



III – Patent related incentives

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III - Patent Based Incentives (Tax / Grant)

- 1) Quebec (IDCI) “patent box” incentives
- 2) EDC CanExport
- 3) IRAP IP Assist
- 4) IPON (IP Ontario)
- 5) Elevate IP

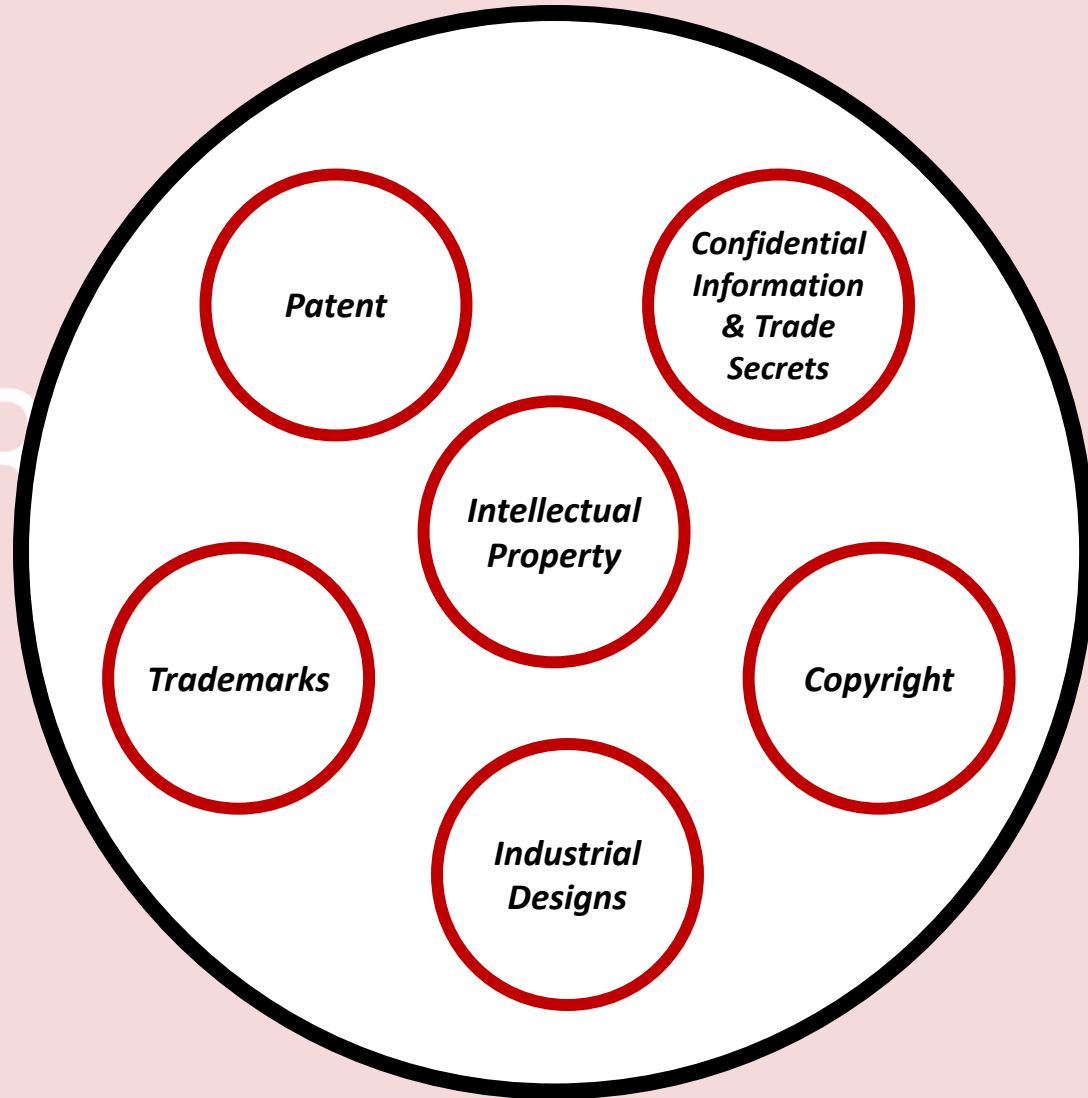
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Types of IP



SP

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1) Quebec (IDCI) “patent box” incentives

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CHANGES TO THE INCENTIVE DEDUCTION FOR THE COMMERCIALIZATION OF INNOVATIONS IN QUÉBEC AND ADJUSTMENTS TO OTHER MEASURES

1. CHANGES TO THE INCENTIVE DEDUCTION FOR THE COMMERCIALIZATION OF INNOVATIONS IN QUÉBEC

To encourage the competitiveness of Québec businesses while fostering the retention and valorization of intellectual property developed in Québec, the incentive deduction for the commercialization of innovations in Québec (IDCI) was introduced in the budget released on March 10, 2020.¹

In short, the IDCI takes the form of a deduction in calculating the taxable income of a qualified corporation and enables such a corporation that commercializes a qualified intellectual property asset developed in Québec to benefit, for a taxation year that begins after December 31, 2020, from an effective taxation rate of 2% on the qualified portion of its taxable income attributable to that asset.

Qualified – corps & assets

In this regard, the expression “qualified corporation” means a corporation that has an establishment in Québec, carries on a business in Québec and from which it derives income from the commercialization of a qualified intellectual property asset to which it holds the rights.²



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The expression “qualified intellectual property asset” means an incorporeal property that is either an invention protected by a patent or by a certificate of supplementary protection, or a plant variety protected by plant breeder’s rights, or a software protected by copyright. In addition, the property must result from scientific research and experimental development (R&D) activities carried out in whole or in part in Québec.³

Qualified – corps & assets

Summary - Need to have

- Establishment in Quebec
- Protection of IP (patent, certificate or protection, copyright, plant right,...?)
- R&D performed in Quebec
- Claimed for SR&ED in Quebec
 - now required – previously hinted at removal

3 part formula

The amount that a corporation can deduct in calculating its taxable income under the IDCII is obtained by applying a formula, which can be broken down into three elements that are used to determine, respectively:

- the qualified profits from a qualified intellectual property asset of the corporation, which profits represent an approximation of the value added attributable to that asset;
- the Québec nexus ratio, which takes into account the relative extent of the R&D activities carried out in Québec by the qualified corporation;
- the rate of the tax benefit, which leads to the determination of a factor making it possible to attain an effective taxation rate of 2% on the qualified income derived from the commercialization of a qualified intellectual property asset.

3 part formula – summary

1. Profit related to the asset
 - Approximation of value
2. Quebec Nexus ratio of R&D
 - If done in multiple jurisdictions
 - OECD rules on transfer pricing
3. 2% rate related to these (as opposed to the general corporate tax rate in Québec of 11.5%)

Clarifications of the definition of “qualified intellectual property asset”

□ Clarifications of the definition of “qualified intellectual property asset”

In order to ensure that the IDCi encourages businesses to commercialize Québec-based innovations from Québec, the change in the definition of the expression “qualified intellectual property asset” announced in Information Bulletin 2020-15 will not be introduced in the tax legislation.

Moreover, in order to more accurately reflect the objective of the IDCi to foster the retention and valorization of intellectual property developed in Québec, while respecting the spirit of the actions established by the Organisation for Economic Co-operation and Development (OECD) to address base erosion and profit shifting (BEPS),⁵ the definition of the expression “qualified intellectual property asset” will be amended to specify that, in order to receive this qualification, an intellectual property asset must result from R&D activities carried out at least in part in Québec, which activities must contribute significantly to the creation, development or improvement of the intellectual property asset.

Qualified Intellectual Property Asset

The criteria for determining whether the R&D activities carried out in Québec have contributed significantly to the creation, development or improvement of the intellectual property asset will take into account all the facts surrounding such creation, development or improvement. Accordingly, qualified corporations must be able to demonstrate to the Minister of Revenue the link between these R&D activities and the intellectual property asset.

Also, the R&D activities carried out in Québec must reflect an active participation in the creation, development or improvement of the intellectual property asset and involve the deployment of financial and human resources in Québec.

These changes will apply in respect of a taxation year of a corporation that begins after December 31, 2020.

Qualified Intellectual Property Asset - Summary

- Original definition amended
- OECD / BEPS guidelines profit shifting
- Claimant must illustrate
 - Activities “contribute significantly”
 - Active participation
 - Considering “All facts”
- Effective years > Dec 31, 2020
- **IMPLICATIONS:** New documentation required

Changes to the Quebec nexus ratio

❑ Changes to the Québec nexus ratio

Under the OECD standards, tax benefits associated with income from an intellectual property asset are permitted provided that there is a direct link between the income receiving the benefits and the R&D expenditures contributing to that income.

However, as a transitional measure, the OECD standards also allow for the use of a nexus ratio based on a moving average of R&D expenditures, which is reflected in the current nexus ratio of the IDCI, which takes into account the relative importance of recent R&D activities carried out in Québec by the qualified corporation.

In this regard, work is underway to establish the rules that will allow the nexus ratio to be directly linked to a qualified intellectual property asset, property, service or family of properties or services.

As such, the Ministère des Finances will announce at a later date the application of this new requirement, which will apply in respect of a taxation year that begins after December 31, 2023.

Quebec nexus ratio - summary

- Nexus ratio options for R&D in multiple jurisdictions
- To be implemented for 2024 tax years +
- Implications:
 - Need for specialists – e.g. patent lawyers, valuers, etc.

2) EDC CanExport

I) CanExport SMEs

Up to \$50,000 in funding to help Canadian small and medium-sized enterprises (SMEs) break into new international markets.

II) CanExport Innovation

Up to \$75,000 in funding to help Canadian SMEs, academic institutions and non-government research centres develop R&D collaborations through partnerships in foreign markets.

2) EDC CanExport

1) CanExport SMEs

Activities Funded

- Travel (compliant with travel advisories)
- Gathering market intelligence (custom research, reports and studies)
- Applying for intellectual property protection in international markets
- Applying for certification in international markets
- Seeking expert legal and business advice
- Search Engine Optimization
- Translating, adapting or creating marketing materials
- Attending virtual trade shows, networking functions, meetings or conferences

2) EDC CanExport

1) CanExport SMEs

Eligible platforms include:

- social media platforms (ex. Facebook, Twitter, LinkedIn, Instagram and WeChat)
- online marketplaces (ex. Amazon and Alibaba)
- search engines (ex. Google and Yahoo)

2) EDC CanExport

1) CanExport SMEs

Who can apply?

- be for-profit
- be an incorporated legal entity, limited liability partnership (LLP) or cooperative
- have a Canada Revenue Agency business number
- employ fewer than 500 full-time equivalent employees
- have \$100,000 to \$100 million in declared revenue in Canada during its past fiscal year (or 12 months for quarterly filers)

2) EDC CanExport

1) CanExport SMEs

- CanExport SMEs commits to a decision within 60 business days.
- The cost-sharing formula is 50:50. The program funds up to 50% of eligible costs for \$10,000 to \$50,000 in funding per project. The applicant is responsible for the remaining 50% of eligible project costs (in-kind contributions are not permitted).

2) EDC CanExport

II) CanExport Innovation

Activities Funded

- Travel (compliant with travel advisories)
- Attending virtual trade shows, networking functions, meetings or conferences
- Applying for intellectual property protection in international markets
- Applying for certification in international markets
- Seeking expert legal and business advice
- Shipping technology to determine feasibility/compatibility with a partner's technology
- Translating, adapting and creating promotional plans or materials
- Attending virtual networking functions, meetings or conferences

2) EDC CanExport

II) CanExport Innovation

Who can apply?

- be registered in Canada
- have a Canada Revenue Agency (CRA) business number
- own, co-own, or have decision-making authority over the intellectual property (IP) rights for the technology
- have a prototype (Technology Readiness Level 4 or higher)
- intend to commercially launch the technology within 5 years
- (note: no revenue required)

2) EDC CanExport

II) CanExport Innovation

- The applicant may submit a maximum budget of \$100,000; there is no set minimum.
- The program funds up to 75% of eligible costs to a maximum of \$75,000 in funding per project. The applicant is responsible for the remaining 25% (in-kind contributions are not permitted).
- CanExport Innovation commits to a funding decision within 60 business days.

2) EDC CanExport

II) CanExport Innovation

Ineligible expenses include:

- application fees for the registration of a trademark
- application fees for IP protection in Canada
- application fees for a provisional patent to prepare for the international phase of the PCT procedure
- consultant or legal fees related to monitoring patents or trademarks
- consultant or legal fees related to developing a **Canadian IP strategy** (but see IRAP IP Assist)
- development of promotional materials for general marketing purposes, or to generate sales (digital marketing, SEO)

3) IRAP IP Assist

- IP Assist is intended to empower firms to better protect and leverage their intellectual property to achieve business objectives. This service will support firms in improving their IP capabilities by providing educational opportunities and supporting access to IP professionals for certain IP-related services. This support is available to help determine whether your business would benefit from an IP strategy.

Funding:

- IRAP will provide financial support of up to \$50K (up to 75% of IP consultant fees and 80% salary cost) for a review of the Firm's current IP assets and status, and priority needs assessment for context of IP strategy.

3) IRAP IP Assist

Eligible Activities Include:

- Development of a firm specific IP strategy with gap analysis
- Review of background art
- Competitor IP asset identification
- Review of supply chain considerations
- IP landscaping for identification of potential competitors
- Collaborators and core technology relationships, etc.

- The IP Assist service is not intended to cover the costs for the drafting and prosecution of patents, patent office costs, or patent annuity fees.

4) IPON

- IP Ontario (IPON) is only available for Ontario companies
- IPON works with innovators, businesses, and researchers at various stages of their IP journey. We provide access to expert IP education, financial supports, and mentorship to help our clients better understand how to:
 - maximize the value of IP
 - strengthen their capacity to grow
 - compete in the market
 - enhance research and commercialization outcomes

4) IPON

Funding:

- Clients in the IP Bootcamp and Partner Program receive up to \$35,000 in initial funding for IP protection and commercialization services that are available for use during the program period.
- All clients have potential access to future funding calls of up to \$100,000 in IP funding.
- IPON will cover up to 80% of eligible costs based on approved scopes of work. Clients contribute at least 20% of the service costs and demonstrate a plan to sustain the IP in the future.
- Covers patent and TM costs.

5) Elevate IP

- Implemented through various Delivery Partners Canada:

ElevateIP National Delivery Partners



5) Elevate IP

- Delivery partners (text form):
 - Communtech Corporation – supporting startups in Ontario, Manitoba and Saskatchewan
 - Springboard Atlantic Inc. – supporting startups in Newfoundland and Labrador, Nova Scotia, New Brunswick and Prince Edward Island
 - Mouvement des accélérateurs d'innovation du Québec (MAIN) – supporting startups in Québec
 - University of Calgary with Innovate Calgary & Economic Development Lethbridge – supporting startups in Alberta
 - New Ventures BC Society – supporting startups in British Columbia, Yukon, Nunavut and the Northwest Territories

5) Elevate IP

Funding:

- Level 1: IP education if needed
- Level 2: IP strategy up to \$25k
- Level 3: IP execution \$10k-\$100k (10%-30% co-pay) - covers patent and TM costs.