

Session: Tax Incentives for Innovation & Transfer Pricing

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Session Description: This session will explore various tax incentives offered by the tax system to promote innovation in Canada, including SR&ED, multimedia and e-commerce tax credits, as well as IP regimes (including patent box systems and credits for innovative companies). Finally, current trends and risks in the transfer pricing aspects of intangible assets and R&D services will be examined.

Outline of Presentation

1. Introduction

2. II. Incentives for innovative companies in Canada

Spectrum of tax incentives for innovation in Canada:

- R&D: SR&ED tax credits (Fed, QC, ON), Strategic Innovation Fund, etc.
- IP: First patent, Patent boxes, Deduction for Innovative Manufacturing Corporations (QC), etc.
 - Quebec's Innovative Manufacturing Corporations:
- Technical Validation/Design: Tax credit for the design of factory-made products
- Market Launch: IRAP, Atlantic Innovation Fund, Commercialization Support for Business Program (MB), Investments in Forest Industry Transformation, etc.
- Exploitation and production: E-business tax credits (QC), Advanced Manufacturing Fund (ON), Tax holiday for foreign researchers (QC), etc.
- Going global: Innovation Rebate Program (NS), Going Global Innovation Fund, Canadian International Innovation Program, etc.

Incentives available for artificial intelligence (SR&ED, CDAE, Tax holiday for foreign researchers, etc.).

Industry-specific tax incentives exist for various sectors including Agriculture, Clean/renewable energies, Multimedia, Development of E-business, Digital media creation, Film/Cinema, Music.

3. Tax implications

- Taxation of tax incentives
 - "Add-back"
 - Government assistance
- Uncertainty due to tax audits under the incentive's eligibility criteria
- Uncertainty due to transfer pricing audits
 - Transfer of IP, functions or risks outside Canada: DEMPE, "cash box"; recharacterizations, etc.
 - Canadian case law and pending cases (e.g., Marzen Artistic Aluminum, Alberta Printed Circuits, Cameco, Agracity, Silver Wheaton, Compass Directional)
 - Impact of tax incentives on transfer prices for R&D services in Canada (TPM-17)
- OECD
 - Transfer pricing guidelines vs. Canadian Law (DEMPE, Cash boxes, disregarded transactions)
 - Taxation of e-commerce
- U.S. tax reform

- GILTI Patent-Box: Global Low-Taxed Intangible Income - minimum tax on a US multinational's foreign earnings that exceed an amount equal to a standard rate of return on the foreign company's assets
- FDI: Foreign-Derived Intangible Income rules or "Patent Box Lite", applicable only to US corporations (resulting in an effective tax rate of 13,125% on income from US-held intangibles to the extent that the income is derived from exports of property and services)
- Potential pitfalls