MILLER ROSENFALCK LLP

European Business Lawyers

Patent Box

The aim of the UK Government's proposal for the so called Patent Box is to ease the tax on income from the exploitation of patents held by UK companies.

Reduced tax

The key element of the Patent Box model is that it offers a beneficial tax rate on the income from existing patents and the model differs from the R&D tax credit model which supports the earlier R&D phase. The model can therefore be seen as an extension of the R&D credit.

According to the Government the main objective is to "encourage companies to locate the high-value jobs associated with the development, manufacture and exploitation in the UK and to maintain the UK's position as a world leader in patented technologies" by lowering the tax on global income from patents held by companies that are taxable in the UK to 10%, as opposed to the 24%, which is expected to be the corporate tax rate when the bill comes into force in April 2013.

Which patent are affected?

The meaning of "holding a patent" is relatively wide and will comprise a variety of income generation models which may benefit UK companies outside the ranks of the traditional science intensive industries. In addition to license income, patent related revenue will include income from sales of patent protected products and from the sale of the patent itself. To avoid mere holding companies from benefitting from the tax relief, the patents must be "actively held" and there must be an element of "active involvement", but the exact definitions of these concepts are currently unclear.

Do all patent profits attract the lower rate?

The actual tax calculation is based on a distinction between "qualifying profit" (derived from patent-related activities) and "non-qualifying profit". The former is reduced by an estimated percentage to a "residual profit" attributable to the innovative activities. This residual profit is then further reduced to the "Patent Box Profit" which can be linked directly to the patents held by the company and which is then taxed at the reduced tax rate of 10%.

What next?

The bill has recently been submitted for its second public consultation by the Treasury. A detailed description of the proposal and associated computational models can be found here.

Miller Rosenfalck will follow the development of the bill and take a closer look at how our national and international clients may benefit from the legislation.

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