

For any company holding patents that it has developed, it is possible that any profits derived from their use will be taxed at just 10%, rather than the usual 19%.

The regime applies to UK and European Patent Office patents, as well as those granted by certain EEA countries but covers all worldwide income from that patent, i.e. it is not restricted to profits from the countries where patents have been registered. It is only available for granted patents; however once granted, relief can be claimed for profits made during the period since the application was made.

As well as patents, the regime also applies to several other similar IP rights, relating to human and veterinary medicines, plant breeding and plant varieties.

## What are the conditions?

The company claiming must either own the patent or have an exclusive licence (by territory) over its use, including to the exclusion of the licensor.

The company must also meet a development condition, which means that it must have been involved in the innovation behind the patent. If qualifying for the relief through an exclusive licence, the company must have performed further development on the original patent.



**Intellectual  
Property  
Office**

## What income qualifies?

The patent box rate applies to the proportion of the company's profits derived from:

- The sale of a patented invention or products that incorporate a patented item. As long as the patented element is integral to the product, income from the sale of the entire product qualifies. As an example, if there is a patented wing mirror on a car, then all profits from the sale of the car will qualify, not just a small element, even if there are no other patents.
- Bespoke consumable items or spare parts, such as the sale of printer cartridges for a printer with a patented item in it.
- Licensing the patent (e.g. royalty income).
- The outright sale of the patent.
- Infringement income, i.e. if you take legal action against a third party for using your patent, then all damages awarded to you will qualify.
- Notional royalties, i.e. where the patented invention does not directly generate income but its use results in increased profits (e.g. in a process or service).

Companies must stream all taxable income and expenditure between patent related and non patent related income to arrive at the [taxable IP profit](#).

In addition, separate sub-stream records must be held for each individual IP right (although smaller companies whose affairs are relatively simple may be exempted from this). Even companies within the 'old' regime (those that made a patent box claim prior to July 2016 will need to carry out this detailed allocation of expenditure as they will need this information from that date for when the old regime comes to an end in July 2021.



## The calculation

Once the taxable IP profit is calculated there are three elements to be removed to arrive at the patent box profit:

- Routine return: 10% of certain costs (such as rent, rates and salaries) are removed, on the basis that even without the IP, the company should make a profit.
- Marketing asset return: An amount is removed based on the value of the brand and other marketing assets, i.e. how much a third party would pay for the use of those assets. This can be complex, however as a rule of thumb, HMRC will accept that if a company is selling to other businesses (rather than consumers) the brand value may be negligible.
- Nexus fraction: This is a recent addition and was designed to ensure that only companies that are engaged in 'substantial activities' in relation to the IP qualify for the relief. It will reduce the patent box profit if the costs relating to the development include payments to acquire the IP, or were carried out by other group companies.

As such the effect is that patent box relief will only be available to the extent that the company holding the IP has incurred expenditure itself on relevant R&D or has subcontracted the expenditure to an unconnected third party.



## Interaction with R&D tax relief

As the relief is based on taxable profits, it would appear that claiming R&D tax relief would result in a smaller patent box profit. As this would be counter to the intention behind the relief, when the patent box profit is calculated, the impacts of any R&D tax relief claims are removed.

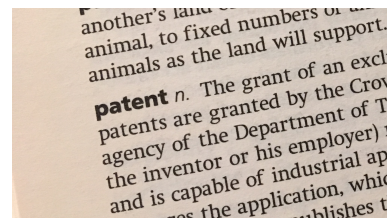
As such the effective tax rate with both patent box and R&D tax relief claims can be much lower than 10%

## Why TMB Tax Consultancy?

The tax relief available is generous, but claims must be properly made to ensure they meet HMRC requirements. HMRC will review all claims carefully - so it is important to work with experienced tax advisors to ensure that the calculation is robust and maximised.

TMB Tax Consultancy can assist you in arranging your tax affairs to maximise your patent box benefit which is especially important given the increased complexity with the nexus fraction. For example we can:

- Help maximise qualifying income to be taxed at 10%.
- Advise on methods of income identification and tracking and on R&D expenditure tracking for the nexus fraction.
- Maximise claims for R&D related costs.
- Apply transfer pricing methodologies to value notional royalties and the marketing asset return.
- Optimise group IP holding structures and licences.



## Contact us

If you would like more details regarding the above, please contact us at [tbyng@tmbtax.co.uk](mailto:tbyng@tmbtax.co.uk).