

11. How to approach the Patent Box

11.1 Introduction

For accounting periods beginning on or before 30 June 2016, the “new rules” do not apply and the company will make a claim under the “old rules”. These “old rules” are covered in **Chapter 12**. The considerations set out below apply to the new rules – periods beginning on or after 1 July 2016.

The revisions to the Patent Box made in FA 2016 have increased the complications of the relief considerably. This should not be a reason not to make a claim, however, as the benefits for IP-rich businesses can still be significant. The legislation can appear to be tortuous at first glance but a route through the maze can be found as long as you are clear which path to go down from the start. For accounting periods beginning on or after 1 July 2021, all claims will need to apply the R&D fraction rules. Before 2021 the route you will take will depend on certain factors:

- whether the company is a new entrant or an old entrant – see section **11.3**;
- (if the claimant is an old entrant) whether the company has income from new IP or not – see section **11.4** below.

11.2 Preparing for the new regime

It is essential for all companies to have an understanding of the basics of the new regime even where it does not need to be applied straightaway; this will allow the company to be prepared for when it will apply. All claims from 2021 will need to apply the R&D fraction and so any company still making a claim then will need to have records in place to support the R&D fraction. These records should cover periods from 1 July 2016 or potentially before. This section includes a summary of the considerations, but more detailed guidelines are included at **14.4.2**.

The new rules require all claims to be streamed (so calculating patent-related profits by allocating expenses to the patent-related income) and not apportioned based on turnover. This streaming

should ideally be done according to the individual IP rights. If this is not possible it may be acceptable to stream according to product, process or potentially the product family. A company should consider how it will stream its IP-related income (for example by rights or products) and start to track and trace its expenditure as soon as possible.

The new rules require the application of the R&D fraction, which reduces the benefit of the claim where expenditure is incurred on subcontracting certain R&D to connected parties or on the acquisition of the IP. This requires that the following are tracked for each sub-stream:

- in-house R&D expenditure;
- R&D expenditure subcontracted to a connected party;
- R&D expenditure subcontracted to an unconnected party;
- acquisition costs (potentially including licence fees).

Further details on the R&D fraction are included at section **14.8** and details on streaming and documentation are at **14.4.2**.

11.3 “New entrant” or “old entrant”

A company is treated as a new entrant where:

- the first period for which the company’s Patent Box election (or most recent election) has effect *begins* on or after 1 July 2016; or
- the company elects to be treated as a new entrant.

The term “old entrant” is not defined in the legislation but covers all companies which are not a new entrant, so:

- the most recent Patent Box election was made for a period beginning before 1 July 2016; and
- no election has been made to be treated as a new entrant.

Where IP is transferred as part of the transfer of a trade it may be possible to look at the ownership of the transferor when considering whether the company is a new entrant (CTA 2010, s. 357GCA).

Law: CTA 2010, s. 357A(11), 357GCA

Guidance: CIRD 240160, 270100

11.4 Meaning of “new IP”

Broadly speaking, new IP is treated in the same way as IP owned by a new entrant. An IP right is treated as new if it meets either of the following conditions. All other IP rights, owned by an old entrant, are treated as old IP rights.

- **New patent** – where the patent was granted in response to an application which had been filed on or after 1 July 2016.
- **Grant or assignment of an exclusive licence or assignment of a patent** – where an exclusive licence is granted or assigned, or a patent is assigned, the IP is treated as new IP if the grant or assignment took place on or after 1 July 2016 (or on or after 2 January 2016 in certain circumstances where IP was transferred between connected parties).

Where the company is subject to a cost sharing arrangement (see section **14.10**), the ownership of the other party to the cost sharing arrangement should be considered when deciding if IP is new IP or old IP.

Law: CTA 2010, s. 357BP

Guidance: CIRD 270200

11.5 Navigating the Patent Box

As set out above, for accounting periods beginning on or before 30 June 2016, the pre-FA 2016 rules apply and these are covered in **Chapter 12**.

The different calculations are divided into different Chapters in the legislation. Until 2021 this applies as follows:

- Company is an old entrant with no new IP – this is dealt with in **Chapter 13** below.
- Company is a new entrant – this is dealt with in **Chapter 14**.
- Company is an old entrant with new IP – this is dealt with in **Chapter 15**.