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2016

A Comparative Review: Innovation-Centric Tax Incentives in the U.S. and U.K.

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Daily Tax Report®

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R&D

Yair Holtzman and Ronald Kalungi of Anchin Block & Anchin look at U.K. and U.S. tax provisions geared to stimulate R&D and technological innovation, including analysis of the U.K. patent box regime and efforts to enact an innovation box in the U.S. ''Technological innovation in the U.K. gets two bites at the tax incentives apple, unlike the U.S. where such innovation gets only one bite,'' the authors write.

A Comparative Review: Innovation-Centric Tax Incentives in the U.S. and U.K.

BY YAIR HOLTZMAN AND RONALD KALUNGI

The U.K. is a major trading partner of the U.S. The U.K. is also a fierce competitor of the U.S. when it comes to jurisdictions that have strong appeal to investment capital.

Earlier in 2016, the U.S. congressional Joint Economic Committee acknowledged that the U.K. ''has begun actively courting U.S. companies with its 10 percent patent box.''[1]

[1] Joint Economic Committee, ''Patent Boxes: A Brief History, Recent Developments, and Necessary Considerations'' (March 6, 2016), p. 3; quoting Lynn, Matthew, ''We need to capitalize on America's overly hostile business environment,'' The Telegraph, March 1, 2016.

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The authors would like to thank Robert Harness, corporate tax manager, and Tim Shaw, tax partner, of Blick Rothenberg LLP, Anchin's affiliate firm in the U.K, for their review of and helpful comments on a pre-print version of this article.

In this article, we explore tax provisions in the U.K. and U.S. legislative frameworks that are geared toward the stimulation of technological innovation. We begin with a comparative review of the research and development (R&D) tax incentives in the two countries' tax laws.

This is followed by an analysis of the U.K. patent box regime and how the adoption and implementation of this regime might influence the ongoing debate on the need for the introduction and design of an innovation box in the U.S.

Finally, we attempt to forecast future developments that will be of interest in legislative efforts to enact an innovation box in the U.S., and how such developments may continue to be influenced by the U.K.'s experience with its patent box regime.

R&D Tax Incentives

In the U.S.

The U.S. federal research and development (R&D) tax credit, otherwise known as the research and experimentation tax (R&E) credit, has been part of the Internal Revenue Code (I.R.C.) since 1981.

For most of its legislative life, the credit has been a temporary provision subject to periodic congressional renewals. The uncertainty associated with its ''sunset''

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nature clouded the benefits of the credit to investors in technological innovations for many years, prompting Congress to deal with this problem definitively by making the credit permanent via legislation enacted in 2015.[2]

The R&D credit was enacted for businesses that uncover new, improved or technologically advanced products, processes, principles, methodologies or materials. In addition to these activities, the credit may also be available to companies that undertake such activities as investing time, money and resources toward incrementally enhancing and improving their products and processes.[3]

The R&D credit benefits taxpayers who incur expenses when undertaking qualified research activities (QRAs) within the U.S. The expenses eligible for the credit, qualified research expenses (QREs), include the following:

- internal wages[4] paid to employees for qualified activities, including wages to individuals directly performing the research as well as those individuals directly supporting and supervising these individuals;
- supplies used and consumed in the R&D processes[5];
- contract research expenses[6] (when someone other than an employee of the taxpayer performs a QRA on behalf of the taxpayer, regardless of the success of the research); and
- basic research payments made to qualified educational institutions and various scientific organizations.[7]

A taxpayer claiming the research credit with respect to an activity must demonstrate that the activity meets the following four tests[8]:

- The activity must rely on hard science, such as engineering, computer science, biological science or physical science.
- The activity must relate to the development of new or improved functionality, performance, reliability or quality features of a product or process.
- Technological uncertainty must exist at the outset of the activities. Uncertainty exists if the information available at the outset of the project doesn't establish the capability or methodology for developing or improving the business component, or the appropriate design of the business component.
- A process of experimentation (e.g., an iterative testing process) must be conducted to eliminate the technological uncertainty. This includes assessing a design through modeling or computational analysis and experimenting with prototypes to test hypotheses.

U.S. R&D Tax Credits Formulas

- **Alternative Simplified Credit (ASC)** = (Current Year Qualified Research Expenses (QREs) – (Average of Previous Three Years' QREs × 50 Percent) × 14 percent
- **Regular (Traditional) Credit** = 20 percent of the smaller of (Current QREs – Base Period Amount) or (50 percent of Current QREs); Base Period Amount = Fixed Base Percentage × Average of Prior Four Years' Gross Receipts

Section 280C(c)(3) Election. If an election is made under I.R.C. Section 280C(c)(3), the amount of the allowable credit is computed as follows:

- **ASC Method.** ASC = (Current Year QREs - (Average of Previous Three Years' QREs × 50 percent) × 9.1 percent
- **Regular Method.** Regular = 13 percent of the smaller of (Current QREs – Base Period Amount) or (50 percent of Current QREs)

Once it is established that an activity meets the above tests, a thorough analysis must be performed to determine that the taxpayer has assumed the financial risk associated with,[9] and will have substantial rights to,[10] the products and/or processes that are developed through the work completed.

As is evident in the requirements outlined above, appropriate documentation must be maintained by any taxpayer claiming the R&D tax credit since the burden of proof regarding all R&D expenses claimed rests with the taxpayer. The taxpayer must maintain documentation to illustrate nexus between qualifying research expenses and qualifying research activities. Based on an Internal Revenue Service audit techniques guide for the R&D credit, the documentation must be contemporaneous, meaning it was created in the ordinary course of conducting qualifying research activities.

The R&D tax credit is reported on Form 6765, Credit for Increasing Research Activities, and this form is included as part of the taxpayer's tax return.

There are two standard methods for computing the credit—the ''regular credit'' and the alternative simplified credit (ASC).[11]

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[2] The Protecting Americans from Tax Hikes (PATH) Act, Pub. L. No. 114-113 (Division Q), enacted Dec. 18, 2015, made the R&D credit permanent.

[3] Yair Holtzman, ''Improving Packaging Design ROI by Taking Advantage of the R&D Tax Credit,'' Bloomberg BNA Daily Tax Report,60 DTR J-1, 3/29/16.

[4] Wages are defined to include amounts deemed to be wages for U.S. federal income withholding tax purposes. I.R.C. Sections 41(b)(2)(D)(i) and 3401(a).

[5] Supplies are defined as any intangible property other than land or improvements to land, and property subject to depreciation. I.R.C. Section 41(b)(2).

[6] I.R.C. Section 41(b)(3).

[7] I.R.C. Section 41(b)(3)(C).

[8] I.R.C. Section 41(d)(1).

[9] Treas. Reg. Section 1.41-2(e)(2); see also *Fairchild Indus., Inc. v. United States*, 71 F.3d 868 (Fed. Cir. 1995). In this case, the court held that the determination of whether a party is at risk turns on which bears the research costs upon failure of the project.

[10] Treas. Reg. Section 1.41-2(e)(3); see also *Lockheed Martin Corp. v. United States*, 210 F.3d 1366 (Fed. Cir. 2000). In this case, court held that the right to use research results without paying for such right, even if not an exclusive right, is substantial.

[11] I.R.C. Section 41(c)(5).

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Under the regular credit regime, the credit is 20 percent of the smaller of the current-year qualified research expenses in excess of a base amount or 50 percent of the current-year qualified research expenses. One of the factors used in the computation of the base amount is the historical qualified research expenses. Under this so-called traditional method, some taxpayers are required to determine their qualified research expenses and gross receipts for years as far back as 1984-1988.[12]

The ASC is 14 percent of the current-year qualified research expenses in excess of 50 percent of the average qualified research expenses for the three years preceding the tax year for which the credit is being determined. Since the ASC only requires examination of the expenses in the credit year and for the prior three years, it is a less burdensome method of computation. As such, companies that haven't claimed the research credit in the past or may have difficulty determining their historical research expenses may find the ASC to be more beneficial, despite the appeal from the higher applied percentage.

In addition to the R&D tax credit discussed above, I.R.C. Section 174 allows taxpayers a deduction for R&E expenditures, as they are paid or incurred, or the option to treat them as deferred expenses that can be amortized over a period of no less than 60 months.

The IRS issued final regulations in July 2014 providing guidance on the application of Section 174. Under these regulations, the only costs eligible for deduction or amortization under Section 174 are those incurred or paid when the business is attempting to solve an uncertainty related to the development or improvement of a product,[13] regardless of whether the product ultimately succeeds, is sold or used in the business.[14]

Appropriate documentation must be maintained by any taxpayer claiming the R&D tax credit since the burden of proof regarding all R&D expenses claimed rests with the taxpayer.

I.R.C. Section 280C allows taxpayers to elect a reduced credit amount, thereby eliminating the requirement to subtract qualified research expenditures claimed for the R&D tax credit from their I.R.C. Section 174 deduction. This election can only be made on a timely return. However, this election effectively reduces the allowable R&D tax credit amount by 35 percent.

To preempt disputes between taxpayers and the IRS regarding eligibility for the credit, a taxpayer can submit a prefiling agreement application with the IRS in order to request consideration of the R&D tax credit issue before the tax return is filed. The policy goals behind this program are to reduce the cost and burden associated with a post-filing examination, to provide a desired level of certainty regarding a transaction and to make better use of taxpayer and IRS resources.[15]

In the U.K.

The U.K. R&D tax credit regime was enacted in 2000 as part of the U.K. government's effort to build a modern knowledge-based economy and improve economic productivity.

The R&D tax relief or credit either reduces a company's tax liability or, where the company has no tax liability, provides a cash sum.

Similar to the U.S. R&D credit, the U.K. R&D credit applies only to R&D activities. For an activity to be considered an R&D activity, it should aim to achieve an advance in science or technology through the resolution of a scientific or technological uncertainty.

An advance in science or technology includes work that generates scientific or technical knowledge; creates a process, material, device, product or service that is new to the field; or appreciably improves something that already exists through scientific or technological change. The R&D shouldn't be something that is already available or could be made available by a competent professional working in the relevant field.

There are two R&D schemes depending on the size of the company or the group of which the company is a member. A company qualifies for the small- and medium-sized enterprise (SME) scheme if it has fewer than 500 employees and either an annual turnover not exceeding 100 million euros ($111 million) or a balance sheet total not exceeding 86 million euros.[16]

Small and Medium-Sized Companies. SMEs can claim a tax deduction for 230 percent of their qualifying R&D expenditures. For companies with losses, an R&D tax credit can be claimed. This is a cash repayment from Her Majesty's Revenue and Customs (HMRC) of up to 33.35 pounds ($41.56) for every 100 pounds spent on R&D.

Expenditures qualifying for the R&D tax relief include:

- the cost of staff directly involved in the R&D work;
- 65 percent of the cost of independent, externally provided workers engaged by the company to work on the R&D project;
- the cost of software and consumable items such as fuel, power and water; and
- 65 percent of the cost of subcontracting specific elements of the R&D work to an independent third party.

Like the U.S. R&D tax credit regime, the U.K. R&D work must not be subsidized by grants and must not relate to R&D subcontracted to the company by another person.

Large Companies. Companies that don't meet the requirements for the SME R&D scheme discussed above may qualify for the large company R&D scheme.

[12] I.R.C. Section 41(c)(3).
[13] Treas. Reg. Section 1.174-2(a)(1)
[14] Id.

[15] Revenue Procedure 2001-22 provides detailed information on the pre-filing agreement application process.
[16] When a company is a member of a group, the holding company and all companies in the group must together meet this definition.

Historically, large companies could claim a deduction for 130 percent of their R&D expenditures. This deduction has since been replaced by an above-the-line (ATL) credit. The ATL credit equates to 11 percent of the company's qualifying R&D spend but is itself subject to corporation tax at the current rate of 20 percent.

ATL credit for loss-generating companies may also be paid as a cash credit, capped at the level of payroll taxes incurred with respect to R&D employees during that year. Any excess is then carried forward as a credit for the following year.

Qualifying expenditure has the same definition for large companies as it does under the SME regime, with the exception that the cost of subcontracted R&D will only qualify if the subcontractor is an individual, a partnership (none of whose partners are companies) or a qualifying body (broadly, a charity, university, health service body or scientific research organization).

In situations where an overseas parent company subcontracts the R&D work to its U.K. subsidiary, the latter will only qualify under the scheme for large companies.

For both the SME and large company schemes, qualifying expenditures on R&D work should relate to the trade of the company and shouldn't be capital in nature. However, capital allowances (tax depreciation) of 100 percent are available on expenditures on capital assets, excluding land and buildings, used for R&D activities.

The R&D tax relief or credit claim is made on the corporate tax return and must be made within two years of the end of the accounting period in which the expenditure was incurred.

The U.K. Patent Box and Attempts To Introduce an Innovation Box in the U.S.

Technological innovation in the U.K. gets two bites at the tax incentives apple, unlike the U.S. where such innovation gets only one bite. In addition to the R&D tax relief or credit discussed above, which generally incentivizes research and development processes that lead to technological inventions, the U.K. also introduced a patent box in 2013 to incentivize the exploitation of technological innovations.

The experiences of countries, such as the U.K., that have implemented a patent box regime are likely to remain points of reference for the U.S.

In the U.S., on the other hand, only R&D or R&E activities are currently incentivized by tax provisions as a matter of legislative policy. There have been recent legislative attempts to introduce the equivalent of the U.K. patent box—an innovation box—in the U.S. but such attempts have so far fallen short of a congressional enactment.

As the debate continues on how to make the U.S. more competitive for both domestic and foreign direct investments (FDIs) generally, and how to make the U.S. more competitive as a destination for technological innovation specifically, the idea of introducing an innovation box is likely to remain on the radar of congressional interest. In this regard, the experiences of countries, such as the U.K., that have implemented a patent box regime are likely to remain points of reference for the U.S. Observing and learning from the U.K. experience will hopefully prove instructive in understanding the costs and benefits of an innovation box in the U.S.

In our discussion below, we highlight the key elements of the U.K. patent box and, subsequently, explore ways in which this regime may influence the design of an innovation box in the U.S.

The U.K. Patent Box

The U.K. patent box regime was introduced by the Finance Act of 2012. The act added a new Part 8A[17] to the Corporation Tax Act 2010 (CTA) that deals with, among other items, the taxation of profits arising from the exploitation of patents. The regime came into existence April 1, 2013.

A company claiming the benefits of the patent box is required to make an election to do so, either on its tax return or separately in writing. The election must be made within two years after the end of the accounting period in which the relevant profits and income arose.

The patent box operates by applying an additional trading deduction from a company's taxable profits. This reduces the effective tax rate on those profits to 10 percent. The full benefit of the regime has been slowly phased in since April 1, 2013, when only 60 percent of this additional deduction could be applied, to April 1, 2017, when the full amount of the deduction will be available.

The regime benefits companies that make profits from the exploitation of patentable inventions. Qualifying profits include income from:

- selling patented products (i.e., sales of the patented product or products incorporating the patented invention or bespoke spare parts;
- licensing out patented rights;
- selling patented rights;
- infringement income;
- damages, insurance or other compensation related to patented rights; and
- use of a manufacturing process that is patented or provision of a service using a patented tool.

The above income must be derived from the use of patents granted by the U.K. Intellectual Property Office, European Patent Office or any one of the following countries that are members of the European Economic Area: Austria, Bulgaria, the Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Poland, Portugal, Romania, Slovakia and Sweden.

The company claiming the benefits of the regime must also have undertaken qualifying development for the patent by making a significant contribution to either the creation or development of the patented invention or a product incorporating the patented invention.

Income qualifying for the 10 percent rate under this regime is computed using a three-step process:

[17] Part 8A, Chapters 1-7, Sections 357A to 357GE, CTA 2010.

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■ **Step 1.** Split the company's profits between those qualifying for the patent box (highlighted above) and other profits. In order to do this, the company must identify the profits attributable to each separate patent or, where appropriate, patented product or product family. Then, to each stream of profits, it must apply a ''nexus fraction'' between zero and one. The nexus fraction reflects how much of the company's total expenditure on the patent (R&D expenditure plus acquisition costs, if relevant) is represented by R&D that was undertaken by either the company or unconnected third parties. (Therefore, if the value of the patent was largely bought-in or generated by other group companies, the amount of qualifying products will be heavily restricted.)

■ **Step 2.** Deduct a ''routine return'' on certain specified costs such as personnel and premises costs. This is intended to reflect the fact that a business would expect to make a profit in the absence of intellectual property (IP) rights and is calculated as a cost plus 10 percent of those costs.

■ **Step 3.** Deduct a ''marketing assets return.'' For small claims (i.e., less than 1 million pounds and in some cases up to 3 million pounds), this can be assumed to be 25 percent, leaving 75 percent of the profits as qualifying for the patent box.

HMRC issued the first statistical release on the patent box Sept. 14. The release shows that in 2013-2014, 700 companies claimed relief under the patent box with a total value of 342.9 million pounds. Close to one-third of these companies (225 or 32.1 percent) were large companies (which collectively claimed 327.2 million pounds). Most of the claimants were in the ''Manufacturing'' sector (445 or 63.6 percent of the total), followed by ''Wholesale & Retail and Transport'' (115 or 16.4 percent of the total). Geographically, London claimed a lion's share of the beneficiaries of the regime (with 196.8 million pounds or 57.4 percent of the overall benefit going to London-based companies).[18]

The patent box regime was modified, with effect from July 1, to include the nexus fraction restriction described above. This was necessary in order to bring the existing regime in line with the Organization for Economic Cooperation and Development's (OECD) proposals dealing with preferential IP regimes.[19] The intention of the new legislation is to adopt the OECD's nexus approach to incentivizing technological innovation. Under this approach, an OECD member state commits to granting preferential tax treatment only to IP whose development required the undertaking of substantial activity in (i.e., IP that has nexus to) that state.

Congressional Attempts to Introduce An Innovation Box in the U.S.

Like the political and policy environments within which it has been framed, the debate about the necessity, or lack of necessity, for an innovation box in the U.S. has been a polarizing one. The Joint Economic Committee[20] highlights some of the key arguments on which proponents and opponents of the introduction of an innovation box in the U.S. have anchored their positions.

Proponents of an innovation box point out that the U.S. corporate income tax rate, the highest in the developed world, has a deleterious effect on businesses and investments generally, and IP innovations specifically. A patent or innovation box would provide an incentive for both U.S. and foreign companies to locate their intangible assets in the U.S. Moreover, the proponents would add, R&D creates broader ''spillover'' effects that benefit society, justifying its special treatment.

Opponents of an innovation box, on the other hand, argue that an innovation box may lead to substantial reductions in tax revenue; the revenue cost associated with an innovation box would be better directed toward lowering general tax rates to benefit all businesses rather than a select group of businesses engaged in a particular activity. They would say the existing R&D or R&E tax regime has performed quite well in stimulating technological innovation in the U.S.[21]

There is some validity to the arguments advanced by both sides, as highlighted above. However, if we use the U.K. experience as a reference point on this matter, we do notice that the U.K. obviously avoided the false choice between lowering its general corporate income tax rate[22] and enacting a patent box regime (choosing to do both instead), or maintaining its R&D or R&E tax relief regime and enacting a patent box (again, choosing to do both instead).

The ''either/or'' approach to evaluating the necessity of an innovation box regime in the U.S. isn't productive. What is more helpful is an evaluation of whether the existing R&D tax incentives make the U.S. more desirable as a destination for technological innovation, especially when compared to its major competitors across the globe such as the U.K., and if there is room for improvement in this regard, whether an innovation box is sound economic and tax policy to spur such improvement.

The ''either/or'' approach to evaluating the necessity of an innovation box regime in the U.S. isn't productive.

Beyond the debate, there have been concrete attempts in Congress to introduce an innovation box in the U.S. These attempts are reflected in draft bills that were introduced in Congress between 2012 and 2015.

[18] HMRC, ''Patent Box, Statistics on uptake of the Patent Box,'' Sept. 14, 2016, p. 4, Tax Analysts Doc. 2016-18500.

[19] See generally, the OECD's Base Erosion and Profit Shifting (BEPS) Action 5: Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, 2015 Final Report.

[20] Ibid., note 2; pp. 6-7.

[21] Mark Mazur, ''An Innovation Box Would be a Bad Innovation for American Tax Policy,'' U.S. Department of the Treasury Notes, March 11, 2016; available on the U.S. Treasury Department's web site at https://www.treasury.gov/connect/blog/Pages/-An-Innovation-Box-Would-be-a-Bad-Innovation-for-American-Tax-Policy.aspx.

[22] At the current corporate income tax rate of 20 percent, the U.K. has one of the lowest corporate income tax rates among OECD member states. The U.K. intends to cut this rate even further to 19 percent from April 1, 2017, and 17 percent from April 1, 2020.

In 2012, a year before the U.K. rolled out its patent box regime, Sen. Dianne Feinstein (D-Calif.) sponsored a bill, the Leveling the Playing Field Act of 2012, that would have enacted a patent box in the Internal Revenue Code. Under this bill, income from the exploitation of patented technology in the U.S. would have been taxed at a preferential rate of 15 percent, as opposed to the general 35 percent corporate tax rate applicable to other income.

A year later, another bill, the Manufacturing Innovation Act of 2013, was introduced by then-Rep. Allyson Schwartz (D-Pa.). Under this bill, a taxpayer who elected the benefit of the patent box provision would be allowed a preferential deduction of, among other items, an amount equal to 71 percent of profits derived from the exploitation of patented IP (with the remaining 29 percent of the profits being subject to the regular corporate tax rate of 35 percent, for an effective tax rate of 10.15 percent).

More recently, House Ways and Means Committee members Charles W. Boustany Jr. (R-La.) and Richard Neal (D-Mass.) introduced a draft bill for an Innovation Promotion Act of 2015. Similar to the 2013 draft bill, this bill would enact in the Internal Revenue Code an innovation box provision that would tax domestic IP at an effective tax rate of 10.15 percent through a 71 percent deduction for innovation box profits. The 2015 bill would also allow companies to repatriate IP from foreign subsidiaries on a tax-free basis.[23]

Although none of the above bills ever became law, the bills reflect the bipartisan interest in and momentum for the introduction of an innovation box in the U.S. Since congressional interest in federal tax reform generally, and improving U.S. competitiveness specifically, is unlikely to dissipate any time soon, legislative attempts to introduce an innovation box in the U.S. are likely to continue as well. In this regard, we highlight below some of the policy and design issues that will be of interest in the formulation of innovation box legislation in the U.S.

The U.S. has, in the congressional bills discussed above, attempted to design an innovation box provision that incentivizes patented technology developed and exploited in the U.S. and patented technology developed elsewhere but exploited in the U.S. This trend is in line with the OECD's nexus approach to incentivizing IP, and with the changes that the U.K. has recently introduced to its own patent box regime.

Enacting provisions incentivizing investments and technological innovation as sunset provisions subject to periodic congressional renewals creates significant uncertainty that undercuts the benefits such provisions are intended to provide. It is hoped that some critical lessons were learned from the trajectory of the R&D tax credit provision before Congress made it permanent in 2015. It would be unwise to introduce an innovation box in the U.S. as a sunset provision. Fortunately, none of the congressional bills on the innovation box to date has suggested such an approach. The U.K. never followed this course either.

Another issue to consider is the territoriality or geographical reach of an innovation box. Should it incentivize only IP developed and exploited in the U.S., or should it extend to IP developed in U.S. possessions as well? In both the 2013 and 2015 bills discussed above, the geographical reach was extended beyond the U.S. through a special definition of the term ''United States'' to include the ''District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands.''[24]

Further down the horizon, if the U.S. enacted a federal innovation box and this inspired some states to enact their own innovation boxes, we would need to understand how the federal and state innovation boxes would interact with one another. Would, for instance, a state innovation box tax be deductible from the federal innovation box taxable income, along the lines of current U.S. federal income tax rules?

By enacting an innovation box, the U.S. will be playing catch-up on what the U.K. has done for many years and continues to do—providing incentives to the entire innovation life cycle from ideation and IP generation (which are stimulated by the R&D tax credit) to commercialization of IP (which is stimulated by an innovation box). If the U.S. achieved this goal, it would go a long way in incentivizing innovators to keep tax-favored R&D activities and IP generated from such activities in the U.S. This would make the U.S. more competitive globally and perhaps stem the outbound flow of R&D activities and IP exploitation from the U.S. to other countries, such as the U.K. and Ireland.

The post-enactment implementation of any innovation box regime generally involves significant costs, as well as heavy compliance and administrative burdens. To this end, there would be need to devote adequate time to the design, enactment and eventual implementation of an innovation box regime in the U.S.

Taking another lesson from the U.K. experience, we notice that the proposed introduction of the patent box regime in the U.K. was announced three years in advance of its enactment. This allowed for solicitation of commentary from the public on such issues as the cost, administrative burdens, and complexity of the regime and how to make it simpler. Likewise, any potential innovation box legislation in the U.S. would benefit from adequate lead time for public commentary on the relevant congressional bill prior to its enactment into law.

Conclusion

The U.S. continues to look across the Atlantic to trading partners such as the U.K. as barometers when gauging its own competitiveness as a welcoming jurisdiction for both domestic and foreign investments generally, and technological innovation specifically. In this regard, the experiences of those partners in boosting their own competitiveness are likely to remain relevant points of reference for the U.S.

The idea of introducing an innovation box in the U.S. as a means of boosting its own competitiveness is likely to remain a relevant consideration in the future, and thus the U.K.'s experience with its own patent box regime is likely to remain a pertinent reference point for the U.S.

[23] See Lewis J. Greenwald, et al, ''The Innovation Promotion Act of 2015: Not the New Ireland,'' Tax Notes International, Volume 81, Number 5 (Feb. 1, 2016), for a more detailed discussion of the provisions this bill sought to introduce into the Internal Revenue Code.

[24] Section 250(b)(6) of the 2015 bill and Section 200(d)(7) of the 2013 bill.

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