

The Patent Box



Patents can have many uses. They prevent third parties from just using the patent holders research for themselves. They provide the basis for licencing agreements or represent assets for financing or M&A activities. Soon, patents and adjacent rights will gain additional significance in Switzerland: they constitute a basis for a so-called “patent box”.

The patent box is one of the instruments introduced on the cantonal level in all of Switzerland with the federal tax reform and AHV financing act (STAF) starting 2020. Revenue generated by (technical) Innovation shall be taxed in a privileged way through the framework of a patent box. The tax burden can be reduced by up to 90%! The box includes any revenue that is ultimately connected to some patent.

Not just large corporations can profit through this instrument, its use can also be of interest to SMEs. The new option is likely to influence your patent strategy: If the tax savings outsize the cost of acquiring a patent by multiples it is sensible to try and pursue patents exclusively for the added fiscal options.

The introduction of the patent box raises questions about tax and business administration that go beyond intellectual property rights. Mr. Martin Röthlisberger is a lawyer and certified tax expert with T+R Treuhand AG and is our “guest at grips” today to clear up those questions.

Philipp Rufenacht

«Nothing is for certain in this world,
except for death and taxes»

Pictures: Stefanie Schär

Making Sense of the Patent Box

	The Reform	Key Points
<p>What changes does the tax reform (STAF) entail?</p>	<p>The tax reform as part of STAF eliminates a handful of existing exceptional provisions, such as tax advantages for holding companies and domiciliary companies. It contains various instruments with which the corporate tax burden can be reduced. Many of those tools only have an effect if their application is specifically requested. Legislation at the federal level is implemented in the cantonal tax codes in different ways. For example, the French-speaking cantons will generally cut their corporate taxes sharply and apply the additional measures from the STAF only to a limited extent.</p> <p>Other cantons, such as Bern and Zurich, cannot offer comprehensive general tax reductions because of fiscal policy considerations, but they offer the instruments of the STAF as comprehensively as possible or intend to do so.</p>	<ul style="list-style-type: none"> > Tools for lowering corporate taxes > Application of tools must be requested > Implementation varies between cantons: Check situation in relevant canton!

	Patent Box	Basis for a patent box
<p>What is a patent box?</p>	<p>A „patent box“ pools revenue of a taxable company generated by patents and comparable rights which are based on research and development expenses. This pooling can fundamentally be based on the patents, products or product families involved. The earnings belonging in the patent box or boxes are taxed at a reduced rate at the cantonal level, the reduction ranging up to 90%. Even existing patents, generated from past research and development activity can be put into a patent box, in which case a „buy-in“ to the patent box is necessary. Depending on the canton, the past 10 years' worth of box-related R&D expenditures are retroactively taxed at a special rate (e.g. Basel, Berne), or the R&D related tax amount is offset with the deductions from the patent box (e.g. Zurich).</p>	<ul style="list-style-type: none"> > Swiss, European and foreign patents > Supplementary protection certificates > First applicant protection according to therapeutic products act (Heilmittelgesetz) > Topographies > Protected plant species

Benefits of STAF for innovative Businesses

	Calculation	Modified Nexus Approach
How are the earnings from a patent box calculated?	<p>The calculation of the income assigned to a particular patent box follows the so-called „residual method“. Profits not based on licenses or the sale of a patented product are deducted from the total profits made on the product or product portfolio in question. The deductions include profit from financing activities or from routine functions and profit based on the brand. In any case, at least 6% of the associated costs will be deducted from the net income thus determined from the patent box. This results in the so-called residual profit. This is then corrected by the so-called „modified nexus approach“ to ensure that tax relief takes place in the state where the underlying research and development took place. After this correction, the result is the amount of privileged taxable earnings.</p>	$\frac{\text{Qualifying R\&D-expenses}^{\#} \times 130\%}{\text{total R\&D expenses}}$ <p># includes costs of:</p> <ul style="list-style-type: none"> > In-house research and development (CH) > Domestic and foreign contract research by third parties > Domestic contract research by group companies
How is research and development fostered by STAF?	<p>The patent box takes into account research and development by the taxable company in Switzerland, as well as domestic and foreign contract research by third parties and domestic contract research by group companies. For the patent box, R&D expenditures in connection with contract research by foreign Group companies do not qualify for industrial property rights or knowhow.</p> <p>In addition to the patent box, an additional 50% of the recorded costs for research and development can be deducted in the tax return (tax superdeduction). However, the principle must be observed that the STAF instruments, which include the patent box and the super deduction, must not lead to a relief of more than a maximum of 70% (e.g. Canton Bern) of the taxable profit before loss adjustment. Other cantons have provided even stricter relief limits.</p>	<ul style="list-style-type: none"> > In-house R&D costs: directly attributable personnel expenses (including social security costs) plus 35%, but not more than total R&D expenses > 80% of expenses for contract research (assuming no deduction is claimed by the contractor)



Prerequisites for Using the Patent Box

	Strategies	Key Points
<p>What do we have to do to be able to make use of the patent box?</p>	<p>For a taxable company to benefit from the patent box, it must hold qualifying intellectual property rights (such as patents). These can already exist or be obtained in the future. As long as the domestic revenue is also linked to activities (production, offering, sale) in Switzerland, patent protection in Switzerland covering the relevant product or products should be sufficient. When exhausting all options to accelerate the proceedings, a Swiss patent can be obtained in 6-9 months. The application is not materially examined for novelty or the inventive step. Its duration is a maximum of 20 years from the application date.</p> <p>The effect of the revocation of a non-legally valid patent is yet unanswered - but it is generally expected that the tax authorities will examine the requirements formally, i.e. the use of the patent box is thought to be possible as long as the necessary property rights exist. The bookkeeping must also be examined: It should be possible to indicate and assign clearly the revenue and costs relevant for the calculation of the patent box and the additional R&D deductions.</p>	<ul style="list-style-type: none"> > File for intellectual property rights in due time > Indicate relevant earnings and expenditures



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