent box advantages for Companies unable to establish a link between R & D operations and the registration of IP.

Detail: Apart from the calculations and identification of linked IP registrations, companies will need to track R & D and linked patents from 01 July 2016.

New entrant companies going into the new rules between 1 July 2016 and 1 July 2021 and companies with IP being treated under both the old and the new



regimes will have to include R&D expenditure from 1 July 2013. After 1 July 2021, companies will only need to gather data as far back as 1 July 2016 (although companies can go back further if they have adequate data). There are special provisions for companies if they lack data for the 2013-2016 years allowing them to elect on a rolling three year period and compute the R&D fraction at a global level. Under the new rules, the only method of apportionment into the patent box will be the streaming approach. A higher level of detail may be needed as the fraction must also be applied ('sub-streaming') to profits from each 'parcel' of IP, be it the patent or product family.

Action Point:

The existing PB rules will only continue to 30 June 2021, after which only the new rules will exist. Where a company has elected into the patent box and has IP that already exists at 1 July 2016, it will be able to benefit from the current rules until 30 June 2021.

The current rules will be closed to new entrants (either companies or products) from 1 July 2016 - any new IP created later (either patents or products) will be subject to the new rules.

Two Patent Boxes?

No - As companies may find that they are following both the current and new rules in any given period, if income is tracked at the product level, it may be necessary to apportion R&D costs and profits between the two regimes. There is a chapter of the draft legislation devoted to these circumstances.

Action Point

Reviews may be appropriate if you are considering acquiring IP from a related company in your group.

Companies may also need to restructure their arrangements if they currently own patents, but a substantial proportion of the contributory R&D was conducted by overseas related companies.

All companies will need to consider how to start tracking and tracing R&D expenditure to patents from 1 July 2016.

Frustratingly, the Government has stated that the legislation published on 9 December 2015 is draft only and is expected to be revised further before it becomes law.

Please contact us for assistance with the Patent Box and IP registrations.

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May 2016**

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