
UK and Germany agree on joint proposal regarding preferential IP regimes: good news for UK patent box?

November 17, 2014

In brief

The UK and German governments on November 11, 2014, issued a joint statement regarding a proposal they have co-developed to advance negotiations on new rules for preferential intellectual property (IP) regimes within the G20/OECD base erosion and profit shifting (BEPS) project.

If agreed, this is a key development in securing the future of the UK patent box. Germany had been leading the opposition to patent box regimes, while the United Kingdom was in the minority in opposing the nexus approach as set out in the September OECD BEPS paper on Harmful Tax Practices. Consequently, this joint proposal is a significant step to reaching consensus among OECD and G20 members.

The United Kingdom and Germany will present their joint proposal to the OECD Forum on Harmful Tax Practices (FHTP), which is meeting November 17 – 19. They then hope to get agreement from the OECD and G20 at the January 2015 meeting of the OECD's Committee of Fiscal Affairs.

This proposal is intended to bridge the gaps among OECD and G20 member countries on the application of the modified nexus approach proposed by the OECD. The modified nexus approach requires the tax benefits of IP regimes to be connected directly to research and development (R&D) expenditures. The joint proposal amends these rules to address concerns expressed by some countries and seeks to tackle outstanding issues related to qualifying expenditure, grandfathering, transitional arrangements, and tracking qualifying R&D expenditures.

The definition of qualifying expenditures will exclude related-party outsourcing and acquisition costs. However, to reduce the negative impact of this exclusion, companies may increase their qualifying expenditures by 30%, subject to a cap based on actual expenditures.

The proposal's grandfathering arrangements will allow companies that enter into IP arrangements before June 2016 to take advantage of existing patent box regimes for existing patents/products until June 2021. The new rules will apply to IP regimes entered into beginning in June 2016.

The United Kingdom has recommended that the FHTP work to reach agreement by June 2015 on a practical and proportionate tracking and tracing approach that can be implemented by companies and

tax authorities, and that includes transitional mechanisms.

The takeaway

The generous grandfathering mechanism, under which IP arrangements entered into until June 2016 can benefit from existing patent box regimes through June 2021,

should provide increased certainty for companies currently looking at investing in the United Kingdom.

For US multinational companies that have existing operations in the United Kingdom or are considering increasing their commercial presence there, this substance-based, revised nexus approach should help the UK's

patent box regime remain attractive going forward.

To help ensure the new nexus approach is well designed, US multinational companies with significant operations in the United Kingdom may wish to discuss the proposal with the UK tax authorities.

Let's talk

For a deeper discussion of how this might affect your business, please contact:

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