

**From:** Thomas, Barry [<mailto:Barry.Thomas@CookMedical.com>]  
**Sent:** Tuesday, 24 November 2015 9:34 AM  
**To:** Chief Economist  
**Subject:** Concern regarding Patent Box Policies report conclusions

Dear Mark Cully

I'm writing to you on behalf of the Cook Medical Australia, a medical device manufacturer, to express our disappointment regarding Gaéten de Rassenfosse's recent report [Patent Box Policies](#). We feel the report is too limited to be useful and wrongly reaches negative conclusions regarding the potential of a patent box-style tax incentive for Australia.

Together with other industry leaders, including the Medical Technology Association of Australia, the Export Council of Australia and AusBiotech, we believe that a patent-box style tax incentive could safeguard the future of manufacturing here. That's why we've been working to advocate for the [Australian Innovation and Manufacturing \(AIM\) Incentive](#).

The AIM Incentive is a proposed measure to support innovative Australian companies and increase commercialisation of innovation here. Its objective is to stem the flow of qualifying intellectual property offshore to more favourable manufacturing environments and instead to encourage manufacturers to produce products in Australia. I have attached a copy of this proposal.

Despite the fact that de Rassenfosse shares our vision of a better landscape for innovators in Australia, we believe his report is limited and hence not reliable as policy advice.

Many of the assertions in the report are based on outdated and irrelevant case studies. These rely on information published prior to the "modified nexus approach", meaning the arguments are no longer accurate. For example, the report refers to Germany's ban on patent boxes, using the ban as justification for rejecting a patent box here. However the ban in Germany was renegotiated in [2014](#), when Germany reached an agreement with the UK and called for the implementation of a patent box tax break.

The modified nexus approach requires that the patented technology must have been developed in the same country to qualify for the patent box. This best-practice model was recommended by the OECD and could potentially create a risk if Australia does not introduce a similar measure. It means that companies will potentially relocate their entire innovation cycle (including R&D) to other countries along with manufacturing in order to qualify.

The report states, "There is no apparent market failure associated with R&D commercialisation, at least not of the type that a patent box policy would solve." Yet Australia has proven "market failure" in areas such as life sciences, which constantly struggle to secure funding for innovation and commercialisation.

We also refute the report's claim that any additional patenting brought on by a patent box policy would merely be "opportunistic" and "the risk is high that R&D leading to these patent applications is performed abroad". Patenting will certainly increase as a result of a patent box policy, and it should be considered a success, since currently patenting in Australia is stagnating.

Further, a patent box policy will promote knowledge sharing. If innovators are motivated to participate in "opportunistic" ventures, their innovations will be made public (because of the

disclosure required by patent applications), enabling other researchers access to data that might have otherwise been private.

Much of the report's research is built on assumptions, without empirical evidence – something the author acknowledges but is not deterred by. Without definitive figures and economic modelling, the report stands on unsteady legs, reaching flawed conclusions on what could be an invaluable policy.

As manufacturers committed to the future of the industry in Australia, we are extremely disappointed by the conclusions reached in de Rassenfosse's report. A report on such a crucial issue for the future of manufacturing in Australia should be robust – but instead the analysis provides little insight.

Myself and other industry leaders have worked together to propose the AIM Incentive, liaising with government and industry to develop a policy that will benefit all innovators. Our patent box policy will retain innovation and manufacturing in Australia, create jobs, and boost the economy. The AIM Incentive has the potential to revitalise innovation and advanced manufacturing in Australia.

We must do something about the future of manufacturing and innovation before it's too late to reverse the damage. At a time when many other countries are strengthening their support for manufacturing, we are falling behind. The AIM incentive would provide a much needed hand-up, not a hand-out that doesn't help long-term.

I'd welcome the opportunity to discuss this important issue with you further in person. Please let me know if you'd be happy to set up this meeting.

Kind regards  
Barry Thomas

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