



**The Quoted
Companies Alliance**

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7 September 2011

Dear Sirs,

HM Treasury – Consultation on the Patent Box

INTRODUCTION

The Quoted Companies Alliance is a not-for-profit membership organisation working for small and mid-cap quoted companies. Their individual market capitalisations tend to be below £500m.

The Quoted Companies Alliance is a founder member of European**Issuers**, which represents over 9,000 quoted companies in fourteen European countries.

The Quoted Companies Alliance Tax Committee has examined your proposals and advised on this response. A list of committee members is at Appendix A.

RESPONSE

We welcome the opportunity to respond to this consultation. Rather than commenting on all the questions specifically, we have general comments in relation to topics of the consultation paper:

QUALIFYING PATENTS

General view is that the requirement for the patent to be UK or EPO is considered to be acceptable and there are no specific EU national patents that should be included.

IP associated with patents

The Government has acknowledged that SPCs and data exclusivity represent equivalents to patents in recognising innovation. We consider that income related to programmes covered by orphan drug status should also be considered as qualifying income.

Security provisions in the UK will prevent the grant of otherwise allowable patent applications from some companies and technologies; such allowable patents should be considered as being qualifying patents.

Ownership requirements

The benefits of the Patent Box should be accessible through beneficial ownership also.

Development criteria

Further clarity is required. The current proposals potentially prevent a company which has developed the IP and then simply licenses it from benefitting from the Patent Box. It is understood that this is not the intention.

QUALIFYING INCOME

Views on Question 4

Question 4: Do businesses believe that it is necessary to set out rules to more closely define the circumstances where a composite tangible or intangible product should be considered a single functionally interdependent item? Or can this requirement be tested through a motive test on a case-by-case basis?

In relation to the specific question 4, businesses' general view is that it is not necessary or likely to be possible to more closely define the circumstances where a composite tangible or intangible product should be considered a single functionally interdependent item.

Process patents

Under UK and European patent law a process patent extends to the direct product of that process and the patent box should apply such products.

Services

We have received further representations that the Government should include service income in the Patent Box, as it excludes a number of business models where innovation is at the heart of the services provided.

Income arising before a patent is granted

It is considered that 6 years would be more appropriate than 4 years. It can take a long time to grant (more than 4 years) and profits are often generated from the point of application.

CALCULATION OF PATENT BOX PROFITS

Step one

Representations have been made that having to include R&D costs in the apportionment between qualifying and non-qualifying income (albeit not the R&D tax credit enhancement) may, on the face it, discourage companies from carrying out their R&D in the UK at all if they want to take full advantage of the Patent Box.

From our discussions with companies, we would expect that divisionalisation will often be the most appropriate/fair approach for determining qualifying income.

Step two

The mark up for "remaining costs" at 15% is too high. It will encourage companies to outsource to third parties or structure such that they outsource functions to other group companies and apply transfer pricing as this will normally result in a lower mark up.

Step three

"Brand" expenditure is not an appropriate means to allocate residual and non-residual patent drivers. Where many products are concerned, the brand expenses should not be referred to as non-qualifying – they are expenses to enable a patented product to be sold.

In addition, if this approach were adopted then looking at expenditure in the current year could be arbitrary, especially given that Patent Box benefits can only be claimed from the date of grant and previous years expenditure on, say, R&D would not be taken into account.

Phasing in

This is broadly accepted.

If you would like to discuss this in detail, we would be happy to attend a meeting.

Yours sincerely,



Tim Ward
Chief Executive

The Quoted Companies Alliance Tax Committee

Vijay Thakrar (Chairman)	Deloitte LLP
Tim Crosley (Deputy Chairman)	Memery Crystal LLP
Paul Barnes	KPMG LLP
Chris Bond	PKF (UK) LLP
David Boyd	Mazars LLP
Nick Burt	Nabarro LLP
Jason Collins	McGrigors LLP
Paul Fay	Crowe Clark Whitehill
Stephen Goldstraw	Manches
Natasha Kaye	Olswang
Neil Pamplin	Grant Thornton UK LLP
Michael Ridsdale	Wedlake Bell LLP
Amanda Solomon	Charles Russell LLP
Kate Jalbert	Quoted Companies Alliance
Tim Ward	Quoted Companies Alliance

THE QUOTED COMPANIES ALLIANCE (QCA)

A not-for-profit organisation funded by its membership, the QCA represents the interests of small and mid-cap quoted companies, their advisors and investors. It was founded in 1992, originally known as CISCO.

The QCA is governed by an elected Executive Committee, and undertakes its work through a number of highly focussed, multi-disciplinary committees and working groups of members who concentrate on specific areas of concern, in particular:

- taxation
- legislation affecting small and mid-cap quoted companies
- corporate governance
- employee share schemes
- trading, settlement and custody of shares
- structure and regulation of stock markets for small and mid-cap quoted companies;
- political liaison – briefing and influencing Westminster and Whitehall, the City and Brussels
- accounting standards proposals from various standard-setters

The QCA is a founder member of European **Issuers**, which represents quoted companies in fourteen European countries.

QCA's Aims and Objectives

The QCA works for small and mid-cap quoted companies in the United Kingdom and Europe to promote and maintain vibrant, healthy and liquid capital markets. Its principal objectives are:

Lobbying the Government, Brussels and other regulators to reduce the costing and time consuming burden of regulation, which falls disproportionately on smaller quoted companies

Promoting the smaller quoted company sector and taking steps to increase investor interest and improve shareholder liquidity for companies in it.

Educating companies in the sector about best practice in areas such as corporate governance and investor relations.

Providing a forum for small and mid-cap quoted company directors to network and discuss solutions to topical issues with their peer group, sector professionals and influential City figures.

Small and mid-cap quoted companies' contribute considerably to the UK economy:

- There are approximately 2,000 small and mid-cap quoted companies
- They represent around 85% of all quoted companies in the UK
- They employ approximately 1 million people, representing around 4% of total private sector employment
- Every 5% growth in the small and mid-cap quoted company sector could reduce UK unemployment by a further 50,000
- They generate:
 - corporation tax payable of £560 million per annum
 - income tax paid of £3 billion per annum
 - social security paid (employers' NIC) of £3 billion per annum
 - employees' national insurance contribution paid of £2 billion per annum

The tax figures exclude business rates, VAT and other indirect taxes.

For more information contact:

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