16 August 2021

Attention: Paul Fischer
Corporate and International Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Re: Patent Box: Discussion paper on policy design (July 2021)
ResMed Submission

Dear Mr Fischer,

ResMed appreciates the opportunity to share our comments on the proposed Patent Box for the Australian biotechnology sector. Our comments focus on the creation of a policy that rewards and incentivises the commercialisation of intellectual property produced from local innovation.

ResMed was founded in Australia in 1989, and now operates in more than 150 countries, with over 8,000 patents and designs globally, and significant R&D and advanced medical device manufacturing capability in Sydney, Australia. We are proud of our Australian roots and want to see Australia flourish as one of the best places in the world to do business. Ultimately, this requires a big-picture view of Australian innovation, talent, and manufacturing.

A simple, well-designed patent box will encourage more businesses in this sector to base their R&D and commercialisation operations in Australia. This will result in additional, incremental revenue coming onshore to Australia for years to come and new sovereign capabilities in a key industry.

For additional information, please do not hesitate to contact Michael Pinczuk (VP of Intellectual Property) at +61 404 371 525 or michael.pinczuk@resmed.com.au; or Chris Merjane (Tax Counsel) at +61 434 486 810 or chris.merjane@resmed.com.au.

Yours faithfully,

DocuSigned by:
Brett Sandercock
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Brett Sandercock
Chief Financial Officer
ResMed

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About ResMed and this Submission

ResMed is a proudly Australian-born healthcare company now listed on the ASX and NYSE. ResMed is a pioneer of digital innovative solutions that treat and keep people out of the hospital, empowering them to live healthier, higher-quality lives. Our digital health technologies and cloud-connected medical devices transform care for people with sleep apnea, COPD, and other chronic diseases. ResMed's comprehensive out-of-hospital software platforms support the professionals and caregivers who help people stay healthy in the home or care setting of their choice. By enabling better care, we improve quality of life, reduce the impact of chronic disease, and lower costs for consumers and healthcare systems.

ResMed employs about 1,500 people in Australia, including over 350 in R&D activities and approximately 500 in our advanced manufacturing operations. We have a highly skilled Australian work force, including all types of engineers, medical staff, designers, manufacturing staff and professionals. We provide training across a range of trades and practice areas with a strong and recognised graduate and intern intake program. We are one of Australia's largest exporters of medical devices.

ResMed has over 30 years of innovation and intellectual property (**IP**) in its portfolio. Specifically, ResMed currently has more than 8,000 patents globally, more than any other Australian medtech or biotech. Most of these patents are held by our Australian legal entity, ResMed Pty Ltd (**ResMed Australia**).

A simple, workable patent box is crucial to the industry

Every year, the global medtech and biotech industry grows, including ResMed. ResMed grows its research and development (**R&D**) expenditure globally by 7 to 8%. ResMed would like to continue this investment by creating jobs and maintaining a local innovation ecosystem, and believes the following policy recommendations can assist in evolving Australia's competitive business environment. However, without a patent box, it has been increasingly difficult for ResMed to choose Australia for new, incremental innovation investment over other jurisdictions.

Like most businesses, our decision-making process for new investment includes determining return on investment (**ROI**). In other words, prioritising opportunities where our investment can yield the greatest returns. In this respect Australia unfortunately lags behind comparable jurisdictions that offer more favourable business environments.

The following table compares Australia with other ResMed innovation hubs.

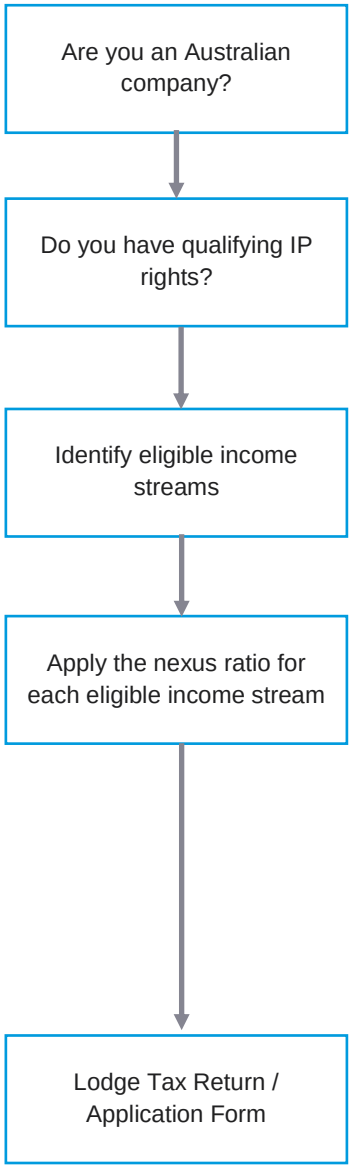
	Ireland	Singapore	United States	Australia (with patent box)	Australia (no patent box)
R&D incentives (per $1 of R&D)	25c	Up to 20c	20c	Up to 16.5c	Up to 16.5c
Local tax rate (inc patent box, where present)	6.25%[1]	5 – 10%[2]	13.125%[3]	17%	30%
Return[4] (per $1 of R&D)	**$4.94**	**$4.70 - $4.85**	$4.54	$4.32	$3.67
Ranking on ROI	**First**	**Second**	**Third**	**Fourth**	**Last**

Currently, ROI in other overseas ResMed hubs is up to **135%** of what is experienced in Australia. These are all favourable, first-class jurisdictions with comparable talent and general operating conditions. The creation of a patent box would significantly narrow this gap and make Australia far more competitive with these jurisdictions for R&D, innovation and commercialisation.

The patent box should be simple and easy to administer. It should be fulsome and OECD compliant without unnecessary distortions and "carve outs". A simple patent box regime gives businesses certainty and confidence for investment: invest in patentable medtech / biotech products in Australia and achieve a 17% tax rate upon which businesses can rely when calculating ROI. This will make it easier for all biotechnology businesses to choose Australia for each additional dollar invested in R&D.

[1] Tax rate under the Irish Knowledge Development Box
[2] Depends upon applicable rates under the IP Development Incentive or Development and Expansion Incentive.
[3] US Foreign Derived Intangible Income (FDII)
[4] For every dollar of R&D, assume $5 of profit from the resulting commercialisation. This item in the table takes into account tax on that profit which includes any R&D tax incentives. That is: $5 – (tax rate x $5) + R&D incentive.

How the proposed Patent Box might work



You have "Qualifying IP rights" if you own, or have an exclusive licence, to IP rights in prescribed medtech and biotech fields in Australia or a "white listed" country. See *Questions 2 – 5*.

Eligible income streams are income streams where the underlying product includes "qualifying IP rights". Eligible income streams should be identified in a way that is natural and traceable. For example, based on product sales and IP revenue.

The nexus ratio for each product is based on OECD recommendations:

$$\frac{\text{Eligible R\&D project costs}}{\text{Total project costs}} \times \text{Income Stream Revenue}$$

Include in this ratio all aspects of the R&D lifecycle (from ideation to commercialisation) to ensure nexus is considered fulsomely and detract companies from commercialising their IP offshore.

Note: As a transitional measure, historic core IP (which can span twenty years) should not be taken into account in determining project costs.

An Application Form will be lodged as part of a yearly process, akin to the R&D tax incentive.

ResMed's responses to Treasury questions

Question 1

What features of patent boxes in other jurisdictions are most significant and important for designing the Australian patent box to support the medical and biotechnology sectors?

The Australian patent box should be designed with Australia's best policy interests in mind.

Offshore patent boxes are designed with different policy intents. They are typically broad-based (not industry limited) and operate in their own legislative frameworks.

Australia is designing a patent box for the Australian biotechnology and medtech industries with the policy intent of encouraging innovation and commercialisation onshore in a way that builds sovereign capacity. To achieve this policy intent, the Australian Government should consider the specific types of R&D, revenue and markets of the industry to be included.

Specifically, Treasury should ask: why should a biotechnology / medtech company do business in Australia, as opposed to other "medtech capitals" of the world (like Singapore, the United States, or Ireland)? Australia should differentiate itself by demonstrating it has a straight-forward accessible regime and is a compelling, easy place to do business (whilst being OECD compliant).

Consistent with this mantra of "simplicity", ResMed has proposed straightforward solutions that are OECD compliant and compatible with the biotech / medtech industries.

Question 2

Are patents applied for by medical and biotechnology companies with domestic R&D operations generally Australian standard patents?

Where are ResMed's patents filed?

Most of the patents filed by ResMed Australia are **utility patents** that are filed:

(a) in ResMed's major markets for sales/distribution;
(b) where ResMed manufactures its products;
(c) where its R&D is conducted;
(d) where its suppliers are located; or
(e) where there is otherwise a high risk of infringement.

Most of ResMed Australia's active/granted patents are filed in the United States, European Patent Office, Australia, Japan, China, New Zealand and Germany. Less than 15% of ResMed Australia's patents are filed in Australia.

*See **Appendix A** for a breakdown.*

Background to filing strategy

A patent in a country is only useful to the extent it provides actual IP protection. For example, a patent in Australia will not provide sufficient protection against an offshore infringement by a foreign supplier; or for sales in the United States market. But an Australian patent will provide protection in the Australian market.

Importantly, the combination of patents in relevant countries to form a global portfolio helps protect the global commercialisation of local R&D.

Question 3

In instances where an invention is patented in other jurisdictions but not in Australia, is there a way of judging whether the scope of claims in these patents would be substantially similar to the scope of claims in a standard patent that would have been granted in Australia?

Global uniformity was part of the intentional design of Australia's patent laws. Specifically, we refer to the *IP Laws Amendment (Raising the Bar) Act 2012* (Cth), which had the express intent of ensuring "Australia patentability standards [were] more closely aligned to international standards".[5]

In Australia, the key requirements to be granted a patent for an invention are that:

(a) the subject matter be intrinsically patent-eligible;
(b) the alleged invention is new and non-obvious to the relevant person of ordinary skill; and
(c) the alleged invention is disclosed in sufficient detail in the patent specification to enable the relevant person of ordinary skill to put the invention into practice.

These elements are common to the patent laws of Australia, the United States, Europe, Japan, China and other countries.

Our recommendation is that the Australian patent box includes a "white list" of countries with similar IP regimes that also meet appropriate thresholds of integrity.

More information regarding ResMed's IP portfolio and patent strategy has been included below in Question 2.

Question 4

What is the best approach to provide certainty around access to the regime for the medical and biotechnology sectors?

We believe a bright-line test, such as making use of existing patent classification schemes (like the Cooperative Patent Classification (**CPC**) scheme), or using the Therapeutic Goods Administration (**TGA**) definition of "therapeutic good", will create certainty of access.

[5] See IP Australia, https://www.ipaustralia.gov.au/about-us/legislation/raising-bar-act

Using the CPC scheme

Relevant CPC classes are identified clearly. For example, A61 "MEDICAL OR VETERINARY SCIENCE; HYGIENE". If a patent has been classified by a relevant patent office[6] as fitting within a relevant CPC class, that patent should be eligible for the patent box. It would be defined as an "**Eligible Sector**" patent (see Question 5, below).

If a patent has not been classified by the patent office as fitting within a relevant CPC class, the patent holder bears the burden of proof to establish that it falls within the relevant CPC class.

Using the TGA definition of "therapeutic good"

The definition of therapeutic good under the *Therapeutic Goods Act 1989* (Cth) includes biologicals and medical devices and can serve as a useful definition where the income stream arises from the sale of a good.

Question 5

What are the core concepts/applications that need to be covered by any definition of the medical and biotechnology sectors for the purpose of defining access to the patent box?

An Australian company should be eligible for the patent box to the extent they have incurred expenditure on:

(a) The development of technology in an "Eligible Sector" patent; or
(b) The commercialisation of technology in an "Eligible Sector" patent.

Both prongs involve pivotal Australian activities that should be subject to the patent box.

Eligible sector patent includes the following patent types (as designated on the front page of the patent):

- Medical devices;
- Therapeutic medicaments;
- Patent-eligible methods of medical diagnosis;
- Patent-eligible methods of medical treatment;
- Biological agents;
- Methods of manufacture of biological agents; and
- Methods of use of biological agents.

OECD BEPS Action 5 placed a renewed focus on "the nexus approach".[7] The nexus approach required a link between the income benefiting from the IP regime and the extent to which the taxpayer undertook the underlying R&D that generated the IP asset. By focussing on the development of patented technology **and** the commercialisation of that technology, the Australian Government can ensure as much "nexus" as possible for each revenue stream is in Australia.

Questions 6 – 10 (about clean energy)

*These questions are **not** subject matters in which ResMed holds a view.*

[6] For example, IP Australia, the European Patent Office, the United States Patent & Trademarks Office.
[7] See *Action 5: Agreement on Modified Nexus Approach for IP Regimes*, OECD 2015.

Question 11

Do existing record keeping systems allow companies to show how R&D expenses are related to patented inventions? Can companies divide this into expenses incurred in Australia and elsewhere in order to calculate the proportion of R&D related to the patented invention that occurred in Australia?

Tracking of R&D expenses to patented inventions

Both ResMed's accounting records and legal systems mostly track R&D expenditure on a **project-by-project basis**. ResMed's systems do not track R&D expenses against patented inventions.

For example, if ResMed were developing three new masks and a new device platform, each development would have their own project code for which costs are tracked.

ResMed's current legal systems will track each new patent application in respect of each of these projects. The data in the system has a degree of granularity and is capable of filtering based on the technology in each project (e.g. for a mask project, it can track patents related to the headgear, the mask vents, and the tubing all separately despite all being interrelated and part of one single project).

ResMed's accounting systems do not contain similar granularity. Expenses are mostly tracked on a whole-of-project basis but are not tracked against patents.

It is our view that tracking costs against patents would **not be possible**, even with best-in-class processes. However, it would be possible to track the relationship of patents to different products and even components of a product. On this basis, ResMed recommends tracking revenue, costs and patents on a whole-of-product level. This is achievable with existing systems. For example, for a new mask, ResMed could collate data on the patents associated with that mask, the costs of developing the mask, and the revenue from selling the mask.

Tracking of overseas expenses

ResMed typically uses the same project codes for domestic and overseas costs. In any case, ResMed's processes can capture offshore R&D expenditure separately to domestic R&D expenditure. We expect most medtech / biotech companies could track offshore expenditure as this is needed under the R&D tax incentive.

Question 12

How much R&D activity (related to patented inventions) occurs outside Australia? How is R&D usually split between related and unrelated parties?

ResMed entities globally undertake a significant amount of collaborative R&D with each other. For example, ResMed Australia works jointly and collaboratively with a ResMed affiliate in Singapore for the development of new masks, medical devices, and manufacturing techniques. ResMed Australia also works with ResMed affiliates in the United States and Ireland for the development of digital technologies.

R&D is usually split between related parties based on talent, expertise and "Centres of Excellence." Cross-border collaboration increased substantially throughout the COVID pandemic as we demonstrated that we could work jointly without being at the same physical destination.

In regard to unrelated parties, ResMed undertakes some R&D activities jointly with its suppliers. This is mainly to ensure that ResMed can source parts and components on its own inventions. For example, if ResMed develops a new device that requires a new chipset, ResMed must work with its suppliers in developing that chipset. The IP ownership under these arrangements is governed by contract between the parties.

Question 13

Is the existing legal framework for the R&D tax incentive appropriate for determining R&D conducted in Australia for the purposes of the patent box? Do companies already collect this type of data and report it to the Government in some way (such as for the R&DTI)?

The R&D Tax Incentive provides a useful starting point for determining the quantum of R&D conducted in Australia.

The R&D Tax Incentive requires applicants to aggregate data in respect of qualifying core and supporting activities and lodge an application form/R&D Tax Incentive expenditure schedule on a yearly basis.

If the Australian patent box is drafted in a way that expenditure incurred on any R&D activity is "qualifying expenditure" for patent box purposes, so long as those activities directly relate to patented technologies (as described in Question 5), this would help the administrative burden.

Question 14

To what extent are the R&D expenses of Australian patented inventions not entirely the subject of R&DTI claims?

Costs that fall under the following categories are typically not subject to R&DTI claims:

(a) commercial, legal and administrative aspects of patenting, licensing or other activities: this group of activities is expressly defined as not being a core R&D activity and are typically not claimed.

(b) Costs associated with developing (or proving out) patentable inventions during advanced medical manufacturing: these costs are often more difficult to track and are subject to the feedstock rules, and therefore, are at times excluded from R&DTI claims in their entirety.

(c) R&D expenditure incurred above and beyond the "cap" that applies to the R&DTI offsets.

Question 15

Could any existing definitions of qualifying expenditure (such as in the UK) in relation to the development of patented inventions be adopted in the Australian context?

A broader approach to the nexus test would warrant a broader definition to qualifying and non-qualifying expenditure than seen in other regimes. This is further discussed in the below responses.

Also see our response to Question 1.

Question 16

How significant is the role of R&D that occurs after a patent has been applied for? What portion of an invention's total R&D would this typically account for in the medical and biotechnology sectors?

In the ordinary course, ResMed applies for patents very early during the development cycle in the ideation phase. This helps ensure the IP is protected. ResMed may apply for multiple patents: some of which may require heavy experimentation and iterative development in order to be practical, achievable and capable of commercialisation.

ResMed iteratively continues product development and experimentation to narrow down its inventions to final initiatives nominated for commercialisation. ResMed forms cross-functional teams between product development, manufacturing, global supplier alliance (**GSA**), regulatory / quality, marketing, legal, finance and others to determine the relative commercial viability of its inventions.

In this approach, most of the R&D expenditure and effort occurs after an initial patent application is made. Not all patents are ultimately commercialised.

Question 17

To what extent are Australian-based manufacturing processes subject to their own patents in the medical and biotechnology industry?

ResMed has some of the most advanced medical manufacturing capabilities in the world. The technologies, robotics and data used in its manufacturing processes are world-class, and much of it was historically developed in Australia.

Nevertheless, ResMed generally does not seek patents on its manufacturing processes. Much of its manufacturing processes are kept highly confidential in the form of trade secrets, and we recognise there is a trade-off in seeking patents for manufacturing processes as ResMed would be publishing its inventions and techniques publicly.

The patent box concessional rates should still apply to the extent a company is undertaking R&D to experiment regarding if/how an invention *can be built* in accordance with the patent whilst achieving key medical quality outcomes.

In no circumstance should the patent box be designed to *detract* Australian advanced medical manufacturing. This would be inconsistent with the policy intent of a patent box.

To put it differently: by *excluding* commercialisation/manufacturing of patented technology (such as R&D and process development) from the regime, medtech / biotech companies would be faced with a question of marginal investment of manufacturing capacity. That is, whether to build manufacturing

capabilities here in Australia or manufacture overseas (where there are competitive tax rates much lower than 30%, lower costs of workforce capital, and a larger pool of specialised talent for manufacturing). This would detract from Australia's overall value proposition as a location for advanced manufacturing, R&D and commercialisation.

Question 18

What will be the implications of targeting the patent box to new patented innovations (i.e. have a patent priority date after 11 May 2021)?

The answer to this question depends on the way in which the Parliament targets new patented innovations.

The total product development lifecycle can span up to seven years (from ideation, design, development, experimentation, manufacturing innovation) for ResMed. The medtech / biotech industries generally have a long lead time between product iterations due to stringent regulatory and quality requirements. and the requirement to determine clinical indications and patient outcomes (i.e. clinical trials).

Today, ResMed's inventions spring from over thirty years of mostly Australian industry leading research in the field. New masks and devices will have new patents, but also, rely on the core technology and learnings of many patents over many years (most of which are still active and are owned by ResMed Australia).

In answering this question, we can consider a hypothetical example. Let's say ResMed develops a hypothetical new mask platform, the Utopia 100. There are features that are new (and patented accordingly), such as the headgear design and vent design. However, there are also many features that have come from previous iterations and patents.

Theoretically, if the Utopia 100 is sold for $100, ResMed would need to determine how much of that $100 falls within the patent box tax rate. There are a few possible approaches here in calculating the nexus ratio:

(a) consider only incremental R&D expenses **after** 11 May 2021 to develop the new patented inventions. This approach makes sense as it is new features / functions that create competitiveness of future product iterations. This should be relatively straight forward.

(b) Consider all R&D expenses for the Utopia 100 project in totality. Any costs incurred prior to 11 May 2021 would be ineligible. Again, this should be relatively straight forward.

(c) Retrospectively price in the 30+ years of mask R&D, and all the patents achieved over the many years, that have contributed the Utopia 100 mask design. **This would not be practical** given the time span of ResMed core/historic intellectual property in the field, valuation requirements of the IP, and the amortisation of that IP over time.

We recommend that Treasury target new patented innovations through either option (a) or (b) above.

Question 19

Would a start date for the patent box's concessional tax treatment of income years commencing on or after 1 July 2022 give companies enough time to prepare for the regime? How would it impact on new R&D?

ResMed recommends starting the regime **as early as possible** to maximise business confidence.

We are making decisions now about R&D investment. We are constantly evaluating current and upcoming projects. A gap between enactment and commencement creates uncertainty as to whether the regime will actually come to fruition.

The worst-case scenario for Australia and for business is having continual policy uncertainty.

Question 20

What types of patent-related revenue should be eligible for the patent box?

In ResMed's view, three revenue streams should be included for medtech and biotech inventions:

(a) Sales revenue of goods and services.
(b) Royalties or licence fees.
(c) Damages or an account of profits.

ResMed believes it is in Australia's sovereign interest *not* to provide a discounted rate for the disposal of IP rights offshore (as this contradicts the policy intent of ensuring IP commercialisation stays in Australia).

The next question is **how much** of that revenue will attract a discounted tax rate. This is answered in the following questions posed by Treasury.

Question 21

How far downstream can the patent box's concessional treatment apply, and what principle should be used to define eligible income derived from the patented innovation?

It is important that the **R&D lifecycle** is considered in responding to this question. An invention – and a patent – does not exist in a vacuum. An invention starts from ideation, then proceeds to design, development, experimentation, and commercialisation / manufacturing.

That invention must be proven out, developed, tested, and capable of being built / commercialised in a medical product whilst achieving key regulatory, quality and clinical outcomes as expected for Class II Medical Devices. It is not enough to just have a patent for an invention.

Importantly, some aspects of this chain of commercialisation may not be specifically mentioned in the patent. For example, a patent for a new liquid silicon rubber (**LSR**) mask design will describe the particulars of the design, but not necessarily how that design might be manufactured. What ResMed often sees is that the costs and effort in developing novel advanced manufacturing capability is substantial. Beyond the patented invention, significant expense and effort is invested in developing the

manufacturability of the product, and this added value is critical to a products commercial success and commercialisation.

It would be consistent with the OECD Action 5 approach to broadly test nexus[8]. For example: if ideation is by an Australian entity, a patent is lodged by that entity, however all the work to prove-out the invention (including R&D to determine whether the invention can actually be developed into a viable, manufactured good) is undertaken overseas, then concessional treatment should be limited proportionately.

Question 22

In circumstances where a single product comprises of a group of related patented innovations, what approach could the patent box use to simplify the calculation of eligible revenue and the R&D fraction?

Where a company is selling a single product comprising of a group of related patented innovations, a whole-of-product approach should be adopted. This is critical to demonstrate simplicity to encourage global businesses to invest more in Australia.

The patent box should follow the natural flow of sales and revenue. Where a biotech sells a device, or licences a bundle of rights, use that revenue as the starting point for determining eligible revenue.

Carving up this number (for example, to extract the portion of revenue of a product sale that relates to a particular patent) would almost always be subject to differing views and opinions. This opens integrity risks and increases administrative intensity.

Instead of carving apart a single product (and a single revenue stream) into components, the R&D fraction (i.e. the “nexus ratio”) should be applied on a whole-of-product basis.

Question 23

As non-patent revenue will need to be separated from the eligible revenue, how might this be achieved optimally (having regard to existing systems and record keeping)?

The R&D fraction (i.e. the “nexus ratio”) can be used to split eligible revenue. If the technology of a product is mostly protected by Australian patents, then the entire product sale should be eligible revenue, subject to the R&D fraction. As a simple example, looking at the complete investment expenditure for the hypothetical product, Utopia 100 (in Question 18):

Australian product R&D expenditure (subject to Australian patents)	$100
Foreign product R&D expenditure (not subject to Australian patents)	$50
Developing Australia manufacturing processes (incl. R&D)	$50

Nexus ratio split of eligible revenue is **75%** (i.e. $150 / $200)

[8] *Action 5: Agreement on Modified Nexus Approach for IP Regimes*, OECD 2015.

Question 24

Having regard to existing systems and record keeping how might eligible expenses be optimally separated from non-eligible expenses?

Eligible expenses may include all expenditure for the purposes of the R&D Tax Incentive. All project expenses (including non-eligible expenses) may include all costs coded against the project in accordance with accounting practices.

Question 25

How should losses associated with either the development of a patented invention or its commercialisation be treated, both within the patent box and for general corporate tax purposes?

The patent box should apply to income, consistent with the Treasury's policy objective:

> *On 11 May 2021, the Australian Government announced that it will introduce a patent box for corporate **income** associated with patented inventions in the medical and biotechnology sectors.*

During the pre-commercialisation phases of a new project, the project will *always* be in a loss position. Currently, this generates deductions and offsets other assessable income.

The patent box should not reduce deductions or losses. The patent box should not result a business paying more tax, because of a mix of patent box losses against non-patent box gains (or vice versa).

If the patent box applied on the gross income stream (as proposed above), medtech / biotech will not be worse off than they currently are during the early investment stage. In other words: there would be no disincentive to apply under the patent box.

However, if Treasury seek to quarantine patent box deductions (so *no* deductions arise against other assessable income), or reduce deductions to a lower tax rate, then medtech / biotech companies will be worse off for the first several years compared to not applying for the patent box. This will be a disincentive to apply under the patent box. Instead: development costs up until commercialisation should be deductible against other income at the general corporate tax rate.

Treasury should continue to refer back to the policy intent of the patent box: as an **incentive** to **encourage companies** to base their R&D, and commercialise that R&D, in Australia. Applying the patent box to eligible gross income streams (rather than to outgoings or losses) would achieve an incentive outcome.

Question 26

What is the likely regulatory burden in relation to administrative, record keeping or evidentiary requirements required to access the patent box concession?

The administrative, record keeping or evidentiary requirements to access a patent box largely depends on the design of the patent box.

To the extent the program can be designed in a way that uses existing processes, data sources, and records, then the burden should not be problematic. Treasury should develop a roadmap for collaborative ruling / engagement processes to assist taxpayers comply (see further comments in Question 29).

Question 27

Are there design features of any existing patent boxes that, if adopted in Australia, would minimise the regulatory burden on companies?

See Questions 1 and 15.

Question 28

The ATO will administer the patent box via taxpayer self-assessments within the corporate tax system. What types of evidence would taxpayers be able to provide that would support claims that patented inventions relate to eligible sectors?

See Question 4.

Question 29

Are there any other issues you would like to raise for consideration in the design of the patent box?

In designing the patent box, the policy intent must remain at the forefront. The patent box is an **incentive**. It is intended to encourage biotech and medtech companies to invest R&D and commercialisation efforts in Australia. It is intended to enable long-term sovereign capacity of crucial industry, which has been fruitful for Australia throughout the COVID pandemic (for example, through ventilator, PPE, and vaccine production).

If the regime has excessive regulation, is too complex to administer, or is too narrow in its approach, the Parliament's policy intent will not translate to commercial outcomes for the industry. The scheme should be drafted as an incentive in order to effectively work as an incentive.

Treasury should also consider a collaborative ruling process for companies to gain certainty on their allocation methods ahead of commencing new projects. This was a feature in the UK patent box at launch, where the UK tax authority (HMRC) worked collaboratively and openly with taxpayers. The collaborative approach is also a feature in other tax regimes, such as the Singapore Economic Development Board (EDB). We recommend considering a flexible system that allows for an open and practical partnership between innovators and Government.

Appendix A: ResMed's global patent filings