



# A taxing issue

The UK Patent Box is a tax allowance that took effect from 1 April, 2013. It enables companies to apply a significantly lower rate of Corporation Tax to profits earned from its patented products. More than nine months after its introduction, however, many companies – and particularly small companies – are only vaguely aware of it or of the tax savings that it could offer to aid growth and stimulate jobs.

Low tax regimes attract controversy. Large corporations have been criticised for structuring their businesses so that they pay tax on UK profits in countries that have established low-tax regimes. Much public debate has surrounded the activities of Starbucks, Amazon, Apple and Google, for example.

The EU is investigating the legality of tax sweeteners that facilitate 'corporation tax avoidance', which are allegedly being offered by Luxembourg, Ireland and the Netherlands (Apple having confirmed that its Irish subsidiaries pay only 2% tax).

Whilst Germany and France lambast Luxembourg for its facilitation of tax avoidance, several European countries have established Patent Box-like regimes, including the Netherlands, France, Spain, Belgium and now the UK.

German finance minister Wolfgang Schäuble suggested in July 2013 that the UK's Patent Box scheme lacked 'European spirit – You could get the idea they are doing it just to attract companies.' And in October 2013, the EC suggested that the scheme breaks EU rules on harmful tax competition, although the UK Treasury disputes this.

So, is Patent Box – a Labour-conceived, Con-Dem implemented policy – just a corporate tax avoidance scheme thinly veiled? And does it offer anything to the British economy other than

temporary corporate residence until a better offer comes along? Is the UK the new Luxembourg, setting aside such issues as personal affluence, and quality of life and happiness? Is this a race to the bottom?

Yes, it is a low tax scheme for companies – but with a twist. By focusing on profits from patented

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**Sir Andrew Witty** *GSK chief executive*

products, it targets innovative companies. Whilst the company claiming the benefit need not necessarily have devised the product, they do need to have exclusive rights to it, thereby having at least provided an outlet for the innovator.

The government wants to encourage innovative companies to pay tax and invest their revenues in the UK. The complementary R&D tax credit scheme does something similar – reduces the tax liability for companies investing in R&D.

Who will benefit? GlaxoSmithKline (GSK) indicated at the beginning of the year that, as a result of the Patent Box tax break, it would invest £500m in its UK business, expanding operations in Scotland and building its first new manufacturing plant in 40 years, in Cumbria. GSK chief executive Sir Andrew Witty said: 'The introduction of the Patent Box has transformed the way we view the UK as a location for new investments.'

But it's not all about the conglomerates – small businesses can benefit, too. London-based folding bike manufacturer Brompton Bicycles has a £16m turnover and its md Will Butler-Adams has said

of the Patent Box: 'It's completely relevant to my business... It seems a straightforward process and we have opted in. Based on our patent pipeline and turnover, it could be worth up to £100,000. That is £100k of free money.'

Small and large companies that can make such savings are in a good position to invest in research, growth and jobs.

And it seems likely that, even if investigations by the EU result in changes to the Patent Box, they are likely to be relatively cosmetic – such as requiring that the patents result from research carried out in the UK or EU. Companies should certainly look more closely at their IP, and consider patenting inventions that might otherwise not have been patented. Cost effective patent protection can be secured covering the UK and qualifying for the tax benefit. More robust pursuit of protection for inventions may be appropriate for broader commercial reasons. And aside from the immediate tax benefits, it is a useful exercise to capture, review and monitor ideas and innovations, since this could reveal more profitable, patentable opportunities.

The purpose of patents is to distort competition, protecting a company's competitive advantage. If UK companies patent their inventions and are encouraged to do so through schemes such as the Patent Box, then arguably the country's collective competitive advantage is better protected.

The Patent Box and R&D tax credits together make a compelling case to invest in innovation and R&D in the UK. This will bring sustainable high-value UK jobs for science and engineering graduates and reduce 'brain drain'. And more patents on successful British innovations will better protect the UK's competitive advantage. Perhaps this is a race to the top. ●