



Hong Kong General Chamber of Commerce
香港總商會 1861

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Mr Algernon Yau, JP
Secretary for Commerce and Economic Development
Commerce and Economic Development Bureau
22/F, West Wing, Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Algernon,

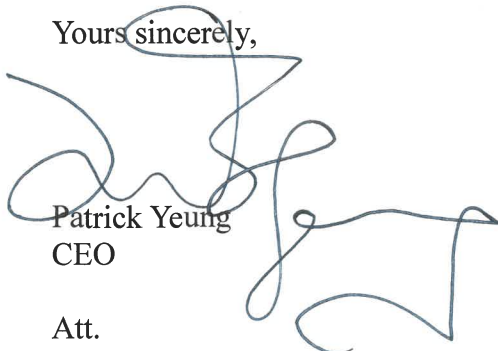
Re: Introduction of a Patent Box Tax Incentive in Hong Kong

The Hong Kong General Chamber of Commerce welcomes and supports the Bureau's proposal to introduce a patent box tax incentive as we believe that this would encourage businesses to engage in more R&D and IP trading activities in Hong Kong.

To further strengthen Hong Kong's tax competitiveness as an international innovation and technology centre, and a regional IP trading hub, consideration should be given to such aspects as taxing IP income at a lower rate, as well as widening the scope of eligible IP-related asset and income.

These and other comments are set out in the attached. We hope you will find our comments useful.

Yours sincerely,



Patrick Yeung
CEO

Att.

Consultation on the Proposal to Introduce a Patent Box Tax Incentive in Hong Kong
Response by the Hong Kong General Chamber of Commerce

1.1. The Hong Kong General Chamber of Commerce (“HKGCC”) welcomes the opportunity to respond to the captioned consultation.

1.2. In his last Budget, the Financial Secretary unveiled plans to implement a patent box tax incentive to provide concessions for profits sourced in Hong Kong and derived from eligible intellectual property (“IP”) assets, which the Chamber put forward as a recommendation in its submission to the 2023/24 Budget. We therefore welcome and support the Commerce and Economic Development Bureau’s proposal to introduce a patent box tax incentive as we believe that this would encourage businesses to engage in more research and development (“R&D”) and IP trading activities in Hong Kong. To further strengthen Hong Kong’s tax competitiveness as an international innovation and technology centre, and a regional IP trading centre, consideration should be given to such aspects as taxing IP income at a lower rate, as well as widening the scope of eligible IP-related asset and income.

1.3. The following sets out our responses to the various issues raised in the Consultation Paper (“CP”).

Eligible IP Asset

1.4. The CP proposes that patents and plant variety rights must be filed in Hong Kong in order to be eligible for the tax concession. Although the inclusion of such a condition is understandable, it is likely to render such a regime less attractive compared to those in other markets. For example, under the UK’s patent box tax regime, IP qualifying for tax relief includes not only UK-registered patents but also those granted by the European Patent Office and certain European countries¹. We suggest that consideration could be given to replicating the UK’s approach whereby jurisdictional coverage of qualifying IP activities is also expanded to the GBA to further enhance the proposed framework’s tax competitiveness.

1.5. It is also noted that under the proposed regime, IPs acquired from a related party would not qualify for tax concessions. Such a restriction would significantly undermine the effectiveness of the patent box incentive as companies, including Hong Kong-based businesses and local subsidiaries of foreign groups, would be discouraged from using Hong Kong as a hub to develop and exploit their IP assets. As such, we suggest that a tax deduction be provided for the costs of acquiring IPs from related parties provided that (a) they are incurred in producing chargeable profits in Hong Kong, and (b) the transfer prices are made at arm’s length. In the case of non-arm’s length transactions, the Inland Revenue Department is already vested with the authority to adjust the price

¹ <https://www.gov.uk/guidance/corporation-tax-the-patent-box>

of such transactions and should not therefore pose a concern. As a safeguard measure under the proposed regime, a taxpayer could be required to provide a valuation report prepared by a recognised body.

Eligible IP Income

1.6. Under the proposed regime, eligible IP income includes, among others, the portion of income generated from the sale of a product or service attributable to the value of an eligible IP asset that is determined on a just and reasonable basis (such as those based on transfer pricing principles). However, there are a number of issues that have yet to be addressed such as (a) cases where the composition of IP income is not derived based on the foregoing principles, as well as the approach to calculating such income; and (b) whether incidental income (e.g. infringement income) should fall within the scope of eligible IP income. It would therefore be useful to have clarification on these issues in the interest of promoting certainty and transparency.

Tax Rate

1.7. The CP draws from the practices of a number of jurisdictions where concessionary tax rates are provided as part of a patent box regime (such as 4.99% in Luxembourg, 6.25% in Ireland, 5% to 16% in Israel, South Korea's range of 4.5% to 18%, and Singapore's 5% or 10%). To ensure that Hong Kong's patent box regime is sufficiently attractive and competitive, the concessionary rate should be comparable to, if not better than, those offered in other jurisdictions. We therefore propose the following concessionary tax rates, which should have the desired outcomes of incentivizing and attracting investments in key innovation and technological sectors in Hong Kong:

- **A rate of 4.125% or lower** for eligible IP income derived from eligible IP assets used in the following fields:
 - Fintech;
 - Life and Health Science;
 - Artificial Intelligence and Data Science;
 - Applied Materials (e.g. Semiconductors); and
 - New Technologies for (i) Advanced Manufacturing (e.g. Micro-satellites Manufacturing) and (ii) Addressing Climate Change.

- **A rate of 8.25% or lower** for eligible IP income derived from all other eligible IP assets.

HKGCC Secretariat
October 2023