



19 January, 2022  
Reference: OBPR21-01137

Mr Jason Lange  
Executive Director  
Office of Best Practice Regulation  
Department of the Prime Minister and Cabinet  
1 National Circuit  
BARTON ACT 2600

Email: [helpdesk-OBPR@pmc.gov.au](mailto:helpdesk-OBPR@pmc.gov.au)

Dear Mr Lange

### **Regulation Impact Statement – Patent Box Concessional Tax Regime – Second Pass Final Assessment**

I am writing in relation to the attached Regulation Impact Statement (RIS) prepared for the Patent Box Concessional Tax Regime (Office of Best Practice Regulation Reference: OBPR21-01137).

Thank you for your letter of 13 January providing OBPR's first pass assessment of the above RIS. I am satisfied that the revised RIS attached addresses the concerns raised in your letter. Specifically, Treasury has revised the RIS in the following ways:

- As all RISs must have at least 3 viable options for consideration, a new Option 3 has been included reflecting the revised design specifications following public and targeted industry consultation. This more clearly differentiates the differences between the 2021-22 Budget announcement (now included as Option 2) and the feedback provided by stakeholders on that announcement (Option 3).
- The RIS now includes further evidence of the problem and the benefits of the proposed solutions.
- The RIS has been re-structured to more clearly present the evidence base and identify the need for Government intervention compared to the status quo of no policy action.
- Language around the options has been amended to make it clear that a final decision has not yet been made (approval of the legislation is considered the decision point under this process, and the final RIS will inform this decision).
- Minor formatting and editorial suggestions noted in OBPR's marked-up version of the RIS have been noted and addressed as appropriate.

The RIS shows that the primary benefit of a patent box is the retention of economically valuable IP in Australia where it has been developed here. While this provides benefits in the form of potential economic gains to Australia and lower revenue leakage to lower tax jurisdictions, Treasury has not been able to quantify these benefits. This is in large part due to the lack of data and analysis from international patent

boxes that reflects changes to patent box regimes since the 2015 OECD Guidelines on BEPS Action 5: Harmful Tax Practices. The RIS instead seeks to make a qualitative assessment of the relevant options.

The ongoing regulatory costs for the preferred option provided to Government for decision are approximately \$1.7 million per year. While implementation of this proposal will increase the regulatory burden, the design choices presented to Government have been influenced by the need to reduce taxpayers' compliance costs where possible. Moreover, access to the regime remains optional. While no offset measures have been identified as yet, Treasury will review whether there are regulatory burden reductions elsewhere in the 2022-23 Budget process that could be used as offset measures.

Draft RISs have been prepared for milestone decision points in this process. This is the final RIS for assessment by the OBPR. This RIS will be provided to the Government to be considered prior to introduction of legislation.

Accordingly, I am satisfied that the RIS is now consistent with the six principles for Australian Government policy makers as specified in the Australian Government Guide to Regulatory Impact Analysis.

I submit the RIS to the Office of Best Practice Regulation for formal final assessment.

Yours sincerely



Maryanne Mrakovcic  
Deputy Secretary  
Revenue Group