Driving Innovation in Canada

DESCRIPTION

The federal government is in the midst of rolling out its "Intellectual Property Strategy" to build a nation of innovators. There should be a focus on ensuring a two-pronged approach, through programs and tax-based mechanisms, to encourage business investment in intellectual property and innovation to improve productivity, economic growth, and incomes for Canadians.

BACKGROUND

The new "Intellectual Property Strategy" is an investment of $85.3 million over five years to help Canadian businesses, creators, entrepreneurs and innovators understand, protect and access intellectual property (IP) through a comprehensive IP Strategy. This strategy is part of the federal government's Innovation Strategy announced in the 2017 budget with details released in the 2018 budget.

This policy resolution was updated and reapproved at the Canadian Chamber of Commerce's national convention in 2017 and it continues to offer positive solutions to help Canadian businesses develop their innovations. Emerging from and throughout the COVID-19 pandemic, innovation is continuing, most likely at a faster pace than before the pandemic, these solutions will put Canada on a solid path for recovery. In fact, in its Roadmap to Recovery document, the Canadian Chamber makes the following recommendation as step at nurturing recovery: Adopting an "innovation box" regime that would reduce the corporate tax rate for income derived from patented inventions and other intellectual property connected to new or improved products, services and related innovative processes developed in Canada.

The Intellectual Property Strategy has goals and recommendations in three areas: IP Awareness, Education and Advice, Strategic IP Tools for Growth, and IP Legislation. While there are solid recommendations within these buckets there is limited discussion about the cost of the investment.

In 2019-2020 $30M was slated to establish a pilot program called the "Patent Collective". The collective will work with Canadian entrepreneurs to pool patents, so that small and medium sized firms will have better access to critical IP they need to grow in early stages without fear of infringing on a patent. The budget refers to this program as providing these businesses with the "freedom to operate".

This strategy is still in its infancy and Canada remains 16th in innovation overall in the Global IP Rankings. The Index consists of five key sets of indicators to map the national intellectual property environment for the surveyed countries.
The major indicator categories are:

1. patents, related rights, and limitations;
2. copyrights, related rights, and limitations;
3. trademarks, related rights, and limitations;
4. enforcement;
5. membership and ratification of international treaties.

It is worth noting there are some significant differences between what Canada is offering business in this space and the offerings of other countries that are ranked above Canada on this list. One of those differences is a "patent box" tax approach. A number of countries (the U.K., Belgium, Luxembourg, France, Spain, Hungary, Ireland, Switzerland and China) have adopted this approach which sharply reduces the normal corporate tax rate on income derived from the exploitation of patents. The Netherlands widened the policy to an "innovation box" to encompass a broader class of intellectual property.

The various "patent box" programs have even caught the eye of several provinces, but the approach has not been instituted at the federal level. British Columbia has had such tax policy in place since 2006, Quebec included patent box policy in its 2016 budget, and Saskatchewan announced patent box tax policy in its 2017 budget.

The reference to "box" comes from having to tick a box on the tax form that indicates this type of revenue is being claimed. The types of profits that qualify for the lower tax rate, and how acquired intellectual property is treated, differ significantly among countries and provinces. Additionally, the "patent box" rate varies considerably among nations and provinces. Finally, some countries put caps on the total tax relief companies can receive from patent boxes. In the case of Saskatchewan, the provincial government has installed time limits on the number of years of tax relief that can be attached to a patent.

Given the tax advantage provided in some countries for holding intellectual property, the question arises whether Canada should adopt similar incentives and, if so, how should they be designed?

These types of tax approaches do support business investment in research and help bridge the commercialization gap.

The "innovation box" approach would encourage companies to locate intellectual property activity and the new high value jobs associated with the development, manufacture and exploitation of innovation inside Canada. This would drive new and sufficient economic activity and government tax revenue to more than offset the immediate revenue costs of the proposal. The government could also apply the savings that will be realized from streamlining the SR&ED tax incentive program to offset all the immediate revenue cost of this proposal.

Finally, an "innovation box" approach would complement the existing SR&ED Investment Tax Credit program— firms would have an incentive to base their R&D activities in Canada AND to commercialize them in Canada.

The federal "Innovation Strategy" also has a goal to double the number of high-growth firms in Canada from 14,000 to 28,000 by 2025. This is a target because high-growth firms are the most likely to innovate, sell globally and invest in people creating more and better paying jobs. A by-product of this goal is to achieve growth in intellectual property applications and have these companies base their R&D and commercialize their innovation in Canada.

A federal "My First Patent Program" could help achieve this. Quebec funds such a program with the following parameters: Quebec SMEs with 250 or fewer employees that are able to demonstrate research and development efforts completed or in part can apply for a non-repayable contribution of up to 50% of eligible expenses, to a maximum of $25,000 for patent application project, industrial design registration or integrated circuit topography.

RECOMMENDATIONS

That the Government of Canada:

1. Implement for an "innovation box" approach to encourage more business investment in innovation processes in Canada.
2. Consult with senior business leaders/technologists to define what intellectual property would qualify, e.g. patents, copyright, industrial design
3. Ensure that any such regime adopted in Canada delivers the clarity and simplicity that encourages participation in innovation from both SMEs and large companies.
4. Develop a federal program modelled after the "My First Patent Program" to encourage more investment by SMEs across the country.

NOTES

[64], [65], [66], [67], [68]

[64] https://www.ic.gc.ca/eic/site/062.nsf/eng/h_00083.html Retrieved June 22, 2020
[65] https://www.statista.com/statistics/257583/gipc-international-intellectual-property-index/ Retrieved on June 22, 2020
[66] https://www.newswire.ca/news-releases/budget-2018-commits-853m-over-five-years-to-national-ip-strategy-intellectual-property-institute-of-canada-applauds-goal-to-raise-ip-awareness-675347693.html Retrieved on June 22, 2020
[67] https://www.canadianbusinessresiliencenetwork.ca/resources/recovery/ Retrieved on June 19, 2020
[68] https://www.ic.gc.ca/eic/site/108.nsf/eng/home retrieved June 22, 2020