

Intellectual Property and Technology Law Update

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New IP Legislation Under Consideration Regarding Tax Relief for Income Generated From IP Assets

Last week, a group of several leading American companies, including Cisco, Boeing, Intel, McGraw Hill Financial, Oracle and Facebook, announced they are forming a group called “American Innovation Matters” (AIM) to lobby Congress to revise the U.S. international tax code rules in an effort to encourage innovation in the U.S. This announcement was concurrent with a statement made by David Gauke, U.K. Parliament Member and Financial Secretary to the Treasury, that “patent boxes” are actually serving their purpose of attracting investment in the U.K.

In early August, House Ways and Means Committee Members Rep. Charles Boustany, Jr. (R-LA) and Rep. Richard Neal (D-MA) announced they were introducing the “Innovation Promotion Act of 2015” (“the Act”) in the U.S. House of Representatives. The Act introduced the concept of an “innovation box” as a mechanism that would provide a lower tax rate on income related to intellectual property with the stated goal of promoting research and development in the U.S.

According to the Tax Foundation, the nation’s leading independent tax policy research organization, the innovation box idea proposed in the legislation would work by providing a deduction of 71 percent for patent income. Under the proposed definition, the following would qualify for that deduction:

- (a) Licensing fees (that is, if a corporation licenses the right to use a patent and receives licensing fees, those payments would qualify); and
- (b) The sale of a product related to a patent (that is, if a corporation invents a new product, the profit related to the sale of that product would qualify for the deduction; this would also apply to income derived from selling products to related foreign corporations that then sell the product overseas).

The total amount of profit related to the above outlined income would not qualify for the innovation box. Instead, only a share of the income would get the deduction. The share would be based on the qualifying research and development expenses related to the product that occurred over the preceding five years.

Upon releasing a “[discussion draft](#)” of the Act, the two Congressmen asked stakeholders to weigh in. The S Corporation Association, an organization that describes itself as being “exclusively devoted to promoting and protecting the interests of America’s 4.6 million S corporations,” submitted a [letter](#) with comments to the Congressmen earlier this month. In the letter, the association noted that the discussion draft does not allow Subchapter S corporations and other pass-through businesses to benefit from the proposed tax deduction. In other words, the benefit of the deduction is currently only limited to Subchapter C corporations. Accordingly, the association urged the Congressmen to expand the overall rate relief to all business income, regardless of entity type.

The Tax Foundation has noted that a U.S. innovation box would not be the first such endeavor in the world, citing a number of developed countries that already have innovation boxes that provide lower tax rates on income derived from intellectual property. Currently, there are 11 developed countries that have some form of tax relief for income generated by IP, or at least have legislation under consideration: Belgium, France, Hungary, Ireland, Israel, Italy, Luxembourg, Netherlands, Spain, Switzerland and the U.K.

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