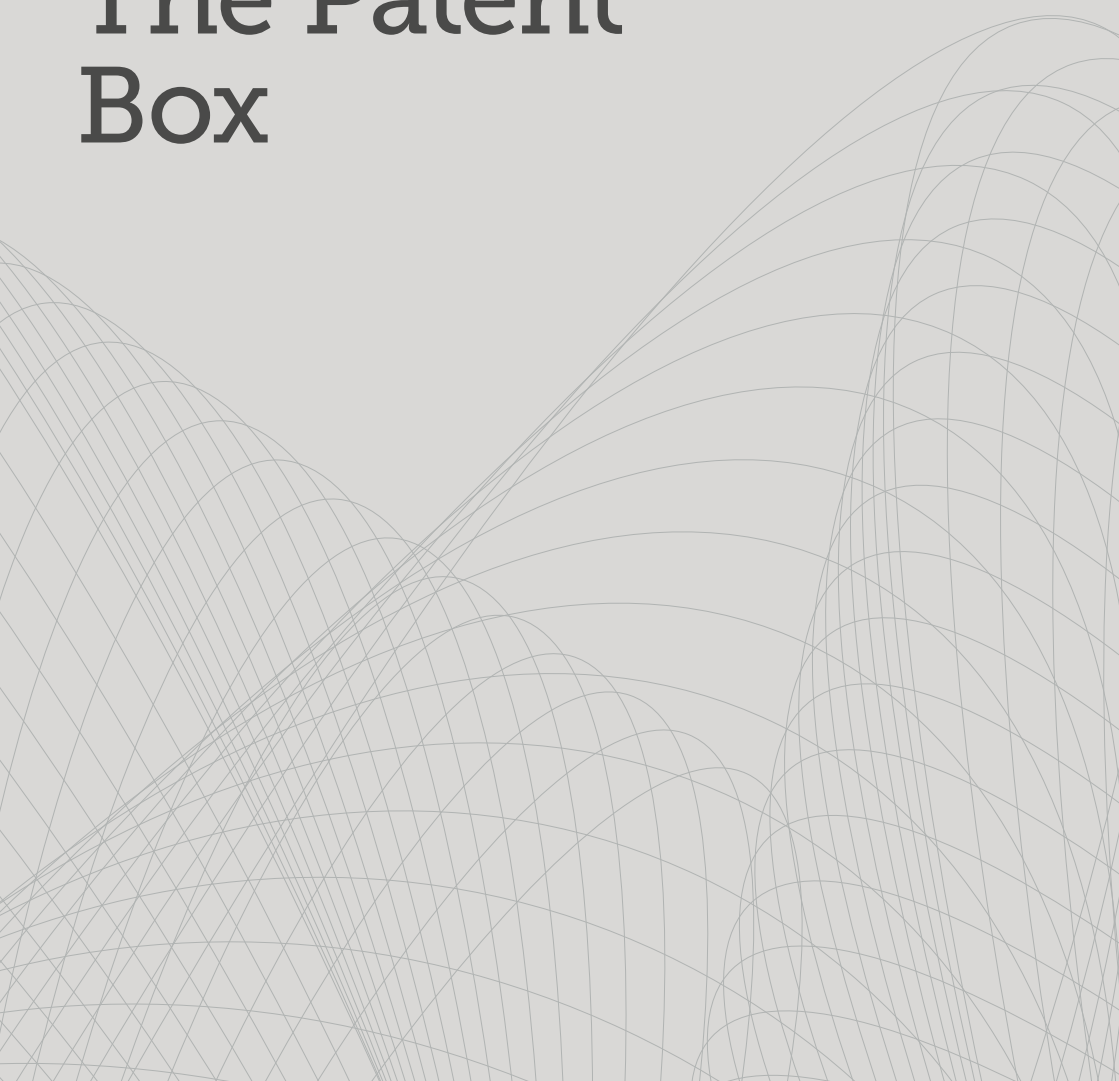


Practical Guide to: The Patent Box

The background of the lower half of the page features a complex, abstract graphic composed of numerous thin, overlapping, curved lines in a light gray color. These lines create a sense of depth and movement, resembling a wireframe or a series of intersecting paths that flow across the bottom of the page.

Practical Guide to: The Patent Box

What is the Patent Box?

The Patent Box is a scheme which reduces the rate of corporation tax payable on profits derived from sales of patented goods – the saving is considerable, down to 10% from the standard 19% rate.

The idea behind the scheme, first introduced in 2013, is to incentivise and reward UK-based innovation. The Patent Box goes hand in hand with R&D tax credits – companies can benefit from both schemes at the same time.

The tax savings can be sizable, but submitting a claim can be complex – your patent attorney and accountant will guide you through the process.

Is my business eligible?

Eligible companies are those which:

- + Are liable for UK corporation tax
- + Make profit on patented inventions – e.g. from sales, royalties
- + Own, or exclusively license from someone else, the relevant patent(s)
- + Undertake at least part of the R&D themselves (not wholly outsourced)

What do I need to do?

First, you must patent your inventions – seek advice from a patent attorney to ensure that your inventions are suitably protected.

Second, you need to submit a tax relief claim – seek advice from an accountant or IP consultant on how to collect and submit the necessary data. You will need to show that you've derived profits from patented inventions, and tracked your R&D expenditure on developing those inventions.

The administration can be daunting, and perhaps you don't have the internal resource to prepare and submit a claim – if this is the case, you can seek advice from an accountant or IP consultant to determine whether there is potential for a claim, and outsource some of the leg-work in documenting and compiling the claim.

Once the initial administrative hurdles are overcome, claiming in subsequent years is more straightforward.

Key Points

- + Worldwide profits count in the scheme – savings can be considerable
- + Adjustments are made to deduct “routine profits”
- + Timing is key – you can “look back” two years when electing into the scheme
- + No need to wait for the patent to grant – tax benefit can be accrued for sales whilst the patent application is pending
- + No need to patent an entire product – a patented part can be sufficient for profits to count
- + Speak to a patent attorney to see if your novel product designs (or processes), or parts of them, can be patented
- + Ensure you capture your R&D expenditure

Frequently asked questions

Is it worth the effort?

Often, the answer is yes! Both small and large companies can benefit from the scheme. Patents last up to 20 years, and many businesses make significant savings through the scheme. Streamline the process by seeking advice on how to set up processes for capturing R&D expenditure and profits attributable to patented products.

How much do patents cost?

Patents are not cheap (costing around £5-8k to file, with further costs to follow), but often the benefits derived through the Patent Box far outweigh the expenditure – and moreover, if Patent Box is the primary/sole motivation for filing a patent application, prosecution costs can be minimised because the patent attorney can draft a narrower, more focussed, patent application.

Which revenue streams count?

Income from: worldwide sales of patented products; licensing out the patents; sales of the patents; damages from infringement claims under the patents; insurance payouts/ compensation relating to the patents; manufacturing using a patented process (a notional royalty will be applied); providing a service using a patented tool (a notional royalty will be applied) – if in doubt, seek advice from a patent attorney or accountant.

Is it true that profit on sale of a large product can count, if only a small part is patented?

In theory, yes. However, the tax relief calculation makes adjustments to identify “IP-related profit” from total profit i.e. discounting routine profit. There is also an adjustment to remove profits attributable to marketing. The Patent Box can be lucrative – discuss your particular set-up with an accountant or IP consultant.

At what stage of product development do I talk to the patent attorney?

You do not need to have decided on the final product prototype to file an initial patent application – the inventive concept can be claimed in a broad way, and if the product is developed further after filing, any improvements can be captured in an updating application 12 months later. It is crucial that you do not publicly disclose your invention before the patent application is filed.

In which countries do I need to secure patent protection?

For Patent Box purposes, having a GB or EP application is enough for worldwide profits to count in the scheme. If you also want to deter competitors, you might consider filing corresponding applications in other jurisdictions – your patent attorney can advise.

Does the scheme apply to other intellectual property rights?

Most claims rely on patents – but certain other medicinal or botanic innovation rights can also count (e.g. plant breeders’ rights).

Have I undertaken enough R&D work to qualify for the scheme?

Your company must have made a significant contribution to the creation or development of the patented invention / product. The tax relief may be adjusted down slightly if you have purchased the patents, or paid connected entities to undertake the R&D.

What about groups of companies?

Talk to an accountant – special rules apply for groups of companies.

We exclusively license someone else’s patented technology – do we qualify for the scheme?

If your company holds a licence to use patented technology it can benefit from Patent Box if it has rights to the exclusion of all other persons (including the licensor), and exclusivity throughout an entire national territory (rights to manufacture or sell in part of a country would not qualify). Your company must also be able to bring infringement proceedings, or be entitled to the majority of damages awarded in successful proceedings.

