



TAX BREAKS

Patent Box: The U.K. and Italy Compared

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The current **picture** of the Patent Box tax facility is certainly variegated. Considering the various systems of the **different countries**, it seems clear that we are looking at a **complex and anything but uniform picture**. Indeed, there are **substantial differences** among the various countries (in some cases it is the level of taxation that changes, in others the treatment of expenses and deductions).

The Patent Box regime was introduced in the United Kingdom in 2013 and is today regulated by the Corporate Tax Act 2010(CTA), Part 8A. The entry into force of the British “IP regime” occurred in advance compared to our country, where it was only applied by means of the Stability Act in 2015 and later confirmed in the related implementing decree. The favourable regime for **intangible assets** in force in the U.K. makes it possible for British companies to have a lower percentage of taxation, 10% to be exact, **compared to the 19% rate** of the corporate tax, while in Italy income deriving from patents and other intangibles, instead of being subjected to ordinary taxation, will be subject to a **rate of one-half** with the adoption of the Patent Box. The British government implemented, well in advance compared to our country, the **OECD recommendations** object of BEPS, providing for a sort of transitory regime for those intangible assets no longer covered by the tax break, for which it provided the possibility of continuing to enjoy the benefit up to 2021, with the exception of some intangible assets purchased after 2 January 2016. Unlike what happened in the U.K., the recommendations contained in the BEPS Project were implemented in Italy with considerable delay, and only **partially**, because of the inertia of Italian lawmakers.

It is useful to point out that the practices connected with the Patent Box in the U.K. were the object of investigation in 2014. All this led to an **agreement** between the U.K. and Germany on the realization of a **draft proposal** aimed at some improvements, a draft based on the much-touted BEPS Nexus Approach.

In light of what is described here, in the European panorama the existing regimes must be subdivided into **two groups**:

- one essentially aimed at **favouring development and innovation**. Included here are Belgium, the Netherlands, the U.K. and Italy. These countries concentrate on patents, rather than on assets connected with marketing;
- one that seeks to **attract all forms of intangible assets** and is used by Cyprus, France and Hungary.

Nevertheless, also with reference to the countries that adopted the first “model”, the Patent Box is increasingly used as a vehicle aimed at encouraging innovation and attracting **research and development** activities.

Over time it has become a tool aimed chiefly at **shifting the earnings** deriving from intangibles from foreign countries towards the U.K., or Italy, so as to benefit from the underlying **tax break**.

And it is precisely this awareness that has led to the dialogue and reflection in regard to the adoption of additional measures common to OECD members and to the – albeit theoretical – project for the introduction of a **common taxation system for enterprises**.