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Tax Incentives on Research & Development
IFA 2015 Congress – Subject 1 Branch Report Summary

David Regan, KPMG LLP
Paul Stepak, Blake, Cassels & Graydon LLP

Introduction

- Subject compares countries' income tax policies used to stimulate R&D by analyzing input and output incentives from two perspectives: domestic and international
 - R&D tax incentives under domestic tax law
 - The incentive regime
 - Preferential treatment for SMEs vs MNEs
 - Alternatives?
 - R&D tax incentives in an international context
 - Tax treaty anti-discrimination clauses
 - “Offshoring” of intangibles
 - BEPS

SR&ED (Domestic Context)

- Canada's R&D tax incentives program is among world's most generous
- SR&ED regime is one of many forms of government support for innovation
 - It is the largest Canadian program, but recent shift to more direct forms of investment
- Tax incentives include both a deduction and investment tax credits
- Certain SMEs (i.e., CCPCs) are entitled to enhanced and refundable ITCs

SR&ED (Domestic Context) *(continued)*

- SR&ED incentives are territorial in scope; generally, work must be done in Canada
 - However, IP can be owned offshore
- Canada has opted for an input incentive; there is no patent box regime or other output incentives for undertaking R&D (and none appear to be on the horizon)

SR&ED and Canada's tax treaties

- Non-residents are generally entitled to same R&D tax incentives as residents (other than CCPCs)
- There has been very little discussion regarding interaction of SR&ED regime and treaty non-discrimination clauses
- Canada reserves on Art. 24 OECD MC, and none of Canada's treaties has Art. 24(5)
 - This allows Canada to offer enhanced incentives to CCPCs without violating its treaty obligations

Offshoring of IP and BEPS

- Canada does not appear to be considering a patent box regime, nor any defensive measures in respect of other countries' patent box regimes
- Treatment of intermediate IP companies and other potential treaty abuse structures
 - Domestic rules?
 - BEPS?