

EXPLANATORY MEMORANDUM TO
THE PROFITS FROM PATENTS (EEA RIGHTS) ORDER 2013

2013 No. 420

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 This order specifies that certain rights similar to those granted by the UK Intellectual Property Office (IPO) and European Patent Office (EPO) granted by a number of states of the European Economic Area are rights to which Part 8A of the Corporation Tax Act 2010 (Reduced corporation tax rate for profits from patents etc) applies.

- 2.2 Some of those states operate more than one process for granting those rights, one which affords a similar level of scrutiny to that provided by the IPO or EPO and another less rigorous process. Where this is the case, the order makes clear that only rights granted under the more rigorous process can qualify.

3. **Matters of special interest to the Select Committee on Statutory Instruments**

- 3.1 None

4. **Legislative Context**

- 4.1 Part 8A of the Corporation Tax 2010 (the Patent Box) was inserted by the Finance Act 2012 and provides for a lower rate of corporation tax on the profits attributable to patents granted by the UK Intellectual Property Office (IPO) and European Patent Office (EPO).

- 4.2 Part 8A also permits Her Majesty's Treasury to specify by order rights of other EEA states corresponding to patents that can benefit from the reduced rate. The Government announced in June 2011 that it would extend the Patent Box to patents granted by other EEA states with search and examination practices similar to the IPO and EPO.

- 4.3 This order lists those EEA states that are considered to fulfil these criteria.

- 4.4 Some of those states also grant rights (sometimes known as utility model patents) similar to standard patents but granted after checking that the utility model complies with

formalities and without a substantive examination. The order ensures that rights granted under these less rigorous processes will not qualify for the Patent Box.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 This order helps to implement the Patent Box, which will provide an additional incentive for companies in the UK to retain and commercialise existing patents and to develop new innovative patented products. It will achieve this by taxing the profits from such activities at a lower rate of corporation tax. The Patent Box legislation provides this benefit in respect of profits from the exploitation of patents granted by the IPO and the EPO.

7.2 The order provides for certain rights granted by other specified EEA states to benefit from the Patent Box legislation in the same way as patents granted by the IPO or EPO where these are afforded a similar level of scrutiny as patents granted by the IPO or EPO.

- Consolidation

7.3 Not applicable.

8. Consultation outcome

8.1 The scope of intellectual property rights to which the Patent Box can be applied was included in a public consultation document issued in June 2011. Subsequently, a response document and draft legislation were published in December 2011 making clear the Government's intention to introduce the Patent Box in Finance Bill 2012 and coming into effect on 1 April 2013.

8.2 The response document made clear that the Government proposed to compile a list of other EEA member states that have patent regimes with comparable patentability criteria and search and examination practices to the IPO and EPO, with the intention of extending the Patent Box to those regimes.

8.3 A Technical Note published by Her Majesty's Revenue and Customs (HMRC) in March 2012 specified the EEA states whose patents would qualify. This order provides for Part 8A of the Corporation Tax Act 2010 to apply to these rights.

9. Guidance

9.1 HMRC has published detailed guidance on the Patent Box, including the matters referred to in the order.

10. Impact

10.1 The impact on business, charities or voluntary bodies is set out in the Tax Information and Impact Note.

10.2 The impact on the public sector is set out in the Tax Information and Impact Note.

10.3 A Tax Information and Impact Note covering this instrument was published on 21 March 2012 alongside legislation on profits arising from the exploitation of patents etc. and is available on the HMRC website at <http://www.hmrc.gov.uk/budget2012/tiin-0726.htm>. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The impact on small businesses is set out in the Tax Information and Impact Note.

12. Monitoring & review

12.1 The measure will be monitored and assessed alongside other measures in the Government's package of corporate tax reforms.

13. Contact

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