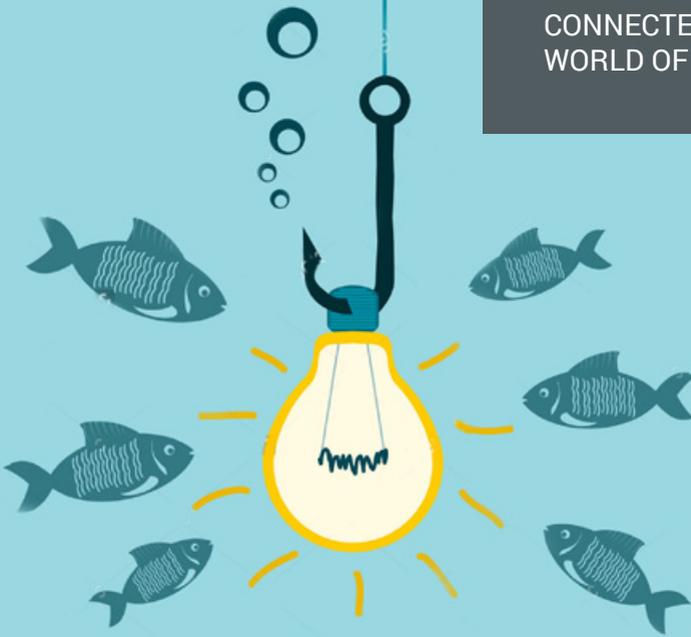


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INTERNATIONAL TAX SERVICES GROUP

# International Tax Round Table

**How are Countries around the World Baiting  
the Tax Hook to Attract Investment in  
Innovation and R&D in a Post-BEPS World?**

**ALLIOTT**  
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A Worldwide Alliance of Independent  
Accounting, Law and Consulting Firms



A recent international tax round table held at the EMEA Regional Conference in Berlin involved members of Alliot Group's International Tax Services Group who discussed the incentives that each of their countries offer to attract investment into innovation and research and development (R&D). These centred on R&D tax relief and the favourable tax treatment of intellectual property ("Patent Box") on its exploitation. Alliot Group's tax expert members also explained how national laws are evolving to ensure compliance with the OECD's Base Erosion and Profit Shifting initiative aimed at artificial IP tax regimes.

### Harmful tax practices?

Attractive tax incentives to encourage investment into a particular country are all part of free global competition between governments. However, the OECD's co-ordinated project to counter the manipulations of tax regimes (BEPS) is targeting countries which offer generous tax incentives without there being any meaningful economic activity. The essence is to ensure tax and tax reliefs attach to where the economic activity and profit is actually generated.

### The modified nexus approach explained



**Marie-Lise Swinne**, Partner at **Tax Consult** in Brussels, explained that this activity is defined as 'R&D activity' and the OECD's solution is that the so-called 'nexus principle' should be incorporated into all IP tax regimes globally:

*"The (modified) nexus approach introduces the device of restricting a company's IP profits that qualify for inclusion under an IP box regime based on the proportion of the company's R&D cost which is incurred directly in creating the IP."*

The round table offered Allott Group's international tax experts the opportunity to outline the incentives on offer in their countries and, where an IP tax regime exists, to explain the impact of recent OECD developments.



## Australia



**Jamie Towers**, partner at **Hanrick Curran** in Brisbane explained that while Australia does not have a IP box regime, it is increasingly focused on innovation and offers a R&D tax incentive:

*"This is set at two different rates – companies with revenues of less than AUD 20 Million can receive a 43.5% tax offset. In this scenario, with the corporate tax rate in Australia being 30%, the company can get back 43.5% in the form of a tax refund. And even if a company does not pay tax, it can still receive a tax refund based on the amount spent on R&D. For companies with over AUD 20 Million revenues, the equivalent tax offset rate is 38.5%. Once R&D deductions exceed AUD 100 Million, a flat rate of 30% applies to the excess."*



## Belgium



**Marie-Lise Swinne**, Partner at **Tax Consult** explained that since February 2017, new legislation has been introduced in Belgium along with a new regime called the 'deduction for innovation income':

*"This replaces the previous patent box regime which was repealed with effect from June 2016 (albeit with a transitional period) as part of efforts to ensure full compliance with BEPS Action Point 6.*

Swinne added that the new regime provides an exemption of 85% of net income derived from innovation, but conditions apply: *"There is no longer a requirement for there to be a patent, but the exemption can only apply to income generated from R&D*



or from the development of new technology or innovation. The income must have been generated since July 2016 and must be included in the Belgian entity's taxable results. Also, it only applies to new developments or the improvement of existing IP rights and products."

According to Swinne, the income can be direct or indirect intangible income, so it can be a licence or an income derived from the product or service being sold. Swinne adds: "The deduction applies also to software development companies which can identify a part of their income that derives from innovation – they enjoy exemption of 85%. The only stipulation is that the modified nexus approach must be applied - this means that the net income has to be assessed as being in proportion to the cost incurred by the Belgian entity or compared to the group cost for the development."

Swinne explained that this means Belgium's corporate tax rate of 33% may actually be reduced for some innovative companies through application of the exemption, resulting in a more favourable effective tax rate. Furthermore, she outlined that unclaimed innovation income deduction can be carried forward for an unlimited period of time.

"Other attractive incentives can also be combined with this, such as the reduction of researchers' wage tax and the taxation of a proportion of earned income at a flat rate of 15% for individuals involved in developing the innovation," explained Swinne.



## Cyprus



**Antonis Partellas**, partner at **Alliott Partellas Kiliaris** in Nicosia explained that the country has had a new IP box regime in place since 1st July 2016 that offers generous tax breaks, but only if very specific criteria are met:

"Under the new laws, 80% of profits generated from qualifying assets can benefit from a profit deduction, with only the

balance being taxed at the corporate tax rate of 12.5%. This new legislation introduces a stricter definition of what constitutes intellectual property – assets that qualify are patents, computer software and other assets which are legally protected. It no longer includes business names, trademarks, image rights and other IP rights used to market products and services.”



## Germany



Germany does not have specific R&D tax incentives, according to **Georg Schleithoff**, tax consultant at **audalis** in Dortmund. On the contrary, Schleithoff explains that from 1st January 2018, the German Government announced the intended introduction of the ‘Licence Deduction Limitation Rule’: *“This rule would apply when license income is subject to preferential low taxation, meaning taxation below 25% and when substantial business activities of the licensor or development activities using own resources do not exist. In cases where the requirements are met (e.g. license income is taxed at a rate of less than 25%, etc.) the deduction of the corresponding license expenses will be denied in proportion to the amount of underpaid tax.”*

**Schleithoff added that while the new rules have yet to be adopted into German law:**

*“Should the new rules enter into legislation, many multinationals will have to review, and possibly adjust, their license and distribution structures.”*



Germany is trying to encourage growth in the technology based sector, but is approaching it from the reverse angle according to **Sebastian Blandow**, partner at **TLC** in Berlin. He explained that a new investment programme has been launched to attract individuals’ investment in R&D by allowing investors to deduct an amount of up to 20% of their initial investment when contributing capital to a startup up to an



amount of Euros 500,000. Blandow explained:

*"This means that a potential investor is entitled to receive a grant of up to Euros 100,000 per year. And when the investor decides to sell the shares once the company has grown and become more profitable, he or she can receive tax relief of 25% on the capital gains received from the sales proceeds."*



An innovation box regime is currently under consideration by the Israeli Government. **Avi Ben Shimon**, partner at **Ben-Shimon, Elias & Co** in Tel Aviv, explained however that there are already many benefits for technology companies that make the country an attractive place for foreign investment and that the Government is making a concerted effort to keep technology in Israel and to avoid 'brain drain'.

**Ben Shimon outlined the benefits in detail:**

*"For technology companies with less than US\$10 Billion annual revenues, a special tax rate of 12% (in periphery areas 7.5%) can be applied, rather than the usual 24% corporate tax rate. For big technology companies with over US\$10 Billion annual revenues, a special tax rate of 6% can be applied. For foreign investors in technology companies, a preferential 4% tax rate on dividends applies rather than the usual 25%-30% dividends tax rate."*

**Ben Shimon pointed out the large number of international companies that already invest in Israel and explained that nearly every big global company has a R&D centre in Israel:**

*"The Government has been successful in attracting and retaining investments from international companies by guaranteeing that the rate of tax will not change if they continue to invest in the country."*



**Giorgio Marcolongo**, partner at **Sorefisa** in Milan, explained that Italy's patent box regime allows a wide number of intangible assets to qualify, including software protected by copyright, patents, know-how such as processes, formulas, industrial, commercial or scientific information and designs and models that are potentially capable of legal protection.

According to Marcolongo, Italy's patent box regime includes the indirect use, such as licensing for the use of any qualifying IP, and the direct use of any mentioned IP, where a ruling procedure is necessary.

*"A general exemption of 50% applies to income generated from R&D or from the development of new technology or innovation. The qualifying income is determined, for each IP, on the basis of the ratio (Nexus Ratio), meaning that the income that can benefit from the tax exemption is in proportion to the ratio of qualifying expenditure to total expenditure incurred to develop the assets,"* explained Marcolongo.



**Maurice Kruidenier**, managing director at **Borrie** in Rotterdam, outlined the Netherlands' well-established innovation box regime which dates from 2007:

*"Under our regime, only 5% corporate income tax is payable on income that is derived directly from IP, instead of the regular corporate income tax rate of 20 to 25%. It enables a company to get a discount on wage tax for people working on R&D development. So it is a two dimensional programme that offers reduced rates of corporate income tax and wage tax."*



 **Nigeria**

The only representative from Africa, **Godwin Osagie**, partner at **G.E. Osagie & Co** in Abuja, explained that his country is also pulling out the stops to attract investment in R&D:

*“Nigeria’s corporate tax rate is 30%, but when investments take place in specific sectors that involve R&D, a tax holiday will be granted ranging from three to five years. Dividends paid during the tax holiday are also tax exempt.*

**Osagie also explained that losses can be carried over for a period of at least four years during which**

*“the company is expected to recover these losses”.*

**According to Osagie, there are special tax incentives on offer to individuals working in specific sectors, particularly expatriates:**

*“Expatriates are entitled to these incentives in return for transferring their skills to nationals. However, to access these benefits, specific registrations need to be carried out to acquire the correct documentation.*

*“Additionally, companies with foreign investment of up to 25% of the share capital are exempted from paying minimum tax when losses are recorded in any financial year; this is applicable to all sectors.”*

 **Poland**

The absence of a specific IP box regime in Poland is, according to **Pawel Falkowski**, partner at **FL Tax** in Warsaw, compensated for by recently introduced R&D regulations:

*“These offer significant benefits to taxpayers who, depending on the size of the company and the category of costs incurred, can effectively deduct 130-150% of their expenses incurred for R&D.”*

Falkowski also outlined how the Polish government is currently working on additional R&D incentive schemes which have become a big agenda item:

*"The latest legislative draft indicates that the amount of deductible R&D costs will increase to 200% as early as 2018."*

However, Falkowski cautioned that while Polish tax regulations indicate the general categories of costs subject to deduction, they do not specify clearly which actual expenses are deemed to be adequately connected with the relevant R&D activity:

*"Specialist tax advice should be sought to ensure careful review of the taxpayer's accounts in order to identify and classify the costs that will qualify for deduction. Professional advice may also be needed to safeguard the R&D tax relief claim by ensuring that the proper records and documentation are gathered and the relevant binding rulings from the tax authorities are obtained."*

Falkowski compared Poland to Australia, in that even if a company does not pay tax and/or is making a loss, it may still be able to obtain a tax refund from the authorities when certain conditions are met. Falkowski added:

*"Additionally, the tax relief may be combined successfully with R&D grants, providing complementary benefits to the most innovative companies."*



## Spain



As **Carlos Montesa**, partner at **Abbantia Abogados** in Seville points out, Spain has had a patent box regime since 2008 and made changes to it in July 2016 to incorporate the OECD proposals and nexus approach. Montesa explained that under the law:

*"60% of net income that qualifies as being derived from qualifying IP and intangible assets is exempt from corporate income tax and the remaining 40% is taxed at the usual 25%."*





According to **Jackie Hendley**, Head of Tax at **Smith Cooper** in Birmingham, the UK Patent Box is similar to incentives on offer in Australia in that R&D tax credits are available to companies in the form of a tax deduction of 230% of the original cost, so an uplift of 130%:

*"Deductions are applicable to the wages of those working on the R&D and are based on the proportion of their time spent working in this area. Consumables also benefit from deductions. If the company has losses, as long as PAYE income tax has been paid for these employees, money can be claimed back from the tax authorities (HMRC)."*



**David Gibbs**, International Corporate Tax Partner at **Alliotts** in London, referred to the Research and Development Expenditure Credit ("RDEC") for large companies which was recently introduced in the UK:

*"This allows a repayment – this is outside of the ordinary state aid rules - a lot of UK R&D has to fall within state aid rules because it is government funding. But this new tax repayment means that a large company such as a global pharmaceuticals company that is making losses, can claim approximately 8% of its R&D spend as a cash refund. Furthermore, the amount that can be claimed is not capped."*

## Contact us

For advice on how your innovative business can take advantage of tax incentives around the world, in the first instance, please contact **Giles Brake** ([giles@alliotgroup.net](mailto:giles@alliotgroup.net)) at Alliot Group's Executive Office who will be able to refer you to a tax expert in a specific city or country. Alternatively, please visit our website ([www.alliotgroup.net/internationaltax](http://www.alliotgroup.net/internationaltax))

## Appendix

Countries with IP/patent box regimes as of 1st June 2017

- Belgium
- Cyprus
- France
- Hungary
- Ireland
- Liechtenstein
- Luxembourg
- Malta
- Netherlands
- Spain
- Switzerland
- United Kingdom



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