

Favourable tax treatment for Patent Boxes in the UK?

Introduction

- (a) The Chancellor, Alistair Darling, announced in the Pre-Budget Report on 9 December 2009 that he plans to introduce a so-called “patent box” which would give a favourable tax treatment to income derived from patents.
- (b) This new regime is part of a drive to make the UK more attractive to high-tech companies. It is hoped that the patent box will encourage these companies to locate their research and development (“R&D”) functions in the UK to take advantage of the change which will be introduced in April 2013.
- (c) A new 10% corporation rate will be applied to patent income from April 2013. It appears that the new tax rate will apply to income derived from patents which have been granted after the new legislation comes into force. The Government believes that the new tax rate, when taken alongside the UK’s relatively low main corporation tax rate and other innovation-focused tax reliefs (i.e. the R&D tax credits regime) will ensure that the UK remains an attractive location for high-tech companies.
- (d) The Government has stated that the patent box has a necessarily narrow scope so that it is focused on areas where the UK has competitive strengths. Therefore only patents are included in the regime, rather than any further intellectual property rights. This is in contrast to a number of other jurisdictions (e.g. Switzerland, the Netherlands, Belgium) which have introduced similar proposals.
- (e) The Government discussed issues surrounding tax and innovation at the Business-Government Forum on Tax and Globalisation in June and October 2009. HM Treasury has also published communications with forum members (http://www.hm-treasury.gov.uk/tax_and_innovation.htm).

Benefits for companies

- (a) GlaxoSmithKline (“GSK”) has just announced that it plans to create 1,000 new jobs in the UK and has cited the new patent box tax rate as a driving factor behind the decision. GSK believes that the patent box will transform the potential of the UK to attract new investment in the life sciences sector.
- (b) Commentators, such as the Bio Industry Association, have said that the patent box will be a real incentive for companies to exploit intellectual property in the UK which has been developed in the UK.

Benefits for the economy

- (a) The Government believes that the patent box will strengthen the incentive for investors to invest in innovative industries. If the patent box is successful in attracting new business to the UK, this could result in a much needed boost and may assist in tackling the UK’s budget deficit.
- (b) With the UK bringing in higher tax rates in areas such as income tax, and with VAT having reverted back to 17.5%, a lower corporation tax rate for specific income will be seen as a positive step.
- (c) It is thought that the patent box will encourage new growth in the bio sciences sector and other industries that rely on intellectual property, and patents in particular. The Chancellor has stated that he wants to encourage growth in these areas and to take advantage of the innovation and ingenuity which we have in the UK.

Future plans

The Government has said that it will consult widely with business on the design of the patent box which will enable relevant legislation to be included in the Finance Bill 2011. The UK software industry in particular may wish to make a case for extending the patent box to include other intellectual property rights, given the difficulties in obtaining patent protection for software in Europe.

If you have any questions about this alert, or you would like to discuss any specific issues, do not hesitate to contact

Peter Steiner

Partner

+44 20 3130 3811

Mark Prinsley

Partner

+44 20 3130 3900

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