



Global Tax Update

United Kingdom

Deloitte Tohmatsu Tax Co.

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1. Budget will be on 18 March

The Chancellor has announced that the Budget will be on 18 March 2015. The draft clauses for the Finance Bill(s) 2015 have been published on 10 December 2014. The consultation on this draft legislation is open until 4 February 2015.

2. Patent Box: UK/Germany approach to be adopted by OECD

Financial Secretary to the Treasury David Gauke confirmed on 2 December 2014 that the agreement on the approach to patent box arrived at by the UK and Germany has been welcomed by the OECD and the EU, and will form the basis of the OECD's further work on 'substantial activity' in the context of IP regimes.

The agreement sets out a mechanism to move existing 'innovation box' regimes to a 'modified nexus' approach. This aligns with the work being done by both the OECD's Forum on Harmful Tax Practices as part of the BEPS project and the European Commission's Code of Conduct Group, and represents a significant departure from the existing transfer pricing approach taken by the UK's patent box.

Conceptually, the modified nexus approach is predicated on there being a link between R&D expenditure and the income arising from the patents developed, with the R&D expenditure regarded as a proxy for commercialisation activities. It involves a comparison of development expenditure incurred by the

claimant entity with expenditure incurred globally by all parties associated with the creation of the IP asset – with the regime being limited so as to apply only to the relevant proportion of the IP income. It requires claimants to be able to identify and track qualifying expenditure, potentially including historic expenditure; outsourced expenditure is excluded.

3. Holding company: VAT recovery

During a recent meeting at which HMRC's policy on VAT recovery by holding companies, as outlined in HMRC Brief 32 (2014) was discussed, HMRC confirmed that:

- the guidance is not directed at seeking to restrict VAT recovery on normal "stewardship" type costs incurred by holding companies in VAT groups;
- the specific concern is in relation to VAT incurred by holding companies on M&A activity;
- the guidance should be read in the specific context of the decision of the Court of Appeal in the case of BAA Ltd; and
- there is no immediate plan to withdraw the guidance, but HMRC have undertaken to ensure that these points are communicated internally within HMRC to ensure the policy is correctly applied.

Discussions with HMRC over the resolution of the numerous appeals to the Tribunal in relation to transaction costs are continuing.

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