

# ASK THE EXPERTS

## INTELLECTUAL PROPERTY

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## Protecting ideas is quick and easy

**Q** I have an idea that I wish to patent but, in the current financial climate, my budget is tight. How can I protect myself without spending too much?

**A** It is a common misconception that protecting intellectual property (such as inventions and designs) needs to be expensive and complex. There are many quick and cost-effective ways of securing worthwhile protection for ideas and most disputes never reach the courts, so high-profile cases are quite rare.

If your idea is technical and has not been disclosed anywhere in the world, a patent could protect the underlying concepts, like how it works, what it does or how it is made. In the UK, no official fee is payable on filing a patent application, so this can be done very inexpensively. However, as the patenting process is complicated, it is advisable to seek professional help first from a patent attorney so you get the best protection.

The appearance of new products can also be protected, to stop competitors dealing in items that look similar. This is done using design registrations, which can be obtained very quickly in the UK and Europe, where one registration can cover all of the EU. These are generally much cheaper than patents and although they do not protect technical concepts, they are very effective against imports of copies or 'lookalikes' from overseas.

Do not rely on your original drawings. These may not be of much benefit, as you will need to prove that someone knew about and copied them. With a patent or design registration, it does not matter if the competitor was unaware that you had obtained that protection.

**Q** I have been using my limited company name and trading style for years, but have been told that this does not protect me. Is this true?

**A** Registering a name at Companies House provides very little protection against competitors, regardless of how long you have used it.

You should register your name, logo or trading style as a registered trade mark, as that will give you a monopoly right to stop others from using something similar, in your business area. There is an excellent EU-wide system, where the official fees have recently been reduced by 40 per cent, so if you also trade in mainland Europe (or might), that would be ideal for you.

■ These answers provide general guidance, but not legal advice, which you should always seek, as appropriate.

## EMPLOYMENT

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## Agreements can be a benefit

**Q** I do not think my employer has followed the redundancy procedure and they have asked me to sign a Compromise Agreement. Is this right?

**A** A Compromise Agreement is not a substitute for the statutory redundancy procedure. It is a legally binding document that, when signed, means you have waived your rights to bring complaints or claims against your employer, if he fails to follow correct procedures. They are also a useful tool to avoid Employment Tribunal claims.

Compromise Agreements cover issues such as payment in lieu of notice, outstanding expenses, accrued untaken holiday and statutory redundancy payment. You may also be offered a compensatory payment. An employer will often do this to avoid the need to go through the (sometimes lengthy) redundancy process.

Although losing your job is not anyone's ideal situation, in certain circumstances, accepting the Compromise Agreement may suit you.

There are potential benefits to a Compromise Agreement; you know where you stand and you get the benefit of the compensatory payment, (which if paid ex-gratia is 'tax free').

Therefore, there is both a legal purpose and practical reasoning behind Compromise Agreements for both parties.

**Q** I have been advised that as a new father, I may be entitled to a statutory payment. How do I get this?

**A** Statutory Paternity Pay (SPP) may be paid by your employer so you can take time off work when your wife (or partner or civil partner) gives birth, although certain conditions will have to be met.

You must: 1. Be the biological father, or adopting the child, or be the mother's husband, partner or civil partner, and be involved in the child's upbringing. 2. Have worked continuously with the same employer for at least 26 weeks by the 15th week before the baby is due. 3. Continuously work for that employer after the child is born. 4. Be earning an average of at least £90 per week, gross.

You may be entitled to £123.06, or 90 per cent of your average weekly earnings (whichever is less) for one or two consecutive weeks - mirroring the Paternity Leave rights. You are paid SPP in the same way as your normal wages and therefore it is taxed.

To claim SPP you must tell your employer of your intention to take leave by the 15th week before the baby is due. You may be asked to complete form SC3, which can be found at [www.direct.gov.uk](http://www.direct.gov.uk).

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## Employee wants invention cash

**Q** I own a small company and we have recently been granted a UK patent. The inventor, who is an employee, has now demanded that I pay him for his invention, what should I do?

**A** In the UK, an employer is entitled to the rights in an invention made by an employee if the employee makes the invention in the course of their duties or in the course of duties specifically assigned to them.

If the employee was assigned the duties which led to the invention or the invention came about as a result of the employee carrying out their normal duties, then the invention properly belongs to the company.

There is, however, a provision in UK law which states that if a patent has been granted and the underlying invention is of outstanding benefit to the employer, the employee is able to claim compensation.

Although this aspect of the law has been in force for over 30 years, it has only recently come before the Courts for the first time. In the recent case, two employees of GE Healthcare were awarded £1.5M between them because the patent was said to have brought outstanding benefit to the Company. Of course, the merits of whether or not an invention is of outstanding benefit will be determined on a case-by-case basis. The enquirer in this case states that their patent has only recently granted and that the company is small. There is no information about whether the patent or the underlying invention has provided an outstanding benefit to the company. If that it is at all likely, the company owner should take advice from a qualified patent attorney or solicitor specialising in intellectual property. Assuming that the invention is considered to be of outstanding benefit, the amount of compensation due will depend upon the court deciding that the financial package that has been agreed with the inventor is inadequate in relation to the benefit derived by the company.

For all employers, it is prudent to ensure that employment contracts specifically mention intellectual property and to set up a scheme to compensate employees for their contribution to a company's intellectual property.

**Q** I have registered a new company name, but I have been told that I might not be able to trade using the name, is that right?

**A** This is a possibility. Before a company starts trading, it should ensure that there are no trade marks registered for identical or similar goods or services to those that it wants to sell. A registered trade mark attorney will be able to organise a search to determine the position with regards to registered and unregistered marks.

## FINANCIAL

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## Hunting for tax relief on goodwill

**Q** I'm buying a business that has few assets but lots of potential so I'm paying a lot for goodwill. Can I get tax relief when I write this goodwill off in my accounts?

**A** You don't mention whether you are trading as a sole trader, partnership or company. Tax relief is only available for the purchase of goodwill if it is bought by a company.

Assuming that is the case, the ability to get tax relief on the purchase of goodwill was introduced on 1 April 2002.

Goodwill is the value of a business that is not directly attributable to assets and liabilities. It generally arises in the case of an acquisition, and it reflects the ability of a business to make a higher profit than it would by simply selling the assets. It is considered an intangible asset.

Generally, goodwill equals the purchase price less the fair value of the tangible net assets. If you purchase a business for £300,000 and the value of the net assets of that business is £250,000, then the difference of £50,000 represents goodwill. This £50,000 goodwill is recognised on the Balance Sheet and is written down over what is considered the "useful life of the goodwill" - usually 20 years. However you can elect to use a reduced number of years.

The opportunity to write off goodwill over a shorter period of time provides tax benefits but H M Revenue & Customs will look closely and consider what is "reasonable".

If you are a sole trader or a partnership it may be possible to incorporate and obtain tax relief. As there has been a trend towards incorporating businesses in recent years this is an area which has seen much interest from HMRC who will seek to challenge the value of goodwill if they consider it to be overvalued. Therefore, understand the value of what you are buying and consider the useful life of the goodwill.

If you are not trading as a limited company, then you should consider incorporation as a way of obtaining tax relief for the value of the goodwill purchased. Another benefit of incorporation is the ability to create goodwill on incorporation; if you established your business on or after 1 April 2002, this goodwill, together with the newly purchased goodwill, could be written down over its useful life. Whilst there are other tax advantages of incorporation there may also be a capital gains tax charge. Professional advice should be sought.

The Budget extended the rules for claiming tax relief on goodwill - allowing for internally generated goodwill for tax purposes. If you are an existing business, with goodwill on your Balance Sheet, but not claiming tax relief, speak to your advisors to establish whether the new rules apply.

## PENSIONS

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## Budget impacts little on pensions

**Q** How will the recent budget changes affect my pensions?

**A** For the vast majority of people it will not have any affect at all.

What is clear is the government's intention to limit the tax relief that can be obtained from large contributions, by individuals with high earnings.

Those affected will have a total annual income of £150,000 or higher in the current tax year or in either of the preceding two tax years.

If you contribute less than £20,000 per annum then you will be unaffected or if you have a history of large regular contributions you are likely to be able to continue this without losing your higher rate relief.

For the individuals who are caught by the changes they will lose higher rate tax relief of 40 per cent, only being able to claim a maximum of 20 per cent relief.

This will almost certainly discourage those individuals from making contributions, favouring alternatives such as Venture Capital Trust (VCT's) which allow 30 per cent relief, or even Enterprise Investment schemes (EIS) 20 per cent relief but with access to the entire capital after three years unlike a pension. These changes clearly signal how valuable higher rate relief can be to the investor, so where affordable you should be making the most of this opportunity. There is no other environment that offers such appealing tax relief as a pension.

On the horizon is "Personal Accounts" the government way of compelling employers to make contributions on behalf of all employees.

Although the details are far from set in stone it is likely to require employers to make a contribution of at least three per cent from 2012.

The burden of future financial support being shifted from the state towards the private sector, so it is absolutely critical that employers look to address the subject now and be prepared.

There are a number of ways to save for retirement, pensions simply being one route.

Carefully consider all options, assess the tax consequences now, and when you retire and ensure you review your strategy on a regular basis.

See the full revenue briefing <http://www.hmrc.gov.uk/budget2009/pensions-industry-1550.pdf>

