

## Patent Box Discussion Paper

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August 2021

Thank you for the opportunity to comment on the design of a patent box for medical and biotechnology industries. The Committee advocated for the introduction of a patent box in Australia as part of our *Unleashing Sydney's Innovation Economy* report released in July 2020. More recently, in our *Covid Recovery and Reopening Plan 2021*, we recommended funding and incentivising R&D to enable Australia to thrive in the future economy. We are broadly supportive of the intent behind this reform, but believe it needs some changes in order to achieve the intended target.

### The patent box should apply to all industries

The Committee supports efforts to drive investment in the Australian medical and biotechnology sectors as important contributors to Australia's future economic success. Sydney is home to Australia's two largest medtech companies and global success stories - Cochlear and ResMed – with the strongest medtech ecosystem in the country. While it is important to support these national legacies, **an Australian patent box should ideally be available across all industry sectors**. If the goal is to drive outcomes in the innovative sectors of the economy, this policy mechanism should be expanded to be agnostic about which industries are doing the research.

Limiting the patent box to the medical and biotechnology sectors restricts the potential to retain and attract investment in innovation across various industries. Expanding the patent box would help drive much-needed diversification of the Australian economy. Of the 24 countries that have introduced their own 'patent box', or intellectual property tax incentives, none have limited which sectors or industries can access the incentives. The proposed sector-based approach will be unique to Australia and undermine our ability to compete more broadly for investment in the innovation economy.

## Recommendations to increase the effectiveness of the program

The design and management of the Australian patent box will be critical to ensure it delivers on the stated policy objectives. To achieve the goal of encouraging companies to undertake research and development in Australia, and to retain ownership of patented inventions by Australian firms, the patent box should:

- Be competitive with similar incentives offered in peer nations.
- Be workable and practical for those using the scheme.
- Reflect and accommodate the nature of the sector that it seeks to target and attract.

Some of the design features proposed in the *Discussion Paper* compromise the workability and effectiveness of the scheme in achieving its policy objectives. We make three key recommendations:

- **Make the tax rate 10%.** The proposed rate of 17% is significantly higher than the rate offered by peer nations and is not globally competitive. The rate should be lowered to 10%.
- **Allow participation based on ownership of the patent and the location of the R&D work, without regard to the location where patents are filed.** The current proposal applies only to inventions claimed in standard patents granted by IP Australia. This will not be workable. The focus of the program should be on where the ownership of the patent is, and where the R&D activities will be undertaken, not where the paperwork is filed. Most medical and biotechnology companies file patents based on competitor sales and manufacturing, not where the R&D or invention occurred. Eligible patents for the Australian patent box should include those granted to Australian companies in jurisdictions of comparable quality, in a manner consistent with the rules and regulations of IP Australia governing standard patents.
- **Do not restrict eligibility to patents applied for after the Budget announcement.** Given the long development timeframe for intellectual property in the medical and biotechnology

sectors (it can easily be between 5-10 years from when a patent is applied for and when it generates revenue), the proposed approach would lock most of the sector out of the patent box for several years. Most, if not all, of the global IP schemes do not apply this kind of restriction, in contrast they enable all existing patents to qualify. The Australian scheme should take the same approach or, at a minimum, apply to patents commercialised after the announcement date i.e., products that earn their first revenue after the date.

The Committee for Sydney recommends changing these proposed design features to ensure the patent box is as successful as possible. Our recommended changes would incentivise medical and biotechnology companies of all sizes to invest in Australian based R&D, and to keep their intellectual property ownership and manufacturing in Australia.

For more detailed aspects of the patent box design, we refer Treasury to the submissions made by Cochlear (who is a Committee member) and AusBiotech. The current UK patent box (now OECD BEPS Action 5 compliant) provides a strong framework for the Australian model.

## Conclusion

The Committee for Sydney congratulates the Government for their commitment to introducing a patent box in Australia. We recommend several key changes to achieve the goals of this highly significant tax reform:

- Open the system to any industry.
- Allow patents filed internationally but owned/taxed in Australia and developed from Australian R&D.
- Allow patents granted by the commencement of the regime (1 July 2022) or, at a minimum, that are in products commercialised (meaning generate first revenue or have their first sales) after 11 May 2021
- Offer a 10% tax rate consistent with competing regimes

Thank you for the opportunity to comment.

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