# Dept. of Finance Consultation Paper: Creating a Patent Box

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# Dept. of Finance reviews: Patent boxes & SR&ED program

In January 2024 the Department of Finance opened two consultations on

- 1) a potential patent box regime and
- 2) Canada's existing Scientific Research and Experimental Development (SR&ED) program.
- Each consultation has a consultation paper and was open until April 15, 2024.
- reviews announced in Budgets 2022 and 2023.

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# Creating a Patent Box Regime

- The government is seeking views on the suitability of creating a patent box regime to encourage the development and retention of IP stemming from R&D conducted in Canada.
- A patent box provides a preferential tax rate to income derived from certain types of intellectual property to incentivize R&D in that country,
- currently used in 13 European Union member states.

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# Key Questions for Consideration

- Canada has a net balance of payments deficit (receipts minus payments) on charges for the use of IP that has grown over the last two decades (see the chart next slide).

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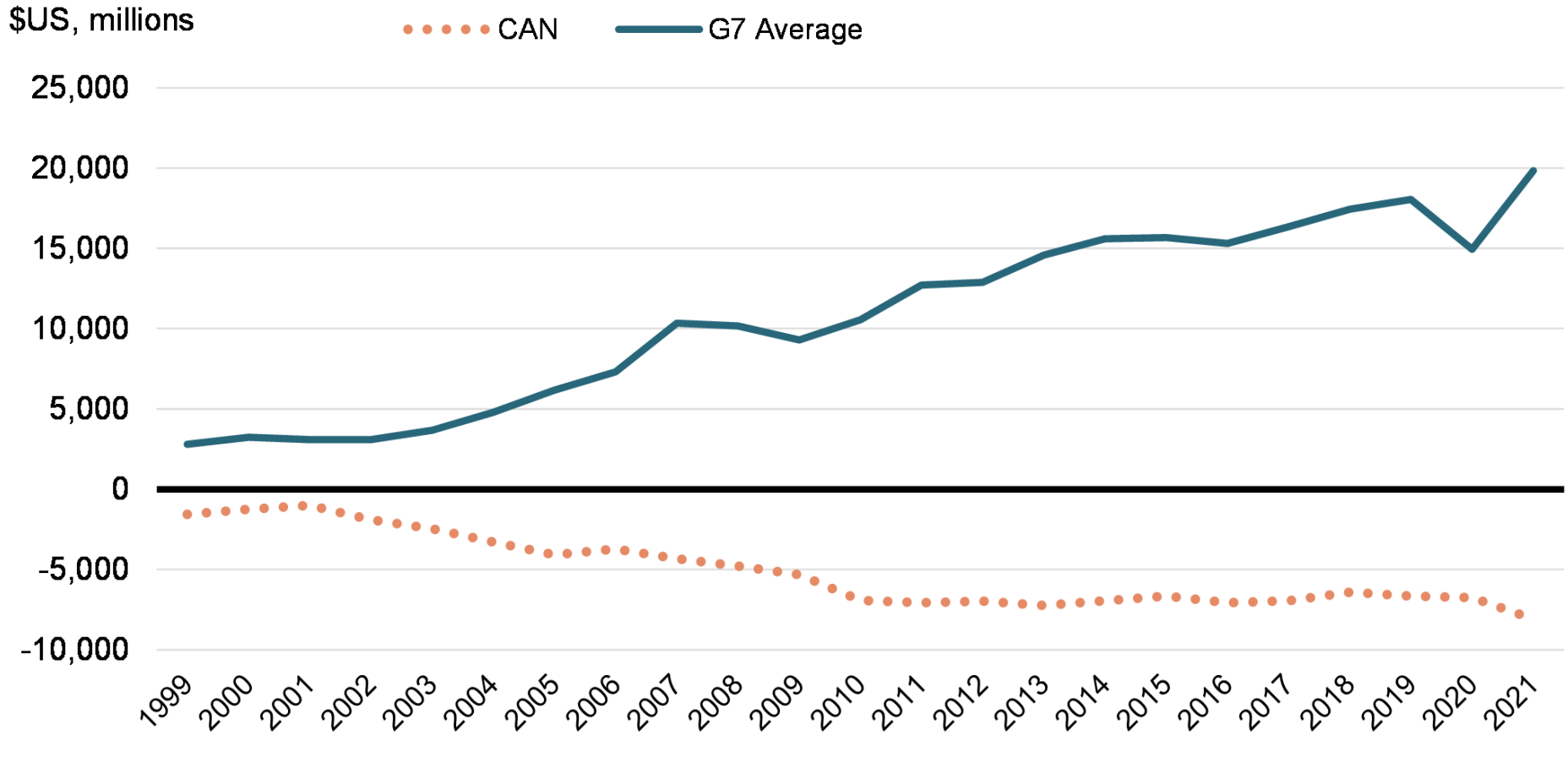
1) What sort of dynamics might be underlying this trend?

- What factors have contributed to Canada's negative balance?

# Charges for the Use of IP, 1999-2021, Net, $US Millions



# Key Questions for Consideration

2. Would implementation of a patent box regime improve Canada's competitiveness as a location for developing, commercializing, andretaining ownership of IP?

- With respect to competitiveness as a location for developing IP, how would support through a patent box regime compare to support provided through the SR&ED program?

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# Key Questions for Consideration

3. How important are tax considerations in decisions regarding where to commercialize IP and where to locate IP?

- Which factors besides tax rates impact businesses' decisions around where to locate andcommercialize IP derived from R&D conducted in Canada?
- How shouldthe Department of Finance account for these factors in determininghow businesses might alter their behaviour in response to a patent box regime?

4. What would be a competitive combined federal-provincial/territorial taxrate under a Canadian patent box regime?

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# Key Questions for Consideration

5. The Action 5 Final Report identifies the IP assets that are in-scope of a nexus compliant approach.

- Should all these assets be eligible for a potential patent box regime in Canada?
- Are there differences in business practices with respect to different types of IP assets to expect that commercialization and IP location decisions for each asset would respond differently to a patent box regime?

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# Key Questions for Consideration

6. If Canada were to implement a patent box regime, compliance with the nexus approach would require businesses to report detailed information around expenditures incurred in the development of eligible IP, similar to requirements in place under regimes in other jurisdictions that are compliant with the nexus approach.

- Drawing on experience with nexus-compliant regimes in other jurisdictions, please share any comments on challenges and best practices in this regard.

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# Québec patent box regime

- eligible revenue includes income from the sale of goods and provision of services “intrinsically linked” to the IP asset, including royalties
- be established, and carry on business, in Québec
- Commercialize eligible IP from an establishment in Québec
- have incurred R&D expenses in Québec,

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- Originally introduced in 2016, the Quebec IP box first tax incentive of its kind implemented in Canada.
- **‘Incentive Deduction for the Commercialization of Innovations’** (**IDCI**), applies to tax years beginning after December 31, 2020.
- permits a qualified corporation to reduce its Quebec tax rate on eligible income attributable to a qualified intellectual property asset (**QIPA**) from 11.5% to as low as 2%.

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A QIPA is intangible property owned by the qualified corporation, which results from R&D activities carried on wholly or partly in Quebec and which is any of:

- an invention protected by a patent or certificate of supplementary protection (applied for after March 17, 2016);
- a computer program (created after March 10, 2020) protected by copyright; or
- a plant variety protected by a certificate of plant breeder's rights (requested after March 10, 2020).

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# Opportunities

- Potential benefits to software companies, including gaming sector, cloud service & artificial intelligence.
- life sciences and agricultural industries, including Canadian biotech and cannabis sectors, may also benefit

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# Options for Canadian Patent box?

- lower tax rate on all eligible IP income,
- a tax deduction (as in Québec),
- a tax credit

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# Status to date?



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