AusBiotech
AUSTRALIA'S BIOTECHNOLOGY ORGANISATION

Mr Mark Cully
The Chief Economist of Australia
Department of Industry, Innovation and Science
GPO Box 9839
Canberra, ACT, 2601

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Dear Mr Cully

Patent box report too limited to be helpful

I write in regard to the recently published report to the Australian Department of Industry, Innovation and Science's Office of the Chief Economist, *Patent Box Policies* (November 2015, Gaéten de Rassenfosse), to voice concern over the publication of this report.

AusBiotech is Australia's biotechnology organisation and national body for the biotechnology and life sciences industry, representing more than 3,000 members.

The report, which admits a "lack of economic models and empirical evidence prevent[s] quantitative estimates" has provided a limited and unhelpful assessment of patent box policies. The findings may undermine the policy without reasonable cause.

AusBiotech and others have been advocating for the Australian Innovation and Manufacturing (AIM) Incentive – a patent-box-style incentive – to keep Australian R&D-based IP, developed and supported here, delivering value as it reaches commercialisation. This would enable Australia to keep the associated jobs, manufacturing activity, exports and economic benefits in our country instead of losing them to more tax competitive jurisdictions.

The academic research utilised in the report's qualitative analysis is based on foreign patent box regimes prior to the "modified nexus approach" being mandated by the G20 and OECD countries. This approach would mean only R&D conducted in Australia would be eligible for the AIM Incentive and therefore renders the research out-dated and of little relevance in assessing a patent box approach for Australia.

The report says "there is no apparent market failure associated with R&D commercialisation, at least not of the type that a patent box policy would solve", however it is widely accepted that Australia has a significant "market failure" in a lack of access to venture for life sciences commercialisation – as well as a number of market barriers, including a high corporate tax rate.

It is unclear why no qualitative analysis has been undertaken, or why so few quantitative indictors have been used in the assessment, especially in the context of Australia's recent commercialisation performance and the importance of this potential program. Independent advice that we have received from an accomplished economist suggests that the factors considered in the analysis, particularly the scope of potential positive factors, is unusually limited.

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The country regimes evaluated in the qualitative analysis all allow preferential tax treatment under their patent boxes regarding “acquired IP”. This would not be a design feature of an Australian patent box, given the required nexus to R&D activity, and would now be in transition in other countries, since the OECD’s views were published.

The position put in the report that neighbouring countries may be pushed to adopt patent boxes, does not consider that Australia already has global competitors, many with existing tax incentive programs that they will presumably continue. Strong regional competitors such as Singapore have many attractive commercialisation features that currently substitute for patent box incentives (e.g. low corporate tax rate, R&D tax incentives, targeted tax holidays and grants). In this context, the suggested “fiscal race to the bottom” makes little sense.

There is no consideration of Australian-specific factors, such as the difference between the Australian tax system and other G20 countries, specifically franking credit impacts in reducing the cost of a patent box scheme in Australia.

The Report notes the level of current patenting in Australia is low and notes that additional “opportunistic” patenting would be likely to occur. If additional patenting occurs in response to a patent box, while not the intent, ought to be considered a positive as it would place more inventions on the public record as part of the patent disclosure process, which in turn would reveal more data for researchers that would otherwise have remained a trade secret. Also, patents in themselves are irrelevant. Only those worked here, resulting in profitable manufactured goods would be eligible for any tax benefit. A real potential exists that additional royalty revenues will flow to Australian companies, which has not been considered in the report’s qualitative analysis.

The proposed AIM Incentive would encourage capturing all activities in the innovation process, including research, development, commercialisation and exploitation of IP (including licencing, manufacturing and sales) in Australia. By having the AIM incentive, innovative companies engaged in R&D will have a greater incentive to reinvest any tax saving from the AIM Incentive in further R&D, employment, plant and machinery, etc., and will help ensure highly-skilled jobs are retained in, or attracted to, Australia.

The report has many short-comings and making the argument for Australia not to implement a flawed design is obvious. No-one from industry is advocating for failure or a flawed structure, but instead we are calling for an incentive to keep the benefits from portable IP (based on the R&D we have funded) in our country, to benefit the Australian community. An analysis that sought to quantify our potential losses if we continue to do nothing to stem the flow of IP from Australia to other more competitive jurisdictions would have been a more valuable contribution to public discourse.

I would be pleased to discuss this report with you further and can be contacted at alavelle@ausbiotech.org

Yours sincerely

Dr Anna Lavelle
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