Funding the Future

The UK's patent box rules for corporation tax violate E...

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Tax Analysts reports this morning (behind a paywall) that:

In a report prepared ahead of the October 22 meeting of the Code of Conduct Group on Business Taxation, the European Commission has determined that the patent box regime enacted by the U.K. government violates two of the five criteria for evaluating special tax regimes.

A commission spokesperson on October 17 told Tax Analysts that the U.K. patent box regime was examined at the behest of unnamed member states. The spokesperson cautioned against drawing larger conclusions from the report 2013 WTD 203-20: Other Administrative Documents beyond the compatibility of the U.K. regime with the code of conduct.

Now I have to say that the patent box was a Labour idea. It was a bad idea. It was designed to assist a few companies. That's always a mistake when it comes to tax law. And what it does is allow the income from new patents registered in the UK to be subject to a special, low rate of corporation tax of 10%.

I am delighted that the EU have decided to look at this now it is in operation to see if it violates an old friend of this blog, the EU Code of Conduct on Business Taxation, which dates from 1997. That code may be 'soft law' i.e. it amounts to pressure on states rather than firm legal requirement, but it has always worked to date.

I suspect the EU is right on this issue: this is an abusive tax measure intended to relocate business without consideration for the economic substance of what is actually happening in the underlying activity and if so then it is abusive.

It would be good if they considered Osborne's controlled foreign company rules in the same light, but it may be harder.