

2 December 2015

Mr Mark Cully
Chief Economist
Department of Industry, Innovation and Science
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Canberra ACT 2601

Email: chiefeconomist@industry.gov.au

Dear Mr Cully

I'm writing to you on behalf of the Medical Technology Association of Australia, the national industry association representing companies in the Medical Technology Industry. I wish to raise our concern regarding Gaëten de Rassenfosse's recent report [Patent Box Policies](#). The report dismisses a concern that is very real in our industry – while there is strong government support for R&D it is vulnerable to being sold, managed or manufactured overseas at the critical point due to a lack of supportive policy in Australia.

MTAA is not calling for grants or handouts to industry. Instead we believe that with the right policy framework we can create environment to develop solutions to healthcare needs all along the value chain from 'idea to end of patient journey'.

Together with other industry leaders, including AusBiotech, the Export Council of Australia and Cook Medical and with the international insight and expertise of Deloitte, 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. If Australia is serious about becoming a knowledge-based economy, we need public policy that will encourage Intellectual Property and its flow-on benefits to stay in Australia, thereby creating local wealth and jobs.

The following indicates the disparity in support for research and manufacturing in Australia:

- \$6 billion - total Australian Health and Medical Research sector investment in 2011-12
- \$2.7 billion – total R&D Tax Incentive spend (across all industries)
- \$15.5 million - NHMRC Development Grants Scheme 2014 (research industry collaboration)
- 2706 - Medical Device patents filed between 2001-2012
- 35 medical device companies listed on ASX (2014)
- \$2.23 billion in export sales

The 2014 INSEAD Global Innovation Index ranks Australia 10th in terms of innovation input and 17th in innovation output, but when these figures are converted to innovation efficiency ratio, Australia dives to 81 out of 143 countries assessed. This stark measure shows that Australians are brilliant at coming up with ideas, but poor at translating them into locally produced products. Part of this is keeping IP here in Australia.

The Gaëten de Rassenfosse 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 clearly from the above statistics, Australia has proven "market failure" in areas such as life sciences, which constantly struggle to secure funding for innovation and commercialisation.

We are not proposing yet another grant. Rather than a direct subsidy, the AIM Incentive would see the Federal Government provide tax relief based on the retention of IP ownership and associated commercialisation of IP in and from Australia.

The AIM Incentive has been designed not only as a tool to help innovators and manufacturers in Australia, but also to alleviate the financial pressures on the Australian Government by reducing the need for up-front direct subsidies. Its objective is to stem the flow of qualifying intellectual property offshore to more favourable manufacturing environments and instead to encourage manufacturers to stay and 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. 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.

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”. Under the modified nexus approach the latter argument is irrelevant.

With regard to “opportunistic” patents being filed, the patent box is based on profit. If a patent is not being manufactured or licensed there is no profit.

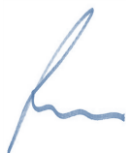
Much of the report’s research is built on assumptions, without empirical evidence. Without definitive figures and economic modelling, the report stands on unsteady legs, reaching flawed conclusions on what could be an invaluable policy. It is of concern to MTAA that a report on such a crucial issue for the future of manufacturing in Australia is based on analysis that 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 revitalize innovation and advanced manufacturing in Australia.

We must do something about the future of manufacturing and innovation before it is 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 would welcome the opportunity to discuss this important issue with you further in person. Please let me know if you would be happy to set up this meeting.

Regards



Susi Tegen
Chief Executive