



When Should you Elect In to the Patent Box?

A company must elect in to the Patent Box regime in order to take advantage of the reduction in payable UK Corporation Tax. For some companies there may be advantages in delaying entry into the Patent Box. This Briefing looks at this issue.

Electing In

A company may elect in to the Patent Box regime for profits earned in a particular accounting period within two years of the end of that period. If a company elects in to the regime all of its trade will be subject to the Patent Box. It is possible for a company to elect out of the Patent Box regime. It will then be barred from re-entering the Patent Box regime for five years.

As can be seen from the sample calculations in the Briefing “[Patent Box - How to Calculate the Patent Box Benefit](#)“, it is possible to make a Patent Box loss on a particular product, for example a product with a low profit margin. A Patent Box loss occurs when the calculation of relevant IP profits (which models the profit which is due to the qualifying IP right in a specific way which is defined by the legislation) is a negative number. Any Patent Box loss made in previous accounting periods in which the company has elected in will need to be set off against Patent Box profits made in subsequent periods.

Although it is not possible to claim a Patent Box benefit until after a qualifying IP right - typically a patent - has been granted, relief can then be claimed for profits made up to six years prior to grant (so long as the company has elected in for the accounting period in which those profits were made).

For qualifying IP rights which were applied for (but not granted) before 1 July 2016, it is possible to elect into the Patent Box regime after this date within the normal time limits and benefit from the pre- 1 July 2016 Patent Box rules (until 30 June 2021), provided the conditions for election into the Patent Box regime are met prior to 1 July 2016.

Electing In - Considerations

As it is possible to make a Patent Box loss, it is important carefully

to consider whether to elect in to the Patent Box at all, and to plan the timing of any such election.

It is not uncommon for profits to be low or non-existent during the early exploitation of a patent. It may therefore be appropriate to elect in to the Patent Box at a point in the business life cycle when a Patent Box profit is available on the product(s) covered by a company’s patents. Any Patent Box loss will need to be set off against the Patent Box profit, so the Patent Box benefit may be greatly reduced or even eliminated as a consequence of having elected in to the regime too early.

As the benefit of the Patent Box is being introduced over time and the Corporation Tax deduction rate applicable is that of the year of grant of the qualifying IP right, it may be beneficial to delay grant of a patent (where possible) perhaps until the 2017/2018 tax year, to benefit from a higher deduction rate for a greater part of the period for which relief is being claimed. For example for calculated relevant IP profits (relevant IP income minus certain deductions, see the Briefing “[Patent Box - How to Calculate the Patent Box Benefit](#)“) of GBP 100k in the tax year 2013/14, the saving in UK Corporation Tax if the qualifying IP right granted in 2012 is GBP 6k (at an assumed UK Corporation Tax rate of 20%). If the qualifying IP right grants in the tax year 2014/15, the saving in UK Corporation Tax is GBP 7k. If grant of the qualifying IP right is delayed until the tax year 2017/18, the saving in UK Corporation Tax is GBP 10k. Of course the benefit of the larger saving in UK Corporation Tax must be offset against the disadvantages of receiving the saving in UK Corporation Tax at a later date.

For companies or groups where a proportion of any R&D relating to [Relevant IP Income](#) is carried out by another company in the same group, or who have acquired their [Qualifying IP Rights](#), there will likely be a benefit in electing in to the pre- 1 July 2016 Patent Box rules. This is because no nexus fraction reduction as required under the post- 1 July 2016 Patent Box rules will need to be applied which might reduce any Patent Box saving under these circumstances.

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