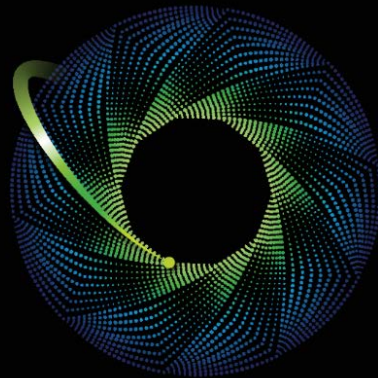




香港税务快讯

专利盒税务优惠的条例草案

INspire HK

躍動香港

专利盒税务优惠的条例草案¹（《条例草案》）于今日提交立法会。《条例草案》对通过研发活动而创造的具资格知识产权，为其源自香港的具资格利润²提供 5% 的特惠税率。《条例草案》旨在鼓励企业积极进行更多研发活动和创造更多知识产权，以推动知识产权贸易，从而巩固香港作为区域知识产权贸易中心的竞争力。待草案通过后，专利盒税务优惠将追溯至 2023 年 4 月 1 日或之后开始的课税年度适用。

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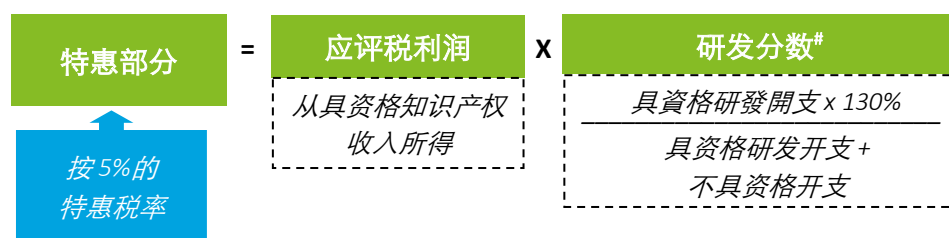
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研发分数 - 应评税利润的特惠部分

在设计拟议的专利盒机制时，香港基本上遵循了经济合作与发展组织采纳的关联法。具体来说，研发分数是用以厘定应评税利润中可享税务优惠待遇部分的比例。



[#]累积比率；限制为 100%

具资格及不具资格研发开支

具资格研发开支指为研发活动招致的开支，而该研发活动与关乎具资格知识产权收入的具资格知识产权有直接关连。

在计算研发分数时，香港会采用税务管辖区划分法厘定具资格研发开支的涵盖范围，其中涵盖以下研发活动的开支：

- 由纳税人在香港或香港以外地方进行的研发活动；
- 外判予非关联方在香港或香港以外地方进行的研发活动；及
- 外判予属香港居民⁶的关联方⁷在香港进行的研发活动。

收购知识产权的开支不会视为具资格开支，但属不具资格开支。利息支付和为任何土地或建筑物而作的支付既不会视为具资格开支，也不会视为不具资格开支。

将研发开支归类为具资格和不具资格开支的目的是为了计算研发分数。开支是否可扣除，应遵循《税务条例》中其他条文的规定，例

如：第 16B 条适用于研发活动开支、第 16E 条适用于购买专利权、第 16EA 条适用于购买指明知识产权，详情有待厘清（见下文）。

特惠税率

拟议专利盒机制的特惠税率为 5%。换言之，5%的税率将适用于具资格知识产权收入所得的应评税利润的特惠部分。

对亏损的处理

与受益于拟议专利盒机制的收入有关的亏损，可以与该机制以外的其他税率征税的应评税利润抵销，前提是可予抵销的亏损额须按税率差距作出调整。例如，专利盒机制下的税务亏损（按 5%的特惠税率）可以通过调整税率差距，用于抵销其他应评税利润（按 16.5%的标准税率）。

备存记录规定

纳税人须制订具体机制备存相关记录，以追查和追溯具资格知识产权的研发开支和收入。作为过渡安排，纳税人将被容许采用按具资格研发开支和整体开支的三年滚动平均值计算比例。过渡期⁸后，纳税人须更改计算方式，由三年平均值转为以累积比率计算。

选择

纳税人须以书面方式作出选择享受税务优惠。选择一经作出，即不能撤回。

我们的观察

虽然 5%的特惠税率并非低于邻近的司法管辖区（例如新加坡也提供 5%的特惠税率），但仍大幅低于香港现行 16.5%的标准利得税率。我们期望专利盒税务优惠能鼓励企业进行更多研发活动，以及将研发成果商品化，进而提升香港作为国际创新科技中心和区域知识产权贸易中心的竞争力。

同时，我们观察到《条例草案》中有几个不确定的范畴，有待税务局提供进一步指引：

- **与研发费用加计扣除的相互影响：**《条例草案》列明了具资格知识产权收入所得的应评税利润的计算公式，其中为产生具资格知识产权收入而招致的支出及开支是可以扣除的。根据《税务条例》第 16B 条，某些研发开支，例如研发雇员开支，可获 200%或 300%的加计扣除。目前尚不清楚根据《条例草案》计算具资格知识产权收入所得的应评税利润时，应如何纳入研发费用的加计扣除。（更新：税务局已厘清，根据专利盒机制下的公式计算具资格知识产权收入所得的应评税利润时，将纳入加计扣除。）
- **与购买指明知识产权的资本开支的相互影响：**根据《条例草案》，在计算具资格知识产权收入所得的应评税利润时，在评

税基期内招致的支出及开支是可以扣除的。根据《税务条例》第 16EA 条，购买指明知识产权的资本开支，例如植物品种权利，可分 5 年扣除。例如，在专利盒机制颁布前，纳税人在第一年购买了植物品种权利，可分 5 年扣除收购成本。专利盒机制于第二年生效。严格来说，纳税人在第 2 年至第 5 年并没有招致资本开支。目前尚不清楚根据《条例草案》计算具资格知识产权收入所得的应评税利润时，应如何纳入分期的扣除。

(更新：税务局已厘清，根据专利盒机制下的公式计算具资格知识产权收入所得的应评税利润时，将纳入分期的扣除。)

- **成本分摊协议⁹下的研发开支份额：**《条例草案》没有明确提及在确定研发分数时，纳税人在成本分摊协议下所承担的研发开支（出资）是否会被视为具资格研发开支。目前尚不清楚税务局会否参照适用于研发费用加计扣除的《税务条例释义及执行指引第 55 号》中所述，即使研发活动是由香港以外的其他实体进行，纳税人在成本分摊协议下所承担的研发开支仍可被视为纳税人招致的开支。若税务局能够在这方面发出指引，将会很有帮助。

拟议专利盒机制一旦颁布，将适用于 2023/24 课税年度，而提交 2023/24 课税年度利得税报税表的最早截止日期为 5 月初。虽然税务局会待法例颁布后才会在其网站发布有关专利盒的申报表格式，但由于申报期限少于 1 个月，有意在即将到来的利得税报税表中选择专利盒机制的纳税人应准备好相关资料。纳税人亦应寻求专业意见，以评估在拟议税务优惠下在香港开发和买卖知识产权的潜在机遇。

¹ [《2024 年税务\(修订\)\(知识产权收入的税务宽减\)条例草案》](#)

² 外地知识产权收入须遵从外地收入豁免征税机制的规定。

³ 植物品种权利是授予植物品种拥有人的权利，藉以保障其培育或发现并发展的栽培植物品种。

⁴ 如果注册申请是在《条例草案》生效日期起计 24 个月的宽限期后提交的，对在香港境外申请或获授予的专利或植物品种权利还有额外的要求。

⁵ 归因于具资格知识产权的收入应根据经济合作与发展组织就税收协定范本中有关营业利润条文的评注及转让定价指引来计算。

⁶ 在香港成立为法团的公司，或（如在香港境外成立为法团）通常在香港加以管理或控制的公司。

⁷ 如某人参与另一人的管理、控制或资本（一般指至少 50%实益权益或表决权），或同一人或同一组人，参与每名当事人的管理、控制或资本，则这些人属彼此相联。

⁸ 过渡期是指由 2023 年 4 月 1 日开始至纳税人在 2025 年 4 月 1 日开始的课税年度的评税基期的最后一日。

⁹ 成本分摊协议是企业之间的一种契约，以分担共同开发、生产或取得无形资产、有形资产或服务所涉及的资金和风险，而该无形资产、有形资产或服务预计会为各参与者各自的业务创造效益。

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如有任何疑问，请联系我们的专业人员：

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我们诚信为本，坚守质量，勇于创新，以卓越的专业能力、丰富的行业洞察和智慧的技术解决方案，助力各行各业的客户与合作伙伴把握机遇，应对挑战，实现世界一流的高质量发展目标。

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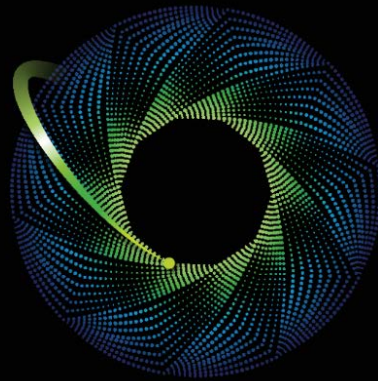
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Hong Kong Tax Newsflash

Draft legislation on patent box tax concession

INspire HK

躍動香港

The draft legislation¹ on patent box tax concession is introduced into the Legislative Council today. The Bill seeks to provide a concessionary tax rate of 5% for qualifying profits sourced in Hong Kong² from eligible intellectual property (IP) created through research and development (R&D) activities. It aims to encourage enterprises to forge ahead with more R&D activities and create more IPs for promoting IP trading with a view to strengthening Hong Kong's competitiveness as a regional IP trading centre. Upon enactment, the patent box tax concession will apply retrospectively from the year of assessment beginning on or after 1 April 2023.

Eligible IP

Only income derived from an eligible IP could benefit from the preferential tax treatment under the proposed patent box regime. Eligible IP means the following IP that is generated from R&D activities:

- Patent;
- Plant variety rights³; and
- Copyrighted software.

Eligible patents and plant variety rights include not only those granted or registered, but also those under applications, in or outside Hong Kong⁴.

Eligible IP income

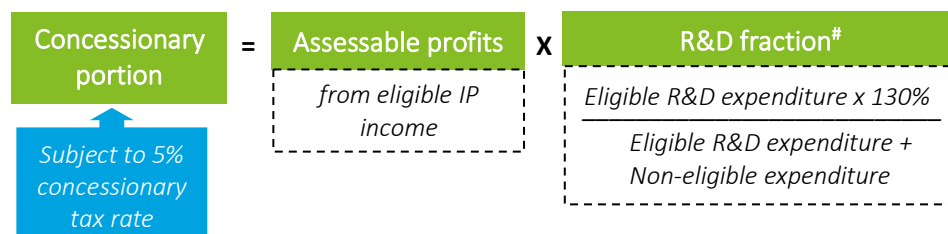
Eligible IP income includes:

- income derived from an eligible IP in respect of the exhibition or use of, or a right to exhibit or use (whether in or outside Hong Kong) the IP;
- income derived from the sale of an eligible IP;
- price of a product or service that includes an amount attributable to an eligible IP⁵ (embedded IP income); and
- insurance, damages or compensation derived in relation to an eligible IP.

The assessable profits from an eligible IP income would be ascertained by deducting the relevant outgoings and expenses incurred during the basis period, depreciation allowances, commercial building allowance and industrial building allowances, and adding balancing charge on assets used to produce the eligible IP income.

R&D fraction for concessional portion of assessable profits

Hong Kong generally follows the nexus approach adopted by the Organisation for Economic Co-operation and Development (OECD) in designing the proposed patent box regime. Specifically, R&D fraction is a ratio which determines the portion of assessable profits that could benefit from the preferential tax treatment.



[#] Cumulative ratio; limited to 100%

Eligible and non-eligible R&D expenditures

Eligible R&D expenditure means expenditure incurred for an R&D activity that is directly connected to the eligible IP to which the eligible IP income relates.

When calculating the R&D fraction, a jurisdictional approach will be adopted to determine the scope of eligible R&D expenditures, which cover the expenditures on R&D activities that are:

- undertaken by the taxpayer in or outside Hong Kong;
- outsourced to non-associated person and undertaken in or outside Hong Kong; and
- outsourced to associated person⁶ that is a Hong Kong resident person⁷ and undertaken in Hong Kong.

Acquisition costs of IP are not regarded as eligible expenditures, but non-eligible expenditures. Interest payments and payments for any land or building are neither eligible expenditures nor non-eligible expenditures.

Please note that the purpose of classifying the R&D expenditures as eligible and non-eligible is for calculating the R&D fraction. Whether the expense is deductible should be governed by other provisions under the Inland Revenue Ordinance (IRO), e.g. Section 16B for expenditures on R&D activities, Section 16E for purchase of patent rights, Section 16EA for purchase of specified IP rights, subject to certain clarifications as discussed below.

Concessionary tax rate

The concessionary tax rate for the proposed patent box regime is 5%. In other words, the 5% tax rate will apply to the concessionary portion of the assessable profits from the eligible IP income.

Treatment of losses

A loss incurred in relation to income benefiting from the proposed patent box regime can be allowed to set off against assessable profits subject to a tax rate other than that provided under the regime so long as the amount of loss allowed is adjusted with reference to the tax rate difference. For example, tax loss from patent box regime (subject to 5% concessionary tax rate) can be used to set off against other assessable profits (subject to standard tax rate of 16.5%) of the taxpayer by adjusting the difference between the tax rates.

Record keeping requirements

Taxpayers are required to adopt a detailed mechanism of record keeping to track and trace the R&D expenditures and income derived from the eligible IP. As a transitional measure, taxpayers will be allowed to apply a ratio where the eligible R&D expenditures and overall expenditures are calculated on a three-year average rolling basis. After the transitional period⁸, taxpayers will need to change from the three-year average to a cumulative ratio.

Election

A written election for the tax concession is required. Once the election is made, it is irrevocable.

Our observation

Although the concessionary tax rate of 5% is not lower than those in neighbouring jurisdictions (e.g. Singapore also has a 5% concessionary tax rate), it is substantially lower than Hong Kong's prevailing standard profits tax rate of 16.5%. We hope it will encourage enterprises to engage in more R&D activities and commercialise the R&D results and in turn increase Hong Kong's competitiveness as an international innovation and technology centre and a regional IP trading centre.

Meanwhile, we observe several uncertain areas of the Bill which require further guidance from the Inland Revenue Department (IRD):

- **Interaction with the enhanced R&D expense deduction:** The Bill sets out the formula of calculating assessable profits from eligible IP income where outgoings and expenses incurred in the production of eligible IP income are deductible. Under Section 16B of the IRO, certain R&D expenditures, e.g. R&D staff cost, are eligible for enhanced deduction at 200% or 300%. It is unclear how the enhanced deduction of R&D expense will be taken into account in calculating the assessable profits from eligible IP income according to the Bill. *(Update: It is clarified with the IRD that the enhanced deduction will be taken into account in calculating the assessable profits from eligible IP income in accordance with the formula under the patent box regime.)*
- **Interaction with capital expenditure for purchase of specified IP rights:** According to the Bill, outgoing and expenses incurred during the basis period are deductible in calculating the assessable profits from eligible IP income. Under Section 16EA of the IRO, capital expenditure on purchase of specified IP rights, e.g. plant variety right, is deductible over 5 years. For instance, a taxpayer acquires a plant variety right in Year 1 before the enactment of patent box regime and is entitled to deduction of the acquisition cost over 5 years. The patent box regime becomes in force in Year 2. Strictly speaking, the capital expenditure was not incurred in Year 2 to Year 5. It is unclear how the deduction by instalment will be taken into account in calculating the assessable profits from eligible IP income according to the Bill. *(Update: It is clarified with the IRD that the deduction by instalment will be taken into account in calculating the assessable profits from eligible IP income in accordance with the formula under the patent box regime.)*
- **Share of R&D expenditure under a Cost Sharing Arrangement⁹:** The Bill does not explicitly mention whether the R&D expenditures (contributions) borne by a taxpayer under a Cost Sharing Arrangement would be considered as an eligible R&D expenditure for ascertaining the R&D fraction. It is uncertain whether reference could be made to the Departmental Interpretation and Practice Notes No.55 for enhanced R&D deduction where the R&D expenditures under a Cost Sharing Arrangement could be regarded as expenditures incurred by the taxpayer even if the R&D activities are undertaken by other entities outside Hong Kong. It would be helpful if the IRD can issue guidance in this area.

The proposed patent box regime, once enacted, will apply to the year of assessment 2023/24 while the earliest 2023/24 profits tax return filing due date is early May. With less than 1 month, taxpayers who would like to elect for the patent box regime in the upcoming profits tax return should get prepared of the relevant information although the form for patent box will not be released in the IRD's website until the enactment of the legislation. Taxpayers should also seek professional advice in evaluating any potential opportunities in IP development and trading in Hong Kong under the proposed tax concession.

¹ [Inland Revenue \(Amendment\) \(Tax Concessions for Intellectual Property Income\) Bill 2024](#)

² Foreign-sourced IP income is subject to the Foreign-Sourced Income Exemption regime (FSIE).

³ Plant variety rights are rights granted to the owners of plant varieties over cultivated plant varieties they have bred or discovered or developed.

⁴ There are additional requirements for patents and plant variety rights filed or granted outside Hong Kong if the applications for registration are filed outside the 24-month grace period after the commencement date of the Bill.

⁵ The income attributed to the eligible IP should be calculated in accordance with the commentary on the business profits article of the OECD Model Tax Convention and OECD Transfer Pricing Guidelines.

⁶ The persons are associated if one person was participating in the management, control or capital (generally means at least 50% beneficial interest or voting rights) of the other person or the same person or persons was or were participating in the management, control or capital or each of the affected persons.

⁷ A company incorporated in Hong Kong or, if incorporated outside Hong Kong, normally managed or controlled in Hong Kong.

⁸ The transitional period refers to the period beginning from 1 April 2023 to the last day of the taxpayer's basis period for the year of assessment beginning on 1 April 2025.

⁹ A Cost Sharing Arrangement is a contractual arrangement among business enterprises to share the contributions and risks involved in the joint development, production or the obtaining of intangibles, tangible assets or services with the understanding that such intangibles, tangible assets or services are expected to create benefits for the individual businesses of each of the participants.

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