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The New Patent Box Regime - 10% Corporation Tax Rate for Patent Income

The new Patent Box regime proposal has now been released by the UK Treasury for formal consultation. The new tax legislation, which should arrive shortly after the consultation period closes, promises a massively reduced corporation tax rate (down to 10%) for profit that is attributable to patents. This provides a compelling financial incentive for innovative companies to ensure they protect their valuable technologies through patents. HGF will continue to monitor the situation closely, but for now we welcome the proposal as it stands and, while important details need to be clarified, we believe it will be of enormous benefit to many innovative companies.

It will, however, be essential that your patent strategy is matched to the Patent Box criteria to ensure maximum benefit. HGF's patent attorneys are commercially focused and will seek the optimum approach to securing broad strong protection for your innovations while ensuring maximum gain from, and the earliest access to, the tax benefits available.

Of course, as the legislation is not yet final, we cannot yet be sure of the implications, but there are several ways in which we might recommend modifying patent strategy if the current proposal is adopted essentially as it stands. These may include:

- Aggressively pursuing rapid grant of patents to enable early access to the reduced tax rates.
- Combining narrow focused patent applications (for rapid grant and access to the Patent Box) with broader applications (for broad protection).
- Ensuring product sales and license agreements are carried out to maximise revenue falling within the Patent Box criteria.
- Leveraging the various peculiarities of examination procedure at the UK and European patent offices to put you in the best position.
- Drafting new applications to include claims directed specifically at maximizing entitlement to tax relief.
- Specifying the appropriate registered proprietor for applications to optimise relief available.

Of course, the best strategy for you will depend on many aspects, and your HGF attorney would be delighted to work with you to develop this. We will be monitoring the progress of the Patent Box closely, and we will issue a further briefing as things progress. If you would like to discuss this further in the meantime, please get in touch with your usual HGF representative.

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Below are some more details of the UK Government's Patent Box proposal:

Following on from the original announcement in November 2010, the UK Government has now formally proposed a 10% corporation tax rate to profits 'attributable' to patents from 1 April 2013 – the so called 'Patent Box'. The reduced rate will apply to global profits derived from products covered by a UK or European patent (other national patents may be included in the qualifying regime in due course). The system will be phased-in over five years, with the savings available to claimants rising from 60% of the potential benefit in year one to 100% in year five. Draft legislation should be issued this autumn, after the current consultation period closes on 2 September 2011.

The original announcement suggested that the new system would only apply to new patents, meaning that companies already exploiting successful patents would not benefit. However, the latest proposals include a possible extension to all qualifying patents. The system will only apply to granted patents, hence the advantages of obtaining rapid grant to access the benefits. However, after grant of the patent, reduced rate benefits can be claimed for any income that arose between filing the patent application and the date of grant, for up to four years prior to grant.

Importantly, the proposals confirm that it does not just apply to license income. Rather, it will also apply to patent income embedded in the sale proceeds of patented products and calculated using a set formula. There are no current plans to include profits generated from copyright or trade marks. Also, it would appear that income from products made by a patented process may not be included. However, Supplementary Protection Certificates (SPCs) granted for pharmaceuticals will be covered, if they are based on an originally qualifying patent right.

The company claiming the reduced rate can be the patent owner or an exclusive licensee of the patent. If the patent is jointly owned, all collaborators will qualify provided that they can demonstrate that their development contribution or application of the patent has been "significant".

Therefore, many companies with UK and European patents protecting the technologies in their products could benefit from a substantial reduction in the tax rate on a significant proportion of their income from 1 April 2013.

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For further advice, please contact your usual HGF representative or email marketing@hgf.com with your query.