

## How you can benefit from the current and the new UK Patent Box Regimes

The Patent Box is a tax relief scheme to incentivise companies to locate their research and development (R&D) activities in the UK.

Under the current Patent Box scheme, which came into effect on 1 April 2013, UK companies can benefit from a reduced rate of corporation tax in relation to profits attributable to patents or certain other qualifying IP assets. The scope of the provisions is broad enough to cover various revenue streams resulting from patented technologies. Moreover, the tax savings can potentially add up to exceed patent costs.

The current scheme will close to new entrants on 30 June 2016, but any company that has elected into the current Patent Box scheme by that date may continue to benefit from this scheme until 30 June 2021.

A new “next generation” Patent Box scheme will commence on 1 July 2016 for new entrants.

### What are the main requirements of the current Patent Box?

There are several basic criteria which a company must satisfy to benefit from the Patent Box

#### Qualifying IP right

Although its name implies otherwise, in addition to patents, the Patent Box also extends to other IP rights, including supplementary protection certificates and

paediatric extensions; plant breeders’ and plant variety rights; medicinal and veterinary products with marketing authorisations and marketing or data protection; and plant protection products with data protection benefits.

To qualify for the Patent Box, a patent must be granted by the UK Intellectual Property Office, the European Patent Office, or the offices of a number of other European Economic Area states.

Tax relief only applies once a patent has granted, but companies can accrue benefits during the patent application phase by electing into the Patent Box early.

#### Actively holding IP rights

The Patent Box is available to companies holding qualifying IP rights as owners or exclusive licensees.

In order to “actively” hold a qualifying IP right, a company must create, or significantly contribute to, the protected invention, or perform a significant amount of activity to develop the protected invention or any product or process incorporating the protected invention. Thus, passive IP holding companies cannot benefit from the Patent Box.

#### Relevant income relating to IP right

The profits to which the reduced tax rate applies are calculated as a proportion of the corporation tax profit

of the company's trade. The relevant IP income for this calculation is that derived from the qualifying IP rights.

Relevant income may include, e.g., sales of a product protected by the qualifying IP rights, or a larger product that incorporates the protected item; licence fees or royalties for granting rights over qualifying IP rights; sales of qualifying IP rights; and income from direct infringement of qualifying IP rights.

## What is changing?

The new scheme links the tax relief to the R&D carried out in relation to the patented invention by the company claiming the tax relief ('the claimant'). The changes are designed to stop multinational groups moving overseas IP into the UK to benefit from the Patent Box tax relief.

Under the new scheme, the benefit will be linked to the proportion of R&D expenditure incurred by the claimant to develop the patented invention relative to the total R&D expenditure incurred to develop the patented invention. Some of the R&D may be outsourced or acquired, but only to a cap of 30% of the qualifying expenditure. This is referred to as the "modified nexus approach". For more information see our Patent Box Q&A section.

These changes are likely to reduce the benefit for companies that have a significant proportion of R&D carried out by others. The new regime is also feared to increase the administrative burden of claimants, because the calculation of qualifying profits, and the tracking of underlying R&D, will undoubtedly be more complex.

The effect of the changes on companies that carry out all of their R&D in-house are expected to be limited.

## Which of the schemes can my business benefit from?

The Patent Box schemes have the potential to provide a significant benefit to many UK-based companies, particularly innovative ones.

The current scheme continues to be open to new entrants until 30 June 2016, when it will close to new entrants. It is therefore recommended that qualifying companies act now to elect into the scheme before that date. There

is no need to obtain a granted patent before that date; a pending application will be sufficient.

Any companies that have elected into the current scheme by 30 June 2016 may continue to take advantage of the scheme until it is abolished in June 2021.

The new scheme will commence on 1 July 2016 for new entrants.

Qualifying IP that was bought-in by a qualifying company on or after 2 January 2016 may only be eligible for the new scheme.

## What actions should I take?

The current Patent Box scheme is likely to be advantageous for many businesses, so following actions should be considered before 30 June 2016:

- File patent applications for any unprotected inventions
- Elect any existing qualifying IP assets into the current Patent Box
- Review licensing and R&D arrangements, particularly within groups of companies

If you have already elected in to the Patent Box, no further action is required to ensure that existing IP rights remain within the current Patent Box scheme until 30 June 2021.

## Where can I get more help and advice?

At Dehns we can help you to maximise the benefit of your company's IP assets in a number of ways, including by:

- reviewing your current patent portfolio and identify opportunities for Patent Box tax relief
- guiding the development process for new customer offerings to incorporate your own patentable innovations or licensed-in technology
- advising on a patent strategy to build the value of your business

Please do not hesitate to contact us for further information – we are here to help.



### Contact Dehns

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