

## Swiss Patent Box

### A. Background

Due to the TRAF, Swiss special income tax regimes considered harmful (in particular holding companies, mixed companies and domiciliary companies) will be abolished by 1 January 2020 and replaced by internationally accepted measures. One of these measures is the mandatory introduction of a patent box on cantonal level. The patent box allows for a privileged taxation of income arising from intellectual property (IP). The introduction of the patent box was undisputed and the solution was largely influenced by current developments in international tax law.

Along the patent box, an increased tax deduction for research and development (R&D) expenses (so-called super deduction) creates an additional tax incentive for R&D activities performed in Switzerland.

### B. Determination of patent box income

The Federal Act on Tax Reform and AHV Financing (TRAF) provides that income from patents and comparable rights can benefit from privileged taxation insofar as it is based on R&D activities of the taxpayer.

Patents and comparable rights are European patents designating Switzerland, Swiss patents and foreign patents equivalent to the patents mentioned. In particular, Swiss patents are interesting for the patent box as they can be granted easily and at moderate prices as compared to other jurisdictions.

Comparable rights include supplementary protection certificates (extension of patent protection for medicinal products and plant protection products after expiry of the basic patent), topographies (protection of semiconductor products), plant species protected under the Plant Variety Protection Act and documents protected under the Therapeutic Products Act.

The ordinance which has not entered into force yet stipulates that a privileged taxation for income resulting from a patent or comparable right can only be requested after the patent has been granted. For pending applications, therefore, no privileged taxation can be claimed.

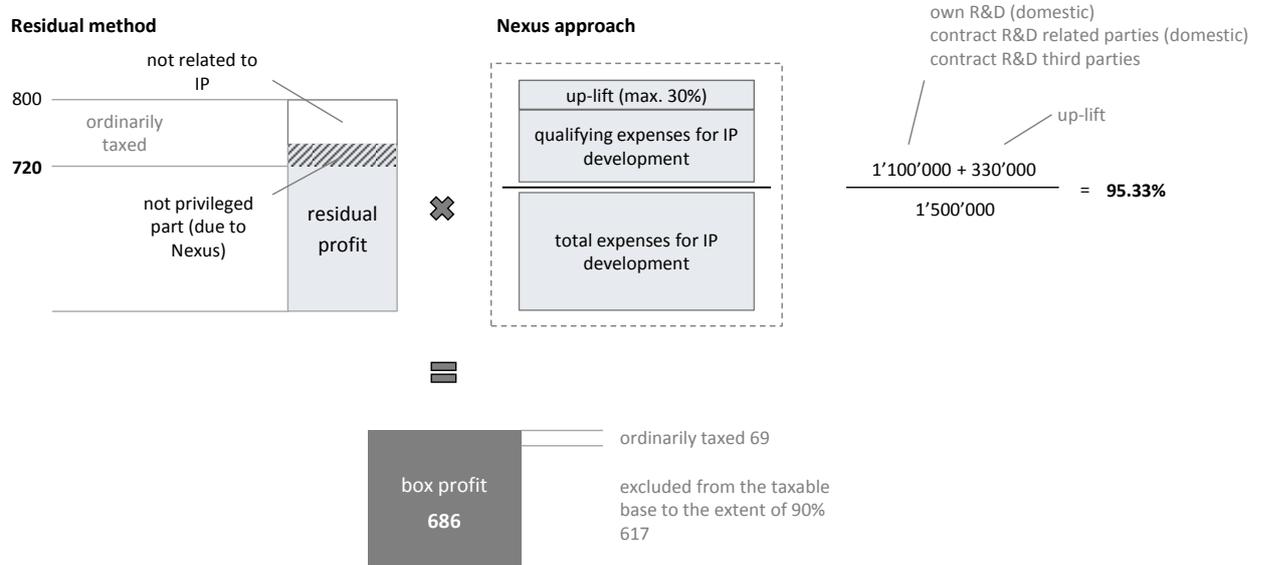
After the expiry of a patent or comparable right, the reduced taxation ends. A retroactive termination of a patent or comparable right, for instances due to revocation or opposition proceedings, does not impact the taxation in prior years.

Income receiving tax benefits is determined in a two-step procedure: In a first step, the profit directly attributable to IP (so-called residual profit) is determined which is in a second step multiplied with the nexus factor (cf. diagram).

The ordinance provides facilitations for the determination of the taxable profit in case a product is protected by several patents or in case the profit of products in the patent box cannot be determined directly.

The nexus factor is the ratio between qualifying development expenses and total IP development expenses. Qualifying expenses are the R&D costs borne by a company (self-incurred costs), costs from outsourcing R&D to domestic related or third parties as well as costs from outsourcing R&D to foreign third parties. Non-qualifying expenses (e.g. costs from outsourcing R&D to foreign related parties or costs of IP acquisition) are taken into account in the qualifying expenses through the so-called up-lift. The up-lift is limited to 30% of the qualifying expenses. Multiplication of the residual profit with the nexus factor (max. 1) results in the so-called box profit. The box profit is excluded from the taxable base to the extent of 90% at cantonal level, i.e. 10% of the box profit is subject to ordinary taxation. The cantons can foresee a lower reduction. At federal level the box profit continues to be subject to ordinary taxation. This can result in a combined effective income tax rate (federal, cantonal and municipal) of around 10%.

#### Determination of patent box income



The overall tax relief resulting from several measures (incl. patent box) is limited to 70% of the taxable profit before offsetting of tax losses (so-called relief restriction).

On the transition into the patent box, the historic R&D expenses are subject to taxation and a taxed hidden reserve is to be built. This can result in a significant tax burden which is why cantons can ensure taxation in a different way. The canton of Basel-Stadt, for instance, provides for a reduced taxation at the entry by one-time taxation whereas in the canton of Zurich, the patent box profits first have to be offset with R&D expenses before reduced taxation

takes place. Further, there are documentation requirements for the patent box which must be considered.

### **C. R&D deduction**

In addition to the patent box, cantons may allow an increased deduction for R&D expenses in order to promote R&D activities in Switzerland. The R&D deduction is not linked to patents (and comparable rights) and is therefore open to a wider circle of taxpayers. The increased deduction amounts to a maximum of 50% of the R&D expenses and is also subject to the relief restriction.

### **D. Conclusion and outlook**

As a result of the tax reform, Switzerland remains an attractive location from a tax perspective in international comparison. Even though not all the details of the patent box have yet been determined, it is clear that the patent box is an interesting measure for companies:

- The patent box is particularly attractive for Swiss SMEs, as they often perform their R&D locally. In addition, the patent box can also be of interest to Swiss companies that have their R&D activities performed on a contractual basis by third parties abroad.
- The qualifying IP rights for the patent box can be relatively easily obtained.
- The patent box can also be an interesting measure for start-ups. Although they do typically not achieve profits in early stages, a potential transition into the patent box can be envisaged and the accounting, for example, can already be set up accordingly.

As far as the patents are included in products, the patent box is of particular interest for high-margin products. If a transition is beneficial depends on various factors that need to be assessed. Among other things, the implementation in the cantons is inconsistent and it will have to be observed how the individual cantons design their patent box.

Taxpayers that wish to benefit from the patent box in the tax year 2020 need a patent that is granted by the end of 2020. Since certain conditions apply to the validity of a patent (in particular the novelty requirement) and the patent process can take some time, there is need for action already now.

The increased deduction for R&D expenses is a measure that can be implemented with comparatively little effort. Again, also for the R&D expenses a specific assessment of the particular case is necessary to analyze if qualifying R&D expenses are available. Furthermore, potential adjustments to the accounting must be made early enough in order to determine the accurate basis for the R&D deduction.

As a next step, the potential transition into the patent box from a tax and patent point of view can be examined as part of a feasibility study. For this purpose, the tax specialists of **ADB Altorfer Duss & Beilstein AG** and the patent attorneys of **Isler & Pedrazzini AG** will be happy to assist you.

ADB ALTORFER DUSS & BEILSTEIN AG

+41 44 267 63 00



**Dr. Pascal Taddei**

Dr. iur., attorney-at-law,  
certified tax expert, Partner

[pascal.taddei@adbtax.ch](mailto:pascal.taddei@adbtax.ch)



**Marc Dietschi**

M.A. HSG,  
certified tax expert

[marc.dietschi@adbtax.ch](mailto:marc.dietschi@adbtax.ch)

Isler & Pedrazzini AG

+41 44 283 47 00



**Dr. Andreas Detken**

Dr. rer. nat., Dipl. Phys.  
Patent Attorney

[andreas.detken@islerpedrazzini.ch](mailto:andreas.detken@islerpedrazzini.ch)



**Harry Frischknecht**

Dipl. Masch.-Ing. FH,  
Patent Attorney

[harry.frischknecht@islerpedrazzini.ch](mailto:harry.frischknecht@islerpedrazzini.ch)