PATENT BOX REGIME

What is Patent Box Regime

A Patent Box is a special tax regime for Intellectual Property (IP) revenues. It is also known as IP-Box or Innovation-Box. The concept of Patent Box was first introduced by Irish and French Tax Authorities. In a Patent Box Tax Regime, a lower rate of tax is applicable for the income generated from licensing or transfer of intellectual property rights like trademarks, copyrights, patent, know-how etc.

The concept of patent boxes, to serve as a tax incentive to companies to exploit their patented IPs, is very common. Many countries have adopted the regime with the intent of encouraging the research and development of intangibles.

UK

UK had set up patent boxes, in 2013, to encourage companies to retain their IPs in UK and exploit through UK companies. Any company liable to UK corporation tax and having income from patents and other specified intellectual property can potentially take benefit of 10% effective rate of corporation tax on income from such IPs. The regime is intended to apply to the worldwide income arising from the exploitation of inventions which benefit from a qualifying patent.

Netherlands

Another country, which had also introduced patent box regime was Netherlands. The scheme was introduced in 2007 but was withdrawn due to the restrictive nature and complexity. Thereafter, an improved version, called Innovation Box, was introduced in 2010. Under the Innovation Box regime, a tax rate was reduced from 10% to 5% and was applied to the income generated by a qualifying intangible to the extent the income from the intangible exceeds the related R&D expenses, other charges and amortisation of the intangible. This represented a significant tax rate reduction, considering the normal Dutch corporate income tax rate which is 25%.

Ireland

In Ireland the old regime which was existing since 1973 was withdrawn in 2010 and in 2015 the scheme was reintroduced in the name “Knowledge Development Box” wherein a reduced rate of 6.25% was applicable on qualifying profits generated on or after 1st January 2016.

France

The regime in France was introduced in 2000. France has the highest rate of 15% under the regime, but that is still considerably lower than their statutory corporate rate of 33%.

Belgium

The patent box scheme in Belgium was introduced in January 2007, and is known as a patent income deduction (PID). It allows a company, liable to pay Corporation Tax in Belgium, to deduct from its taxable income 80% of gross patent income. The remaining 20% of gross patent income is taxed at the standard corporation tax rate of 34%. This results in an effective tax rate of 6.8% on the qualifying income.

Italy

Recently Italy has also introduced "Patent Box" wherein partial tax reduction is given for revenues drawn from the use of intangible assets. The regime also admits the possibility of reducing taxes on gains drawn from the sale of the assets, as long as 90% of the sale consideration is invested, within a limited period, in the maintenance and development of other intangibles.

Other than the above countries, many other countries like Luxembourg, Spain, Hungary, Switzerland have similar schemes to encourage the Intellectual Property Development in their country.

INDIA PATENT BOX REGIME

Vide Finance Act 2016, a new section 115BBF was introduced in the Income-tax Act, 1961 (the Act) which provides for a concessional rate of tax at the rate of 10% (plus applicable surcharge and cess) on the gross amount of royalty, where such income by way of royalty has been earned in respect of a patent developed and registered in India. The said concessional tax rate shall be applicable only to a person(s) resident in India, who is the true and first inventor of the invention and whose name is entered on the patent register as the patentee in accordance with Patents Act, 1970.

The said section was introduced to encourage indigenous research & development activities and to make India a global R&D hub by giving additional incentive for companies to retain and commercialise existing patents and to develop new innovative patented products. This concessional tax regime is pitched-in to encourage companies to locate the high-value jobs associated with the development, manufacture and exploitation of patents in India. The new tax regime is in line with the "MAKE IN INDIA" effort of the Government

The concessional tax regime for patent box, is out of the OECD BEPS recommendations on nexus approach which prescribes that income arising from exploitation of intellectual property (IP) should be attributed and taxed in the jurisdiction where substantial R&D activities are undertaken rather than in the jurisdiction of legal ownership. The downside of the new regime is that no expenditure or allowance in respect of earning such royalty income shall be allowed under the Act. Further, unlike many other countries, the concessionary tax regime in India is introduced only for Patents and not for other IPs.

Conclusion

Introduction of a patent box regime in India is a welcome step. With a strong technology and knowledge-driven economy, India may be in a sweet spot to attract investors in such a regime.