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## **A SWOT ANALYSIS OF THE INNOVATION BOX AS A TAX INSTRUMENT TO SUPPORT INNOVATION BY ENTERPRISES IN POLAND**

*The Innovation Box – a tax relief introduced in Poland in 2019, serves as a complementary element of fiscal support and the final link in the chain of innovation support. This preference is not applied at the stage of creating new solutions (as was the case with the tax relief for purchasing new technologies and has been the case with tax relief for research and development activity since 2016), but at the stage of their commercialisation. It may, thus, contribute to a greater interest and scale of application of the relief for research and development activity. The aim of this article is to present the essence of the Innovation Box, as well as to conduct a SWOT analysis of this tax relief as an instrument of support for innovation by enterprises. A SWOT analysis has corroborated the remarks – previously made by industry practitioners – concerning the ambiguous and complicated mechanism of the Innovation Box. However, along with the consolidation of the practice of applying this tax relief, interest in it may increase, which in turn might be conducive to Polish enterprises.*

**Key words:** commercialization, Innovation Box, IP Box, Patent Box, SWOT analysis

**JEL codes:** H20, H21, O31

### **Introduction, research material and methodology**

The need for fiscal support of innovation by Polish enterprises was noticed as early as 2006, i.e. when tax relief for purchasing new technologies was introduced to the income tax structure. System failures, and consequently the marginal application of this relief, resulted in its replacement with tax relief for research and development in 2016. The scope of the latter relief was considerably modified between 2016 and 2018 – the catalogue of eligible costs was extended, and the limit on deductions of eligible costs on taxable income was increased. Although the mechanism of this relief has generally been assessed positively, and the changes introduced are said to be clearly beneficial for tax payers, the level of application of the relief still remains relatively low.

The Innovation Box – a tax relief introduced in 2019, serves as a complementary element of fiscal support and the final link in the chain of innovation support. This preference is not applied at the stage of creating new solutions (as was the case with the tax relief for purchasing new technologies and as has been the case with tax relief for research and development activity since 2016), but at the stage of their commercialisation.

The aim of this article is to present the essence of the Innovation Box, as well as to conduct a SWOT analysis of this tax relief as an instrument of support for innovation by enterprises. The analysis contains data from the Ministry of Finance (data concerning income taxes) and the Patent Office of the Republic of Poland (data concerning the number of exclusive rights for industrial property objects in force in Poland).

### Theoretical and normative basis

Today, innovation is a key determinant of the competitiveness of enterprises and the country's economic development (Janiszewska M., Janiszewski J.M., 2020, pp. 51–73; Misztal A., pp. 28–29). It translates, among other things, into such business parameters as: increase in efficiency, increase in production capacity or increase in the quality of products and services offered by the innovator on the market (Sikora J., Uziębło A., 2013, pp. 351–352). Recognizing the essence of creating added value through innovation, state authorities develop and implement a number of forms of support and incentives for enterprises to undertake research and development projects. Tax solutions are one such form (Arginelli P., 2017, pp. 91–132; Nowak P., 2014, p. 177).

As of January 1, 2019, a new tax relief was introduced to the Corporate Income Tax Act (CIT Act) and the Personal Income Tax Act (PIT Act), allowing taxation of income derived from intellectual property rights (IPR) by a preferential tax rate of 5%. In economic journalism, this relief is referred to as the Innovation Box, Patent Box or IP Box.

The idea of introducing a new pro-innovative instrument supporting the innovative activity of enterprises to the Polish tax system is assessed positively by both economists (macroeconomic approach) and taxpayers (microeconomic approach) (Uzasadnienie do projektu ustawy o zmianie [Justification to the draft amendment act], p. 30).

The relief in question assumes that it will be beneficial both in microeconomic and macroeconomic terms. The original benefit of using the relief in the form of a lower amount of tax due will be recorded by taxpayers, while reducing the state budget's tax revenues. However, in the long term, the relief in question is a kind of 'investment' in public finances. It is assumed that the beneficiaries of the relief will achieve higher revenues by increasing the level of innovation and commercialization of intellectual property rights, which will ultimately translate into an increase in revenues to the state budget (Ibid, p. 17). The increase in budget revenues may also occur as a result of the so-called "retention function" of the IP Box, which consists in preventing the transfer of intellectual property rights acquired by Polish taxpayers to countries where preferential taxation of income derived from these rights is already applied (Ibid, pp. 2–3).

Despite the positive attitude towards the implementation of the Innovation Box, industry practitioners and taxpayers themselves identify many important barriers to its application, which can reduce the hypothetically high potential of the relief, adopted only on the basis of theoretical assumptions regarding the introduced instrument (Żagun K., 2019, pp. 19–24). The barriers, among which are weaknesses and threats to the application of the IP Box, are the source of a risk of recognizing the IP Box as an ineffective, and even unapplied instrument of tax support for business innovation.

It cannot be considered as an effective instrument if it is not applied at all or is applied at a level much lower than assumed. At the same time, the concept of effectiveness should be defined for the purposes of this study as the ability to achieve the

objectives set. Hence, some reflections have been made concerning the actual potential of applying the IP Box by taxpayers, including a SWOT analysis of the tax instrument in question.

## Results and discussion

The results of the SWOT analysis conducted are presented in Table 1.

**Table 1.** The Innovation Box SWOT analysis

Strengths	Weaknesses
<ul style="list-style-type: none"> <li>- a relatively high level of tax benefit possible to be achieved by taxpayers from the application of the IP Box,</li> <li>- the possibility of using the IP Box relief for the entire duration of the qualified IPR,</li> <li>- a tax instrument complementary to the applicable R&amp;D tax credit,</li> <li>- direct listing in the form of a catalogue of qualified intellectual property rights, the income of which is subject to preferential taxation,</li> <li>- the right to apply the IP Box relief already at the stage of submitting the application for a qualified intellectual property right.</li> </ul>	<ul style="list-style-type: none"> <li>- imprecise and unclear regulations governing the use of the IP Box relief,</li> <li>- complex mechanism of using the IP Box,</li> <li>- high tax risk of applying the relief,</li> <li>- only qualified income is subject to preferential taxation, not total income derived from intellectual property rights,</li> <li>- limited possibilities of securing the taxpayer against any different stance of the tax authorities regarding the law and the correct application of the relief.</li> </ul>
Opportunities	Threats
<ul style="list-style-type: none"> <li>- functioning of the relief for research and development activity since 2016,</li> <li>- numerous European Union programs providing financial support for the innovative activity of enterprises under the 2014–2020 financial framework,</li> <li>- increase in the application of the R&amp;D relief in 2017 compared to 2016</li> <li>- reporting by taxpayers the need to support innovative activities in the form of tax reliefs,</li> <li>- attempting to clarify the unclear provisions governing the IP Box by issuing tax explanations,</li> <li>- increase in the number of qualified intellectual property rights obtained by Polish entities in recent years.</li> </ul>	<ul style="list-style-type: none"> <li>- intensive changes in tax legislation in recent years,</li> <li>- weakening the importance of individual tax interpretations as an instrument to protect the taxpayer.</li> </ul>

Source: the author's own analysis.

### The strengths of the IP Box

One of the key strengths of the IP Box is the relatively high level of tax benefit that taxpayers can achieve from its application. The difference between the standard tax rate and the preferential IP Box rate for corporate income tax is about 14 percentage points (p.p.), whereas in the case of personal income tax this range may be (depending on the form of taxation and the level of achieved income):

- 14 p.p. in the case of a flat tax (19%),
- 13 p.p. in the case of taxation according to the tax scale and income below or equal to the amount for the first tax threshold, i.e. PLN 85,528 (18%),

- 13–27 p.p. in the case of taxation according to the tax scale and income, the amount of which exceeds the amount of income of the first tax threshold (18% to the amount of PLN 85,528 and 32% for the surplus over this amount).

The preferential tax rate in Poland is one of the lowest rates used in Europe under the IP Box and has a relatively wide range of IPRs eligible for the relief. Lower rates are generally only used in Cyprus 2.5%, Belgium 4.5% and Hungary 4.5%. However, it is worth pointing out that in the case of Cyprus and Hungary the difference between the effective tax rate under the IP Box and the standard CIT rate is 10 and 4.5 p.p. respectively (CRIDO, 2018, pp. 16–17).

Another strength of the IP Box should be the complementarity of this relief in relation to the R&D relief. These reliefs can be used together, which increases their attractiveness. Together, they form a somewhat pro-innovative tax strategy for conducting innovative activities. The relief for research and development is a preference that is used at a lower stage of creating innovation than the Innovation Box. Positive results of research and development activities may constitute the basis for a taxpayer to obtain one of the qualified intellectual property rights from which qualified income can be taxed at a preferential rate under the IP Box. This stage of support is referred to as “closing” the chain of innovation creation (Uzasadnienie do projektu ustawy o zmianie [Justification to the draft amendment act], pp. 2-3). Tables 2 and 3 present an example of the tax calculation taking into account the benefits of applying the Innovation Box and the R&D relief.

**Table 2.** An example of CIT calculation using pro-innovative tax reliefs

Specification	Variant I	Variant II	Variant III	Variant IV
	Without using pro-innovative tax reliefs	Only R&D relief	Only IP Box	Using both reliefs
Eligible R&D costs	30,000,000	30,000,000	30,000,000	30,000,000
Tax base	80,000,000	80,000,000	80,000,000	80,000,000
Deduction from R&D relief	None	30,000,000	None	30,000,000
Taxable amount after deduction	80,000,000	50,000,000	80,000,000	50,000,000
CIT rate	19%	19%	5%	5%
Amount of tax	15,200,000	9,500,000	4,000,000	2,500,000
Tax benefit	PLN	0	5,700,000	11,200,000
	%	0.00	37.50	73.68

Source: the author’s own analysis on the basis of: KPMG.

Significant simplifications have been adopted in the presented calculation variants assuming that:

- all taxpayer's income comes from qualified IPRs,
- all tax costs incurred are related to business research and development,
- the taxpayer has met the other requirements necessary for applying both reliefs,
- the taxpayer uses the option of settling the R&D tax relief within 6 years, which makes it possible to combine the R&D tax relief and the IP Box in one year.

The simplifications were adopted in order to preserve the transparency of calculations of the tax benefit and its difference between the standard rate in CIT and taxation according to the progressive tax scale in PIT.

As can be seen from the analysis of the data contained in Tables 2 and 3, the most advantageous tax settlement option for the taxpayer is to take advantage of both reliefs. This conclusion will be true for any assumed numerical output data which make it possible to show the taxable amount enabling the application of the preferential IP Box rate.

When analyzing the calculation variants for applying only one of the reliefs, it should be noted that the most preferred option in both CIT and PIT is variant III, i.e. the application of the IP Box. However, this conclusion is true for the simplifications adopted. In economic reality, a wider scope of application of the R&D tax relief in relation to the IP Box, which applies only to qualified IPR revenues, should also be taken into account. In practice, there are rarely cases in which entrepreneurs obtain income only from qualified IPRs.

**Table 3.** An example of PIT calculation using pro-innovative tax reliefs

Specification	Variant I	Variant II	Variant III	Variant IV
	Without using pro-innovative tax reliefs	Only R&D relief	Only IP Box	Using both reliefs
Eligible R&D costs	30,000,000	30,000,000	30,000,000	30,000,000
Tax base	80,000,000	80,000,000	80,000,000	80,000,000
Deduction from R&D relief	None	30,000,000	None	30,000,000
Taxable amount after deduction	80,000,000	50,000,000	80,000,000	50,000,000
PIT rate	85,528.00 – 18% surplus over 85,528.00 – 32%	85,528.00 – 18% surplus over 85,528.00 – 32%	5%	5%
Amount of tax	25,588,026	15,988,026	4,000,000	2,500,000
Tax benefit	PLN	0	9,600,000	21,588,026
	%	0.00	37.52	84.37

Source: the author's own analysis.

In addition to achieving a measurable nominal tax benefit from the application of both pro-innovative reliefs, one should also indicate the advantage of having the accounting records of taxpayers who already use the tax relief for research and development activities and are considering using the IP Box. The records kept for the R&D relief allow for the identification of costs incurred for research and development activity in the field of IPR. A taxpayer who uses the tax relief for research and development activities is required to have the necessary records and documents confirming the eligible costs incurred for this activity.

Creating cost records for the needs of the IP Box *ex post* from scratch is very time consuming and subject to the risk of error, and in most cases even impossible. The taxpayer who has conducted research and development activities and has not applied the R&D relief is highly unlikely to have kept detailed records that would allow the use of

the IP Box after completion of the research and development works and obtaining a qualified IPR.

Another strength of the IP Box is a direct reference to the catalogue of qualified intellectual property rights. This catalogue directly indicates which intellectual property right is considered qualified, which reduces the tax risk of undermining the right to apply the relief in question. In addition, the taxpayer has the option of preferential taxation based on the application for an intellectual property right, prior to obtaining this right. Moreover, if the taxpayer's application is rejected, the taxpayer will only be obliged to refund the tax amount calculated according to the standard tax rate without interest.

Considering that the procedure for qualified intellectual property rights may be treated even for several years, it should be pointed out that when it comes to the tax office one should take advantage of the offer in the form of an interest-free package including the exercise of tax rights. The waiting time for the decision to obtain a patent is on average (naukawpolsce, 2017):

- 3.6 years at the Patent Office of the Republic of Poland,
- 5.5 years at the European Patent Office,
- 3.5 years at the US Patent Office.

The amount of the taxpayer's benefit from deferred tax will depend on how the deferred amount is managed. The taxpayer may use the funds to cover current liabilities, for which in the event of a deficit of funds they would have to obtain external financing and bear the cost of it. On the other hand, in the case of a surplus of the taxpayer's funds and the benefits of deferment of tax payment, an example of placing funds on a deposit is often indicated in literature, a deposit from which the taxpayer will obtain financial profits in the form of interest.

#### The opportunities of the IP Box

In terms of the opportunities of the IP Box, we should take into consideration the existence of the R&D tax relief since 2016 and numerous European Union programs supporting the innovation activity of enterprises, especially under the 2014–2020 financial framework, whose priority is to support research, technological development and innovation (ec.europa.eu, 2014). Research and development activities were also supported in the previous perspective of 2007–2013, although to a lesser extent compared to the currently implemented framework (PARP).

The research and development works initiated in previous years, despite the initially negative results, may in the following years be completed with a positive result, which will enable taxpayers to apply for one or even several qualified intellectual property rights. Eligible income, which takes into account the Nexus indicator, allows for including the costs of research and development activities of IPRs incurred since January 2013.

In addition, what shall be emphasized here is the motivational aspect of both the financial support for the EU programs and the R&D relief, as well as increasing entrepreneurs' awareness of the tools and forms of support for starting and running innovative activities.

**Table 4.** The number of taxpayers benefiting from the R&D relief and the amount of deduction in 2016–2017

Specification	Number of taxpayers	Amount of deduction (in thou. PLN)	Average deduction (in thou. PLN)
2016			
CIT	264	198,334	751
PIT	tax scale	96	4,06
	flat tax	168	43,64
	together	264	29,25
Total	528	206,056	390,26
2017			
CIT	565	543,329	962
PIT	tax scale	116	6,87
	flat tax	408	97,57
	together	524	77,49
Total	1,089	583,935	536,21

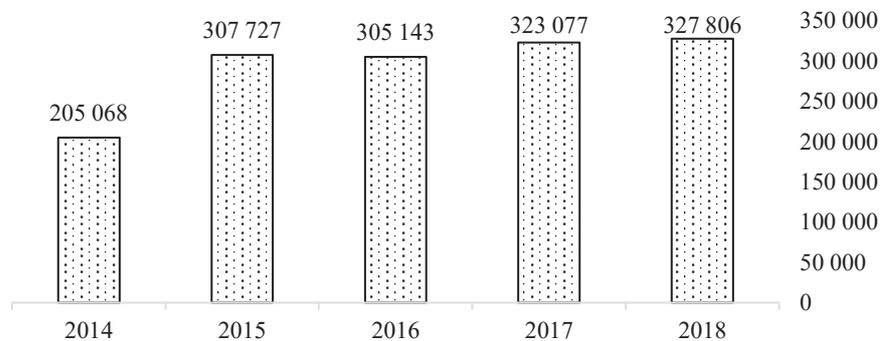
Source: the author's own analysis on the basis of: (Lukaszewska K., 2018, p. 194; MF, 2018a and MF, 2018b).

Another aspect which may be considered in terms of the opportunities of the IP Box is the increase in the application of the R&D relief in 2017 compared to 2016. Table 4 indicates the number of taxpayers benefiting from the R&D relief and the amount of deductions made in 2016–2017.

Based on the analysis of the data presented in Table 4, it may be concluded that in 2017, the R&D relief was applied by 106.25% more entities in total than in the previous year, and the amount of eligible cost deductions was higher by nearly 183.39%. The disproportion between the use of the relief by PIT taxpayers taxed according to the tax scale and the flat tax is also noticeable. A slight reduction of the disproportion (by 3.43 p.p.) was noted between the amount of deductions made by CIT taxpayers and the amount of deductions made by PIT taxpayers in total.

The increase in the application of the relief means that the interest in using support in the form of tax instruments increased among entities conducting innovative activity. Taxpayers themselves also declare that obtaining tax reliefs and support from public funds is an important factor for them to conduct innovative activity (Kamińska A., 2016, p. 84). It may be assumed that the identified disproportions in the application of the tax relief for research and development activities will also be reflected in the application of the IP Box.

An opportunity of the IP Box is also an increase in the number of exclusive rights for industrial property items in force in Poland, observed in recent years (see Figure 1).



**Figure 1.** The number of exclusive rights for industrial property items in force in Poland on the last day of a given year in the years 2014–2018

Source: the author's own analysis on the basis of: (UPRP).

In general, in the years 2014–2018 the number of exclusive rights for industrial property items remaining in force in Poland increased from year to year. The exception was 2016, which saw a decrease of 2,584 rights. That was a decrease of only 0.84% compared to the previous year. The growing number of exclusive rights in force for industrial property items, assuming that taxpayers have incurred the costs of research and development work associated with it, may indicate an increase in the number of IPRs entitling their holders to apply the IP Box.

As an opportunity for the IP Box relief, we may also indicate an attempt to clarify the unclear provisions governing this relief by issuing tax explanations in this regard. However, the final version of the tax explanations is not yet known. These explanations, depending on their final wording, may significantly reduce the weakest side of the IP Box, which should be considered to be imprecise tax regulations constituting a tax risk for the taxpayer.

#### The weaknesses of the IP Box

As already mentioned, the most important weaknesses of the IP Box are primarily imprecise and unclear provisions regulating its use, as well as a complex mechanism for its application, which results in high tax risk. As an example, a definition of research and development activities may be cited, according to which IPRs must be created, developed or improved for the taxpayer to take advantage of the relief. The problematic interpretation of this definition may be demonstrated by the existence of numerous tax interpretations, the subject of which are questions about meeting the definition of research and development activity in practice. On the other hand, the positions expressed in the interpretations do not constitute solutions to the problematic issue. The tax authorities may take a positive position in the interpretations they issue, citing the taxpayer's argumentation and declaration of their opinion on meeting the definition of research and development activity in their business practice, or they may exercise the right to depart from the legal justification of the assessment of the applicant's position (for example, DKIS individual interpretation of August 1, 2018 and DKIS Individual Interpretation of December 13, 2018).

Similar issues regarding the problem of securing the taxpayer by issuing a tax interpretation occur in terms of the approach to meeting the requirement of keeping accounting records which make it possible to determine the income from a qualified IPR. The design of the provision is imprecise and may lead to divergent interpretations, as is the case with records kept for the purposes of the R&D relief. There is a risk of undermining the completeness of the records kept by the taxpayer, and thus undermining the right to the relief during an audit performed by the tax authorities (for example, DKIS individual interpretation of February 7, 2018).

Interpretative ambiguities also occur in the construction of the mechanism of applying the IP Box relief, i.e. the calculation of qualified income, which is assessed as very complicated. The process of determining eligible income can be divided into three stages:

Stage I – determining the amount of income from a qualified IPR,

Stage II – determining the Nexus indicator,

Stage III – determining the qualified taxable income at a preferential rate of 5%, calculated as the product of the result of Stage I and Stage II.

The first stage requires the taxpayer to specify and keep records separately for each qualified IPR. This stage is the most difficult in the case of obtaining “income from a qualified IPR included in the sale price of the product or service” (Article 24d (7) of the CIT Act; Article 30ca (7) of the PIT Act). The income from qualified IPRs from total sales revenue is in practice based on certain assumptions used by the taxpayer (Uzasadnienie do projektu ustawy o zmianie [Justification to the draft amendment act], p. 2). There is currently no way to secure the correctness of the calculation of income from a qualified IPR or the calculation of eligible income. Tax interpretations are issued within the scope of tax law, and the calculations concern strictly controlling issues.

The second stage consists in calculating the Nexus indicator, expressed by the formula (Article 24 (4) of the CIT Act; Article 30ca (4) of the PIT Act):

$$\frac{(a + b) \times 1,3}{(a + b + c + d)}$$

where:

a – costs incurred for research and development activities connected with intellectual property law,

b and c – costs incurred to acquire the results of research and development works connected with intellectual property right from an unrelated entity (b) and a related entity (c),

d – costs incurred for the acquisition of qualified intellectual property rights.

### **The threats of the IP Box**

The threats of the IP Box relate primarily to the intense changes in tax law that have taken place in recent years. Undoubtedly, the period of the last few years should be considered as the most intensive in terms of the number and scope of introduced tax changes. This intensity leads to excessive burdens on enterprises, especially the HR and accounting departments, and determines the uncertainty of tax law among entrepreneurs, which in turn leads to slowing down their development (NBP, 2019, p. 33).

The changes in tax law introduced in recent years not only burden the taxpayers' administrative and accounting departments, but also influence the decision-making processes of enterprises. An example of such changes may be, among others, provisions regarding the clause against tax avoidance and reporting of tax schemes. The first of these changes is also a determinant of weakening the importance of tax interpretations as an instrument to protect the taxpayer. The tax authorities which issue tax interpretations have the right to refuse to issue an opinion, citing the possibility of applying the clause against tax avoidance as to the facts presented by the taxpayer in the submitted application. At the same time, the mere supposition that the elements of the application for an interpretation may be subject to the clause may justify refusing to issue the interpretation (Judgment of the Supreme Administrative Court of March 21, 2019).

The second of these regulations is the mandatory reporting of tax schemes to the Ministry of Finance. The definition of tax schemes is very broad and imprecise, and reporting obligations lie on three entities – tax scheme promoters, beneficiaries and supporting entities. The fine for failure to report the tax scheme is 720 daily rates, which may amount to PLN 21.6 million. In addition, the schemes were also subject to reporting in a retrospective manner, i.e. occurring after the 2018 cut-off date, which entailed additional tax burdens for taxpayers in the form of an analysis of transactions and economic events from the cut-off date.

These changes, along with other tax changes, resulted in additional obligations, the non-fulfilment of which is threatened with high fines. These circumstances could have led to the abandonment or postponement of the decision to apply the advantageous yet optional IP Box.

## Summary

The Innovation Box tax relief consists in preferential taxation at a rate of 5% of qualified income, which is obtained from qualified intellectual property rights. The amount of qualified income subject to preferential taxation is calculated as the product of the income from qualified intellectual property rights and an indicator evaluating the level of costs incurred by the taxpayer in connection with the creation or acquisition of qualified intellectual property rights. However, the mechanism of this relief is assessed as complex, which may contribute to lowering its attractiveness and application by taxpayers.

A SWOT analysis confirmed the comments previously formulated by industry practitioners concerning the unclear regulations and complicated mechanism of the IP Box. However, along with the consolidation of the practice of applying this tax relief, interest in it may increase, which in turn might be conducive to Polish enterprises.

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# **Analiza SWOT innovation box jako podatkowego instrumentu wsparcia innowacyjności przedsiębiorstw w Polsce**

## **Streszczenie**

Wprowadzona od 2019 r. ulga Innovation Box stanowi komplementarny element wsparcia podatkowego i „zamknięcie” łańcucha wspierania innowacji. Stanowi bowiem preferencję nie na etapie tworzenia nowych rozwiązań (jak to było w przypadku ulgi na zakup nowych technologii i jest od 2016 r. w przypadku ulgi na działalność badawczo-rozwojową), lecz na etapie ich komercjalizacji. Może zatem przyczynić się ona także do większego zainteresowania i skali wykorzystania ulgi na działalność badawczo-rozwojową. Celem artykułu jest przedstawienie istoty, a także przeprowadzenie analizy SWOT ulgi Innovation Box jako podatkowego instrumentu wsparcia innowacyjności przedsiębiorstw. Analiza SWOT potwierdziła – już wcześniej formułowane przez praktyków branżowych – uwagi dotyczące niejasnych przepisów i skomplikowanego mechanizmu Innovation Box. Jednak wraz z utrwaleniem praktyki stosowania tej ulgi, zainteresowanie nią może wzrosnąć, sprzyjając innowacyjności polskich przedsiębiorstw.

**Słowa kluczowe:** komercjalizacja, Innovation Box, IP Box, Patent Box, analiza SWOT

**JEL codes:** H20, H21, O31

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