



The UK Patent Box – eight years on

What is the UK Patent Box?

The UK Patent Box scheme was introduced in April 2013 and allows UK companies to elect to pay a reduced rate of corporation tax on profits derived from the exploitation of patents and certain other types of Intellectual Property such as Supplementary Protection Certificates (SPCs) for pharmaceutical products.

In order to benefit from the scheme, a company must satisfy three basic criteria:

1. It must have a qualifying IP right. Qualifying IP rights are:
 - Patents granted by the UKIPO or the EPO;
 - Patents granted by some, but not all, states in the European Economic Area (EEA); and
 - Certain other European IP rights (e.g. SPCs, plant breeders' rights, plant variety rights).
2. It must "actively hold" the qualifying IP right as an owner or an exclusive licensee. The company must be creating, or significantly contributing to, the protected invention, or performing a significant amount of activity to develop the protected invention or any product or process incorporating the protected invention. If a company is part of a group and satisfies this requirement through the activities of another group member, the company in question must actively manage its portfolio of qualifying IP rights; and

3. It must have an income related to the qualifying IP right (e.g. sales of patented products).

In effect, the Patent Box allows for a 10% corporate tax rate, rather than 19%, on qualifying profits derived from UK or European patents.

2016 changes

[In May 2016](#), we reported changes that were to be made to the UK Patent Box in response to an October 2015 report in which the Organisation for Economic Co-operation and Development (OECD) identified the UK Patent Box as being a 'harmful tax practice'. The UK government announced a consultation and, in December 2015, draft legislation was published.

The reason for the change in the scheme was that the original legislation did not require a claimant for tax relief to carry out any Research & Development (R&D) in the UK. Following the introduction of the Patent Box in April 2013, a number of multinational companies sought to take advantage of the regime by relocating their tax domicile to the UK, prompting some EU states, most notably Germany, to claim that the UK Patent Box scheme could provide scope for abusive tax avoidance practices.



The updated UK Patent Box regime, which has been in force from 1st July 2016, introduces a “modified nexus approach” by which the amount of tax relief available will depend on the extent to which the R&D leading to the patented invention (or a product embodying it) was carried out in the UK. Some of the R&D may be outsourced or acquired, but only to a cap of 30% of the qualifying expenditure. The hope was that this would allow the UK Patent Box to fulfil its intended purpose, namely incentivising innovative companies to develop new patented products in the UK, more successfully, whilst minimising the opportunity for tax avoidance.

A transitional period was provided that enabled companies that had already entered the scheme before this date (i.e. by 30th June 2016) to benefit from the old rules. However, this transitional period ends on 30th June 2021, meaning that all participants will be subject to the updated rules from 1st July 2021.

What effects have the 2016 changes had?

When we reported the changes that were to come into force in July 2016, we noted criticism from some observers that the updated rules would considerably increase the administrative cost of compliance on companies wishing to take advantage of the scheme, and that small and medium-sized enterprises (SMEs) with limited resources could be penalised. [In March 2019](#), we reported on initial statistics published in September 2018 by HM Revenue & Customs (HMRC) suggesting that this might indeed have been the case.

HMRC published [updated statistics](#) in September 2020 that give a more complete picture of how the 2016 changes have been received. Like the September 2018 report, the September 2020 report confirms that both the number of companies claiming Patent Box relief and the total value of relief claimed continue to grow year on year (noting that the statistics for 2018-2019 are incomplete).

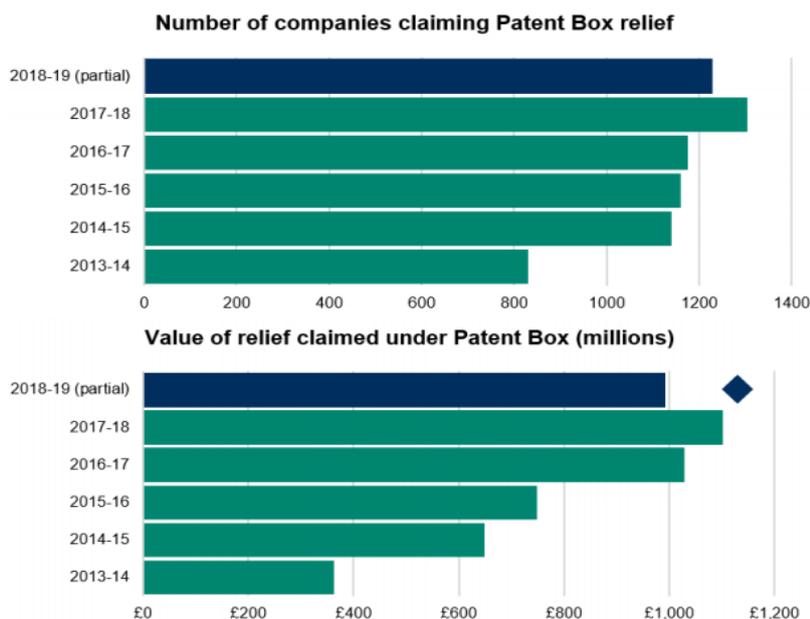


Figure 1: Number of companies claiming Patent Box relief and total relief claimed from 2013-14 to 2018-19. The figures for 2018-19 are partial and will be revised upwards once a complete set of data is available. The diamond reflects a forecast finalised figure for 2018-9.



Of particular interest, given the perceived weaknesses of the updated scheme mentioned above, are the statistics relating to company size. In our analysis in March 2019 we highlighted that, in 2016-17, “large” companies accounted for 96.3% of the total relief claimed, which was a noticeable increase on 95.5% in 2015-16 and 94.6% in 2014-15. This seemed to suggest that small and medium sized companies might indeed be finding compliance with the new scheme a challenging prospect.

However, the September 2020 statistics could suggest a changing picture.

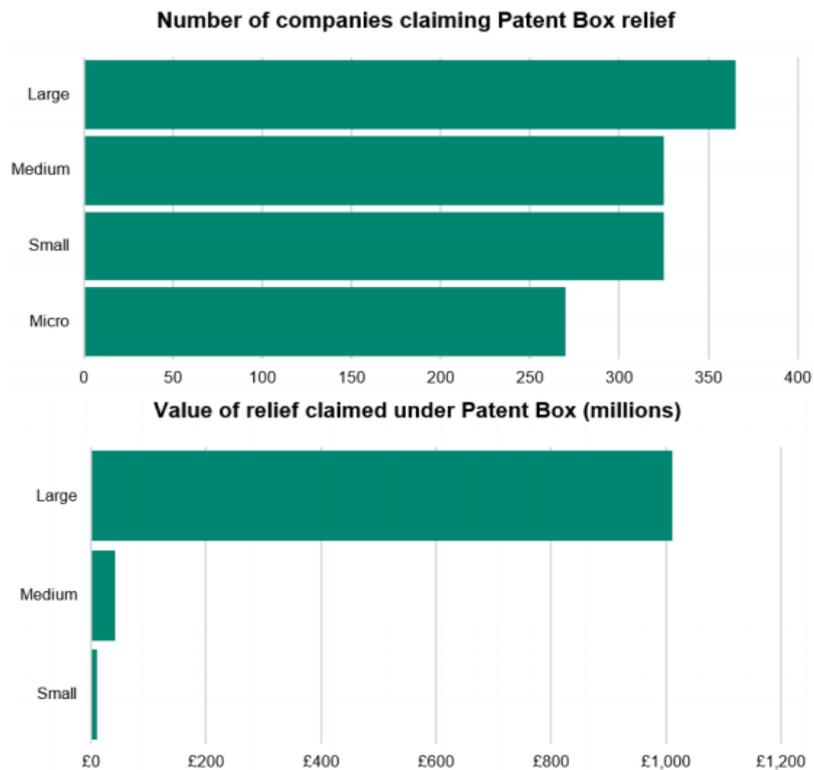


Figure 2: Number of companies claiming Patent Box relief and total relief claimed in 2017-18 by company size

Source: HMRC

The first chart in Figure 2 shows that large companies accounted for 28% of the companies claiming relief in 2017-2018, which is very much in line with figures reported in previous years. The second chart, however, demonstrates that large companies accounted for 92% of the total relief claimed. Whilst this is still undoubtedly a very large proportion, it does represent a meaningful decrease from 95.5% in 2015-2016 and 96.3% in 2017-2018, which could point to small and, particularly, medium-sized companies getting to grips with the stricter rules introduced in 2016. It will be interesting to see whether this shift continues once the transition period ends this year and we will report on this when further statistics become available.



The September 2020 statistics also confirm that companies in London represent the highest proportion of relief claimed, which mirrors previous years. However, the industry sector representing the highest proportion of relief claimed has switched in the 2020 statistics from *Manufacturing* to *Finance and Insurance*, despite only ten companies in the latter sector claiming relief. Therefore, notwithstanding the company size statistics discussed above, it is clear that a number of very large companies are committing significant resources towards benefitting from the UK Patent Box.

Authors & Experts: Matthew Birch & Gary Small

Need advice?

Carpmaels & Ransford is a leading European IP firm based in London. For more information about our firm and our practice, please visit our website at: www.carpmaels.com.

This information provides a summary of the subject matter only. It should not be acted on without first seeking professional advice.

Carpmaels & Ransford LLP is regulated by the Intellectual Property Regulation Board (IPREG).

Copyright © Carpmaels & Ransford LLP 2021