

## **Treasury Consultation - Patent Boxes: Concessional tax treatment for eligible corporate income**

The Australian Government announced that it will introduce a ‘patent box’\* for eligible corporate income associated with new patents in the medical and biotechnology sectors. The patent box relates to eligible revenue derived from inventions that would fall within the scope of Australian standard patents (including where the invention is protected by foreign patents) and will apply to eligible companies for income years commencing on or after 1 July 2022. Incentives include a concessional tax rate of 17% (reduced from 25% or 30%) on eligible revenue.

Treasury are seeking comment on the patent box consultation and interested parties are invited to comment on the issues raised in the associated discussion paper by **16 August 2021**.

\*‘Patent box’ is a generic term for regimes that apply a concessional tax treatment to profits derived from eligible intellectual property (IP). Currently, over 20 jurisdictions, including the UK, Singapore and many European countries have patent boxes or other regimes that offer concessional tax treatments to IP derived profits.

### **The Consultation**

The aim of the Government’s policy is twofold:

1. To encourage companies to base their medical and biotechnology research and development (R&D) operations, and commercialise innovation, in Australia. R&D investment is mobile and a range of factors influence companies’ decisions. While it usually takes a number of years for innovations to become profitable in the medical and biotechnology sectors, a concessional tax rate on those profits will create an additional incentive to locate R&D in Australia.
2. To retain the ownership of eligible patented inventions in Australia.

The objective of the discussion paper is to inform the Government’s consideration of the detailed design of the patent box announced in the 2021-22 Budget. The discussion paper sets out the key design features of the patent box for which Treasury is seeking further information.

The consultation paper provides that eligible IP includes profits derived from inventions that would fall within the scope of Australian standard patents (including where the invention is protected by foreign patents). [Standard patents](#) are granted in Australia if there is sufficient evidence of the invention or process being new, inventive and useful. Standard patents provide protection in Australia for up to 20 years and up to 25 years for some pharmaceutical patents.

The consultation has not proposed eligibility for innovation patents, which are [currently being phased out](#). The last date to file an innovation patent is 25 August 2021.

The Discussion paper also outlines other eligibility criteria including:

- a ‘substantial activity requirement’ - where a link is required between the benefits of the IP regime and the extent that the underlying R&D that generated the IP asset was undertaken within the home jurisdiction. In relation to income earned from a patented invention,

concessional treatment will only apply to net IP income where the company undertook the associated R&D within the home jurisdiction; and

- Eligible revenue to enter the patent box, which includes:
  - Royalties or licence fees derived from an eligible patented invention.
  - Revenue embedded in the sale of patented good or services or the use of patented processes in production.
  - Revenue from damages or an account of profits for infringement of an eligible patented invention.
  - Revenue by sale or assignment of an eligible patented invention.

Through the discussion paper, the Government is also consulting on the potential expansion of the patent box approach to low emissions technologies. Following consideration of responses to this discussion paper, the Government will issue and consult further on exposure draft legislation prior to introducing legislation into Parliament.

#### Feedback to CMA

CMA is seeking comments on the Discussion paper from interested members. CMA is intending to make a submission and to explore opening eligibility in relation to intellectual property that becomes 'restricted information' for the purposes of 5 year data protection of a listed assessed medicine.

Any member comments received will be considered for the CMA industry submission. Feedback to CMA for the CMA industry submission to this consultation is preferred by **9 August 2021** at [technical@cmaustralia.org.au](mailto:technical@cmaustralia.org.au).

#### Feedback to Treasury

Members may also submit a response directly to Treasury. The Discussion paper includes consultation questions as a guide and submissions do not need to be confined to those questions. While submissions may be lodged electronically or by post, electronic lodgement is preferred.

All information (including name and address) contained in formal submissions will be made available to the public on the Australian Treasury website, unless it is indicated that you would like all or part of your submission to remain confidential. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain confidential should provide this information marked in a separate document. A request made under the Freedom of Information Act 1982 for a submission marked 'confidential' to be made available will be determined in accordance with that Act. Closing date for submissions is **16 August 2021**.

#### Resources

- Treasury web page: [Patent box consultation](#)
- Treasury web page: [Discussion paper](#)
- IP Australia web page: [Types of patents](#)