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United States lawmakers are facing increasing pressure from technology and life science industry leaders to adopt an "innovation box" regime to level the playing field with foreign counterparts and prevent significant US job and revenue loss. Members of the House of Representatives Ways and Means Committee and Senate Finance Committee have been considering proposals to create an innovation box in the US to stem the tide of companies shifting operations to lower-tax jurisdictions abroad.

An innovation box, also commonly referred to as a "patent box", provides a substantially discounted tax rate on certain forms of intangible business income. Several countries already have some form of an innovation box. Discounted tax rates (as well as lower tax rates generally) in those jurisdictions have the potential to encourage the movement of ownership of intellectual property offshore from the US.

In the United Kingdom a patent box regime already has been introduced. The UK's patent box is showing signs of having a positive effect on UK business and many high-tech businesses are heralding the move as transforming the way the UK is viewed as a place to invest. In the pharmaceutical sector in particular, the patent box is credited with prompting the UK drug maker GSK (GlaxoSmithKline) to shift hundreds of research jobs back to the UK and to commit to building its first UK site in 40 years.

Under the recent OECD base erosion and profit shifting (BEPS) proposal, businesses will be permitted to participate in existing innovation regimes only to the extent they can show that business activities, such as research and development, are substantially performed in the country where the discounted rate is being received. The new nexus requirements on innovation box regimes are anticipated to significantly reduce the creation and maintenance of intellectual property in the US as well as the associated domestic manufacturing sector, jobs and revenue base. It is anticipated that intellectual property ownership and development functions will continue to shift overseas to establish the requisite nexus to claim the benefits of existing innovation box regimes.

Congress is beginning to take a serious look at ways to create an innovation box in the US Last week, the Senate Finance Committee's Bipartisan International Tax Working Group—co-chaired by senators Dean Heller (R-NV) and Michael Benett (D-CO)—released a report claiming that BEPS will have a "significant detrimental impact on the creation and maintenance of intellectual property in the United States."[1] Moreover, the reported stated "The co-chairs agree that we must take legislative action soon to combat the efforts of other countries to attract highly mobile US corporate income through the implementation of our own innovation box regime that encourages the development and ownership of IP in the United States, along with associated domestic manufacturing."[2]

By way of background on the efforts in Washington around patent boxes, Senate Finance Committee Chairman Orrin Hatch (R-UT) and Ranking Member Ron Wyden (D-OR) created five bipartisan working groups to tackle comprehensive tax reform. On July 7, 2015, these groups, including the International Tax working group submitted their final reports to the Chairman and Ranking Member. While stopping short of making formal recommendations, these reports are concrete steps in laying the foundations for tax reform efforts in the coming months. In the House of Representatives, members of the Ways and Means committee have been actively discussing creating a patent box, though legislation has yet to be introduced.

The goal of retaining US-based research and development is creating a policy climate increasingly more conducive to the creation of incentives to keep pace with other countries. Add to this the prospects of a fall report on BEPS, and it is very possible lawmakers will look to act quickly—possibly this year—on patent boxes.

Look for future Cooley alerts on this topic. Contact **Vince Sampson** for legislative updates.

NOTES

1. Senate Finance Committee, International Tax Reform Working Group: Final Report, July 4, 2015 at 75.
2. *Id.* at 76

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Key Contacts

Aaron Pomeroy Colorado	apomeroy@cooley.com +1 720 566 4108
Vince Sampson Washington, DC	vsampson@cooley.com +1 202 728 7140

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