

## GERMANY-UK JOINT STATEMENT

### Proposals for New Rules for Preferential IP Regimes

The Governments of Germany and the United Kingdom are fully committed to ensuring that the G20/OECD Base Erosion and Profit Shifting (BEPS) project is successfully concluded by the end of 2015. This requires all countries involved in the negotiations to work to ensure that progress is made on all of the Actions set out in the BEPS Action Plan agreed by G20 Finance Ministers in July 2013.

The OECD Forum on Harmful Tax Practices (FHTP) has led work in relation to BEPS Action 5, Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance. Work within the FHTP has led to the development of proposals for new rules, known as the Modified Nexus approach, based on the location of the R&D expenditure incurred in developing the patent or product. This approach seeks to ensure that preferential regimes for intellectual property require substantial economic activities to be undertaken in the jurisdiction in which a preferential regime exists, by requiring tax benefits to be connected directly to R&D expenditures.

In order to take forward these negotiations, Germany and the UK have co-operated to develop a joint proposal for the consideration of the G20 and OECD member countries in the FHTP. This aims to resolve the concerns countries have expressed about some features of the Modified Nexus Approach, and identify what further work is required in order to enable agreement to be reached on this issue during 2015. Concerns have been expressed about how to calculate qualifying R&D expenditure, transitional arrangements between regimes and time allowed for this through grandfathering provisions, and the tracking and tracing methodology for R&D expenditure that will determine whether it qualifies.

The proposal is based on the following elements, which seek to address the concerns that have been raised, whilst reinforcing the nexus approach and providing safeguards against profit shifting. These also aim to ensure that the approach to implementing new rules is consistent with existing OECD rules on the phasing out of harmful regimes.

- **Uplift of Qualifying Expenditure** - where related party outsourcing or acquisition costs are incurred, which do not constitute qualifying expenditure, companies will be able to obtain a maximum 30% uplift of their qualifying expenditure (subject to a cap based on actual expenditure) included within the formula; the 30% uplift refers to the overall expenses for both, outsourcing and acquisition costs;
- **Closure and Abolition of IP Regimes** – to allow time for the legislative process, all existing regimes will be closed to new entrants (products and patents) in June 2016. These schemes will be abolished by June 2021.
- **Grandfathering** – to allow time for transition to new regimes based on the Modified Nexus approach, IP within existing regimes will be able to retain the benefits of these until June 2021.

- **Tracking and Tracing** – the FHTP should work to reach agreement by June 2015 on a practical and proportionate tracking and tracing approach that can be implemented by companies and tax authorities, which includes transitional mechanisms for intellectual property from existing into new regimes, and special rules for previous expenditure. The focus of this should be on developing practical methodologies that companies and tax authorities can adopt.

Germany and the UK will submit this proposal to the Forum on Harmful Tax Practices, during its meeting on 17-19 November. It is our shared hope that countries will agree that this forms the basis for future negotiations and eventual agreement on this aspect of Action 5. We remain committed to working with all G20 and OECD partner countries to achieve this shared aim.