

ROOM DOCUMENT # 7
Code of Conduct Group (Business Taxation)
18 March 2014
ORIGIN: Commission

MEMBER STATES' COMMENTS ON PATENT BOXES

Germany

Here are the German replies [to the questions in room document 4 of 27 January 2014];

Question 2: Do delegates agree that it is an efficient way to start the analysis by looking at the work of the OECD?



Question 3: What comments do Member States have on the OECD's approaches summarised above?

See Germany's attached comments [below].

Question 4: Can Member States who attended the December meeting of the FHTP report on their comments made in reply to OECD?

See Germany's attached comments [below].

Question 5: Can delegates identify other options for the application of the above approaches – for example by combining them?

No

German Comments (34th meeting of the FHTP)



[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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Denmark

The purpose of the IP regimes seems to be to provide targeted incentives for innovation and research and development in the respective countries. It therefore seems to be most consistent with this purpose to use the nexus approach as it will require a direct link between qualifying R&D expenditure and the benefits.

The incentives should be given to real R&D activities in the same country and not to attract IP rights developed in other countries. Management of R&D activities should not be included, Mere capital provisions should not be sufficient either. For these reasons it would also be wrong to use the transfer pricing approach as it would focus on risks taken, assets used and significant people functions, i.e. capital and management of the activities.

The qualifying R&D expenditure should be the R&D expenditure which is deductible for the company, including expenditure incurred in a permanent establishment in another country if the income of the PE is taxed in the country of residence. If the country of residence uses a territorial system where income of the PE is exempted, expenditure in the PE would be excluded.

The qualifying R&D expenditure should not include acquisition costs for acquired IP rights. Likewise, expenditure for R&D outsourced (e.g. contract R&D or cost contribution arrangements) to related parties should be excluded from the definition of qualifying R&D expenditure. If on the other hand the R&D is outsourced to unrelated parties, the expenditure should be included – in these cases it is ensured that market prices are used and it allows cooperation with universities etc.

[REDACTED]

[REDACTED]

Italy

CTPA/CFA/FHP/NOE2(2013)8/CONF – ITALY’S COMMENTS, January 21, 2014

Italy would like to thank the Secretariat for drafting the Note on substantial activities in context of intangible regimes and would like to make the following comments.

[REDACTED]

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Luxembourg

CTPA/CFA/FHP/NOE2(2013)8/CONF – Note on substantial activities in context of intangible regimes

Luxembourg appreciates the excellent report prepared by the Secretariat and [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

| [REDACTED]

| [REDACTED]

Netherlands

The comments by the Netherlands delegation in the FHTP to the topics discussed at the 34th FHTP meeting of December 2013 are attached [below]. [REDACTED]
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]


[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]




Portugal

As requested, we are sending comments on the matter presented in Room Document #4, Code of Conduct Group meeting on 27 January 2014:

On the work on substance and patent boxes, Portugal supports the development of the Nexus Approach, as it is described in the OECD Note that supplements the Note on Substantial Activities in the Context of Intangible Regimes (CTPA/CFA/FHP/NOE2(2012)2/CONF) and that was discussed at the Forum on Harmful Tax Practices on the meeting that took place in 24-26 February.

This revised approach seems to be the most consistent of the three suggestions and a good starting point to further work. It would be useful a deeper reflexion in the definition of definitive solutions, especially concerning qualifying expenditures incurred to develop IP assets and limitation of outsourcing.


Slovenia




Slovak Republic



United Kingdom

I am writing with the comments from the United Kingdom in follow-up to December's FHTP meeting, 



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