Patent Box decision chart:
Part 1: Are you eligible and what to do

1. Are you a company?

No – END

Yes - go to 2

2. The company needs to: hold a qualifying IP right (or rights) by way of ownership or exclusive licence (CIRD210100, CIRD210110) or cost share arrangement (CIRD260130); meet the development conditions (CIRD210200) and if in a group meet the Active Ownership criteria CIRD210210 – see appendix 1 for Groups) OR

3. Have patents pending which will become qualifying IP rights once granted (CIRD220540)?

No – END

Yes - go to 4

4. If you wish to elect into the Patent Box, make an election (within the tax computation) and follow the next steps to apply a reduced rate of corporation tax on profits relating to exploiting qualifying IP rights (granted patents)

go to 5 (part 2)

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Part 2: Preparation

5. 'Track and trace' the R&D and acquisition expenditure underlying the qualifying IP rights from 1/7/16 (unless you wish to make election for earlier) per CIRD272000.

- See CIRD240160 if IP acquired as part of a 'Transfer of a trade', as special rules apply.
- The definitions of R&D expenditure align with the definitions for R&D tax credits
- Acquisition costs include payments for licence fees for the right to exploit qualifying IP rights.

Track and trace the R&D expenditure and acquisition costs at the same level as the sub streams chosen (CIRD272000) set out in step 12 below.

You will need this information for the calculation.

Go to 6

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Part 2 continued: Consider whether these options apply

6..**GLOBAL STREAM** Does the company meet the criteria for Small Claims Treatment (CIRD220470) and want to make the Small Claims Treatment election for having one global stream of relevant IP income (RIPI)? (CIRD273200)

7. If so, make election to put all income from qualifying IP rights into a Global stream (CIRD273200). Split income into a stream of 'no qualifying IP income' (NON RIPI) and global stream of relevant IP income (RIPI).

Go to 8

8.. **NOTIONAL ROYALTIES**: Is income from any of the qualifying IP rights 'IP derived income'? (CIRD220250) This might be from process patents, leasing, or service income for example.

No – go to 12

Yes - go to separate 'notional royalty' appendix 2

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Part 2 continued: determine appropriate sub-stream 'level'

12.Can you identify income relating to every individual qualifying IP right and track its related R&D expenditure? CIRD220160. The criteria is that you should stream using the most detailed level. CIRD271500.

Yes - go to 13

No - go to 14

13.Split income and expenditure into streams of NON RIPI and RIPI (relevant IP income), the latter being divided into sub-stream(s) for each qualifying IP right. Place relevant expenditure into each stream on a just and reasonable basis. CIRD271500 provides guidance.

Go to 15

14.Split income into streams of Non RIPI and RIPI (relevant IP income), the latter being divided into sub streams at an appropriate product or product family level, separating 'mixed sources of income' on a just and reasonable basis (CIRD220290). The qualifying IP rights grouped together need to be capable of being used for the same or substantially the same purpose. Place relevant expenditure into each stream on a just and reasonable basis.

Go to 15

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Part 3: The calculation: relevant IP profit

15. Are there any qualifying IP rights within the sub streams for which income related acquisition payments are required (e.g. payments of milestones or stage payments based on a certain income being achieved (CIRD274500))?

Yes - go to 16

No - go to 17

16. Remove the income related acquisition payments from expenditure in that sub stream for Patent Box purposes (not from the Accounts)

Go to 17

17. Ensure that excluded income (CIRD220280) and non qualifying expenditure (e.g. Finance Income, RDEC (CIRD220400) is excluded from RIPI sub streams

Go to 18

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Part 3: calculation continued

18. Deduct the expenditure debits from the income in each stream/sub stream to determine relevant IP profits (or loss).

Go to 19

19. **ROUTINE RETURN deduction**:

This step is to exclude the proportion of profits approximating to 'routine' construction or work in creating the product or process from the Patent Box as they do not attract the preferential rate of corporation tax

Calculate the routine return deduction for each sub stream with relevant IP income.

(CIRD220430).

A Routine deduction is expenditure specified in CIRD220440 with examples CIRD220460

The routine return is a fixed 10% of that expenditure
Deduct the routine return from those streams/sub streams.

Go to 20

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Part 3: calculation continued

20. Marketing Asset Return deduction. This step is to exclude profits relating to marketing or brands as they do not attract the preferential rate of corporation tax. It applies only if these profits are greater than 10% of the qualifying relevant IP profits in each stream/substream (step 19)

No – go to 23

Yes – go to appendix 3 and follow rules to calculate deduction

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Part 3: calculation continued

This step is to restrict Patent Box benefit in proportion to the company's involvement in underlying R&D

23 Use the tracking and tracing records to identify:

Direct R&D expenditure (D), unconnected party subcontracted R&D expenditure (S1), connected party subcontracted expenditure (S2) and acquisition expenditure (A) for each RIPI stream/sub-stream.

Calculate R&D fractions using the formula **(D+S1)x1.3/(D+S1+A+S2), capped** at 1, for each RIPI stream/sub-stream.

24. Consider whether it is appropriate to make an election to use an alternative Value Fraction because of exceptional circumstances instead of the R&D fraction per CIRD275500 – if so, notify HMRC

Go to 25

25. Multiply the relevant fraction by the relevant profits in each RIPI stream/sub stream to create relevant IP profits/losses for each sub stream.

Go to 26

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Part 4 Patent Box deduction CIRD201020

. 26. Add the sub stream relevant IP profits/losses from each stream/sub-stream together.
Calculate and add the relevant profit/loss for the patent pending period for any patents granted within the accounting period (CIRD220550).
Create a total Patent Box Relevant Profit (or loss).

Loss go to 27

Profit go to 28

27. Reduce any related company's Patent Box profit or carry forward to reduce any future Patent Box profit by this amount

END

28. Multiply the Relevant Profit by **(AR - IPR)/AR** where AR = main rate of CT or if applicable the small profits rate and IPR = special rate of Patent Box CT (10%) . This is the Patent Box deduction which should reduce the profits in the CT600 return. The tax charged will equate to the same amount as the split calculation

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Appendix 1: More detail for a company which is a controlled member of a group

If you meet the criteria in step 2 you also need to meet these conditions:

The company performs the qualifying development (CIRD210190) of the IP itself and remains a member of the group (CIRD210150)

Another group company performed development but

company actively manages 'all or almost all' of the qualifying IP it holds? (CIRD2101210)

there has been a transfer of trade into your company (CIRD240160)

If the company performed the R&D prior to joining the group it continued that R&D for 12 months afterwards

If the company left the group it continued that R&D for a period of 12 months afterwards and did not join another group

You can make a Patent Box election – return to 6

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Appendix 2: Instructions for Notional Royalties

9. Follow the rules at CIRD220250 to ascertain 'IP derived income' relating to the Qualifying IP rights in 8. Does the company meet the criteria for Small Claims Treatment (CIRD220470)?

Yes - go to 10

No Go to 11

10. Make a small claims election (within the tax computation) for notional royalties if you want to take the 'appropriate percentage' of 'IP derived income' to be 75% (CIRD273100) and include the notional royalty within the global stream if that Small Claims Treatment election has also been made.

Go to step 12

11. Complete the notional royalty calculation by calculating an 'appropriate percentage' of 'derived IP income' following the rules in CIRD220251 and CIRD220252 using transfer pricing principles. Put this deemed income into its own sub-stream. Go to step 12

Go back to step 12

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Appendix 3: Marketing Asset Return calculation

20 Does the company meet the criteria for Small Claims Treatment (CIRD220470)?

Yes Go to 21

No go to 22

21. If you wish to make the Small Claims Treatment election for a Marketing Asset Return do this within the tax calculation.
Calculate the Marketing Asset Return which is 25% of qualifying relevant profit (after step 19) for each of the relevant streams/substreams..
Deduct this amount from the profit for each stream/substream

Go back to step 23

22. . Follow the rules in CIRD220490 – CIRD220530 to calculate and deduct a relevant Marketing Asset Return:

- Calculate a notional marketing royalty where applicable using transfer pricing methodology for each RIPI sub stream. (NMR)
- Reduce this by any actual marketing royalty paid (AMR) to arrive at the Marketing Asset Return amount
- Deduct the relevant Marketing Asset Return deduction from the streams and sub streams

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