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THE PATENT BOX: 10% TAX RATE
PATENTS & INTELLECTUAL PROPERTY TAX CHANGES

What is the Patent Box?

This is a new tax regime that will allow companies to apply a 10% corporation tax rate to profits attributable to patents and certain other intellectual property (IP), instead of the mainstream 23% rate (22% from 1 April 2014) that would otherwise apply from commencement. The government plans to introduce the relevant legislation in this year's Finance Act, to take effect from 1 April 2013.

Companies otherwise paying tax at the mainstream rate that qualify for the Patent Box will be able to enjoy an annual tax saving of up to £120,000 by 2017 (initially up to £78,000 in 2013) on qualifying patent profits of up to the £1 million per annum small claims threshold. For companies willing to meet the additional requirements of the rules for larger claims, greater annual savings will be available.

This tax saving is in addition to the enhanced relief available for certain research and development (R&D) expenditure under the R&D tax regime, so companies will be able to benefit under both regimes if the requirements of the rules are met.

With the introduction of the Patent Box and the proposed improvements to the R&D tax regime, the Government is promoting the UK as 'the place to be' for innovative businesses.

Will my company be able to benefit?

- *Does your company hold patents granted by the UK Intellectual Property Office or the European Patent Office?*
- *Does your company hold an exclusive right to exploit a patent?*
- *Are you in the process of developing an invention which will be used in the business?*
- *Does your company claim R&D tax credits on development expenditure which is patentable?*
- *Could you secure a patent registration for an invention used in the business? Improvements to existing technology can be patentable*

If you can answer yes to one or more of these, then you should be able to benefit from the 10% rate. You may also be able to benefit if you own intellectual property rights sufficiently similar to patents that are also eligible. Although the regime is to be phased in from 1 April 2013, you need to take action now to ensure you obtain the maximum benefit.

The Patent Box rules

The 10% rate will apply to worldwide profits arising from existing and new patents. Companies can benefit regardless of how they use their patents – whether they are licensed, included in patented products, or used in internal processes or to provide services. Patent Box income can include licence and royalty fees, income from sales of patented products, and products that include the patented invention and income from the sale of spare parts. In addition, where non-patented goods or services are provided using a patented process, it will be possible to apply the Patent Box to a notional royalty relating to the patented process.

Companies must meet development and, in certain circumstances, active ownership conditions in order to qualify. Companies that are passive holders of IP will not qualify. Corporate partners in partnerships will be eligible.

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The 10% rate will only be available once a patent is granted. However, profits arising while the patent is pending, for a period of up to 6 years from application to grant, can also be included in the Patent Box in the accounting period in which the patent is granted. This could result in a windfall repayment of corporation tax paid in prior periods for the year of grant.

Calculating Patent Box profits

A largely formulaic approach will be used to calculate Patent Box profits. However there are complexities and options within the calculations. Companies will need to ensure that systems are in place to capture the data necessary to undertake the calculations, and some information for prior years may also need to be extracted.

So long as a new product is covered by at least one qualifying patent, the profits from it should be capable of falling within the Patent Box.

Action to be taken

The Patent Box does not commence until 1 April 2013, but companies should be reviewing now whether they will be able to benefit from the 10% tax rate. Issues and opportunities to address include:

- *Reviewing the patenting policy of the business – can more inventions be patented?*
- *Reviewing IP ownership policies – should IP be located in the UK?*
- *Ensuring adequate systems are in place to trace patents into products or services, to adequately track the attributable income and costs.*
- *Reviewing licensing arrangements, to ensure that the exclusivity requirement is met.*
- *Reviewing whether the company's R&D expenditure will qualify for enhanced tax relief or tax credits under the R&D tax regime.*