



PATENT BOX - ARE YOU A QUALIFYING COMPANY?

Summary

In order to benefit from the Patent Box, the beneficiary must be a *qualifying company* as defined in the legislation. We discuss here the requirements of a *qualifying company*.

Qualifying Company

The Patent Box is relevant to UK companies who pay or will in the future pay UK Corporation Tax.

A *qualifying company* must hold or have held, during the relevant accounting period, either *qualifying IP rights* or an exclusive licence to *qualifying IP rights*. The separate Briefing “Patent Box - Do you hold *Qualifying IP Rights*?” explains what is meant by *qualifying IP rights* under the Patent Box. In order to benefit from the Patent Box, the company must have generated income from commercial activity relating to the *qualifying IP rights*, including income from sale or licensing of a *qualifying IP right*.

For those companies who are currently unable to take advantage of the Patent Box but are looking in the future to dispose of intellectual property rights they hold, the Patent Box is still relevant. If it is possible to dispose of the intellectual property in a way which enables the recipient to claim the benefit of the Patent Box, this will increase the value of the intellectual property.

The Meaning of Exclusive Licence

For a licence to be considered as exclusive under the Patent Box legislation, it must be exclusive for at least one country or territory. The licence may cover only part of the scope of the *qualifying IP rights*, but the scope must be sufficient that the licence is effectively exclusive. For example, if the sector to which the licence grants exclusivity is too narrow, or licensed activity would not constitute

infringement of the licensed patent, the licence may be deemed not to be exclusive for the purposes of the Patent Box. The licence must give either the right to bring proceedings for infringement without the consent of the right holder or any other party, or the right to receive the greater part of any damages for infringement.

A licence which grants exclusive rights in part of the world and non-exclusive rights in another part of the world will be treated as if it were two separate licences and therefore could fulfil the exclusivity requirement.

Considerations for Individual Inventors

Only UK companies that pay UK Corporation Tax are eligible for the Patent Box. Individuals may not make use of the Patent Box. This may have implications for individual inventors who hold IP rights in their own name rather than in the name of a company subject to UK Corporation Tax. Such individuals will need to consider whether to transfer IP rights to a *qualifying company* in order to benefit from the Patent Box.

Identifying *Qualifying IP Rights* and Matching IP to Income

For the Patent Box it is necessary to establish which parts of income are covered by which *qualifying IP right*. For some companies this will be a relatively simple matter. For others this may require more effort. For example, a company which has two products may know that only one of those products is covered by a *qualifying IP right* which they hold or for which they have an exclusive licence and that the other product is not covered by any *qualifying IP rights*. For such a company, it may be relatively easy to identify which part of their income relates to the *qualifying IP rights* they hold and which parts of their income do not relate to the *qualifying IP rights* they hold, as is necessary for taking advantage of the Patent Box. Other companies may have a more extensive product line-up and information about which products are covered by which *qualifying IP rights* may be harder to establish. Such companies may wish to start matching their *qualifying IP rights* to their products now so that they are in a position to provide this information to their corporate tax advisers when required.

For companies with licences to *qualifying IP rights*, it may be worthwhile to perform an audit of any IP licences to ensure that they will be regarded by HMRC as exclusive licences.

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