

6 Intellectual property regimes

Key insights

- Forty-three regimes were found to be not harmful, and one was found to be harmful. Seven regimes were in the process of being amended or eliminated since they were not compliant with the base erosion and profit shifting (BEPS) Action 5 minimum standard. Eight regimes were abolished in 2023 and one regime was under review even though it had not yet been determined whether they were in compliance with the Action 5 minimum standard.
- Of the 43 non-harmful intellectual property (IP) regimes, all 43 offer benefits to patents, 32 offer benefits to copyrighted software and 19 offer benefits to the third allowed category of assets that are restricted to small and medium-sized enterprises (SMEs).
- Tax rate reductions for the 43 non-harmful IP regimes range from a full exemption from tax to a reduction of about 40% of the standard tax rate.
- All seven regimes that are in the process of being amended or eliminated offer a full exemption from taxation for IP income.

The *Corporate Tax Statistics* database also includes information on IP regimes. Many jurisdictions have implemented IP regimes, which allow income from the exploitation of certain IP assets to be taxed at a lower rate than the standard statutory tax rate (STR).

IP regimes may be used by governments to support research and development (R&D) activities in their jurisdiction. In the past, IP regimes may have been designed in a manner that incentivised firms to locate IP assets in a jurisdiction regardless of where the underlying R&D was undertaken. However, the nexus approach of the BEPS Action 5 minimum standard now requires that tax benefits for IP income are made conditional on the extent to which a taxpayer has undertaken the R&D activities that produced the IP asset in the jurisdiction providing the tax benefits.

Intellectual property regimes

The information reported for each IP regime in the *Corporate Tax Statistics* database is:

- the name of the regime;
- the qualifying IP assets;
- the reduced rate that applies under the IP regime;
- the status of the IP regime as determined by the OECD's Forum on Harmful Tax Practices (FHTP).

The *Corporate Tax Statistics* database draws on the detailed information collected by the FHTP for its peer reviews of preferential tax regimes. The information and the status presented are correct as of June 2023. Changes to regimes that have been legislated in 2023 but are not effective until 2024 are not reflected in this edition of the database.

The information presented in this edition provides a basic description of the IP regimes in place in 2023. Future editions will incorporate the effects of IP regimes into the corporate effective tax rate analysis.

Reduced rates available under non-harmful IP regimes ranged from 0% to 18.75% in 2023. The magnitude of the reductions ranges from around 40% to a full exemption from tax.

What qualifies as an intellectual property regime?

IP regimes can be regimes that exclusively provide benefits to income from IP, but some regimes categorised as IP regimes are “dual category” regimes. These regimes also provide benefits to income from other geographically mobile activities or to a wide range of activities and do not necessarily exclude income from IP.

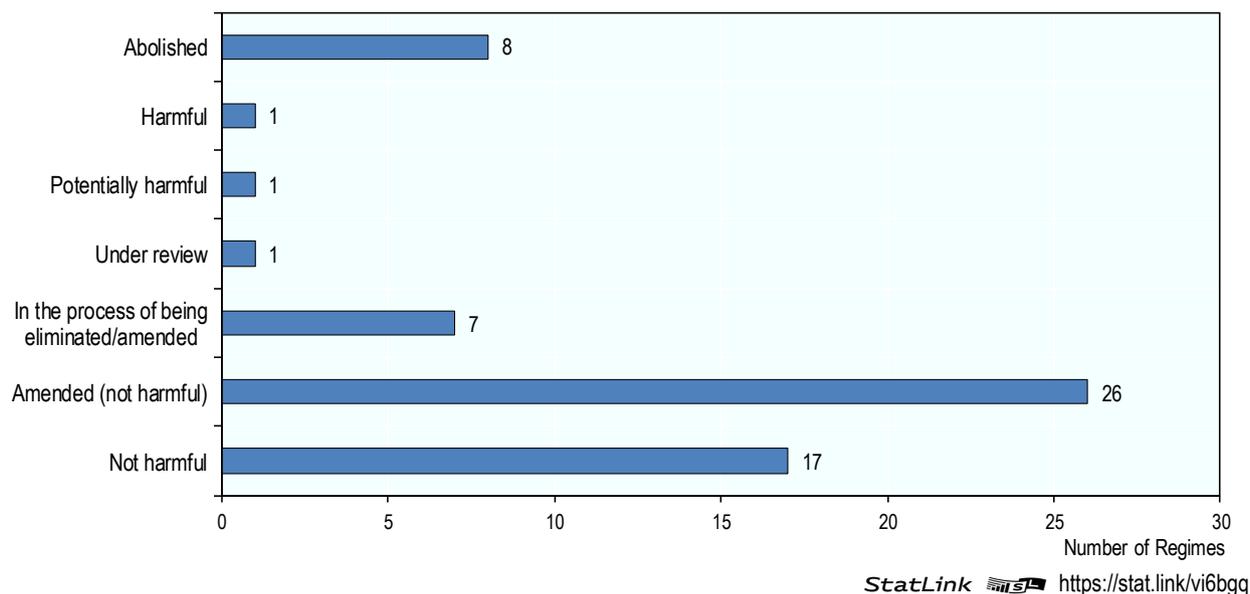
The Corporate Tax Statistics database shows information both on regimes that narrowly target IP income and on regimes that offer reduced rates to IP income and other types of income. Of the 61 IP regimes contained in the database, 34 were reviewed by the FHTP as IP regimes only and 27 were reviewed as “dual category” regimes (IP and non-IP regimes).

Status of intellectual property regimes

On the basis of the features of the regime, IP regimes are found to be either: harmful (because they do not meet the nexus approach), not harmful (when the regime does meet the nexus approach and other factors in the review process), or potentially harmful (when the regime does not meet the nexus approach and/or other factors in the review process, but an assessment of the economic effects has not yet taken place). The peer review process is ongoing, and by 2023 the vast majority of regimes were fully aligned with the Action 5 minimum standard. These are listed with the status “Not harmful” or “not harmful (amended)”. Regimes that were already closed to new entrants in 2023 (according to the peer reviews approved by the Inclusive Framework in June 2023) were listed as “abolished” in the database, although continuing benefits may be offered for a defined period of time to companies already benefiting from the regime. In most cases, this grandfathering would end by 30 June 2024. There were eight IP regimes abolished in 2023.

The Corporate Tax Statistics database contains information on 61 IP regimes that were in place in 46 different jurisdictions in the year 2022. Forty-three regimes in total were found to be not harmful; 26 of these regimes were found to be not harmful after having been amended to align with the Action 5 minimum standard. One regime (in Trinidad and Tobago) was found to be harmful. Seven regimes are in the process of being amended or eliminated since they were not compliant with the BEPS Action 5 minimum standard. One regime is under review, since it has not yet been determined whether it meets the Action 5 minimum standard. This can be the case with newly introduced IP regimes and IP regimes of jurisdictions that have recently joined the Inclusive Framework.

Figure 6.1. Status of intellectual property regimes in place in 2023



Qualifying assets and reduced tax rates

In the Corporate Tax Statistics database, qualifying assets of IP regimes are grouped into three main categories: patents, software and Category 3. These correspond to the only three categories of assets that may qualify for benefits under the Action 5 minimum standard: 1) patents defined broadly; 2) copyrighted software; and 3) in certain circumstances and only for SMEs, other IP assets that are non-obvious, useful and novel. The Action 5 Report explicitly excludes income from marketing related intangibles (such as trademarks) from benefiting from a tax preference. If a regime does not meet the Action 5 minimum standard, then the assets qualifying for the regime may not fall into the three allowed categories.

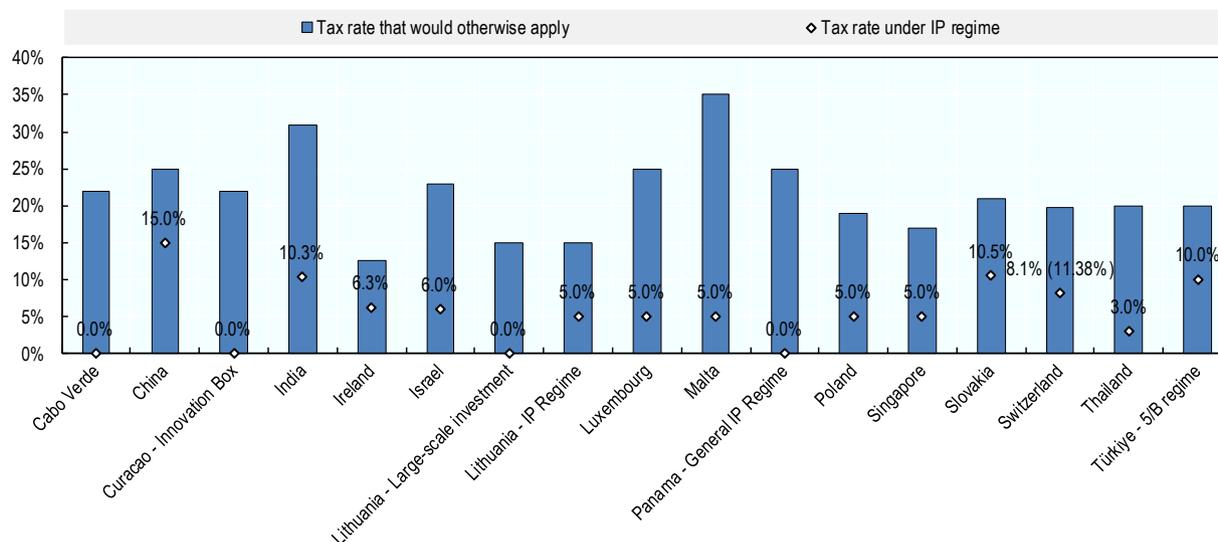
Of the 43 regimes found to be not harmful, all 43 regimes cover patents, 32 cover software, and 19 regimes cover assets in the third category (Category 3). All seven regimes that are in the process of being eliminated or amended do not have any restrictions on the type of income that qualifies for a reduced rate, although there may be restrictions to certain industries or income types. The reduction in the rate on IP income varies among the regimes, and some regimes offer different rates depending, for example, on the type of income (e.g., royalties or capital gains income) or size of the company.

Among the 43 regimes found to be not harmful, the tax benefit offered ranges from a full exemption to a reduction of about 40% of the tax rate that would have otherwise applied. The most common reduction is a 50% reduction. The reduced rates range from 0% (in 13 jurisdictions) to 18.75% (Korea's Special taxation for transfer, acquisition, etc. of technology; this IP regime offers reduced rates ranging from 5% to 18.75%). All seven regimes that are in the process of being amended or eliminated offer a full exemption from taxation for IP income.

For each of the 43 non-harmful IP regimes, Figure 6.2 and Figure 6.3 show the lowest reduced rate offered under the regime and the tax rate that would otherwise apply. Figure 6.2 shows those regimes with the status non-harmful, while Figure 6.3 shows the regimes that have been amended to be non-harmful. The tax rate that would otherwise apply is typically the STR, but it may not include certain surtaxes or sub-central government taxes. Similar to the reduced rate, the tax rate that would otherwise apply may also fall into a range, for example, if the standard statutory rate depends on the level of profits. Therefore, the tax

rates shown in the figures are representative and do not detail the full range of tax reductions offered in each IP regime.

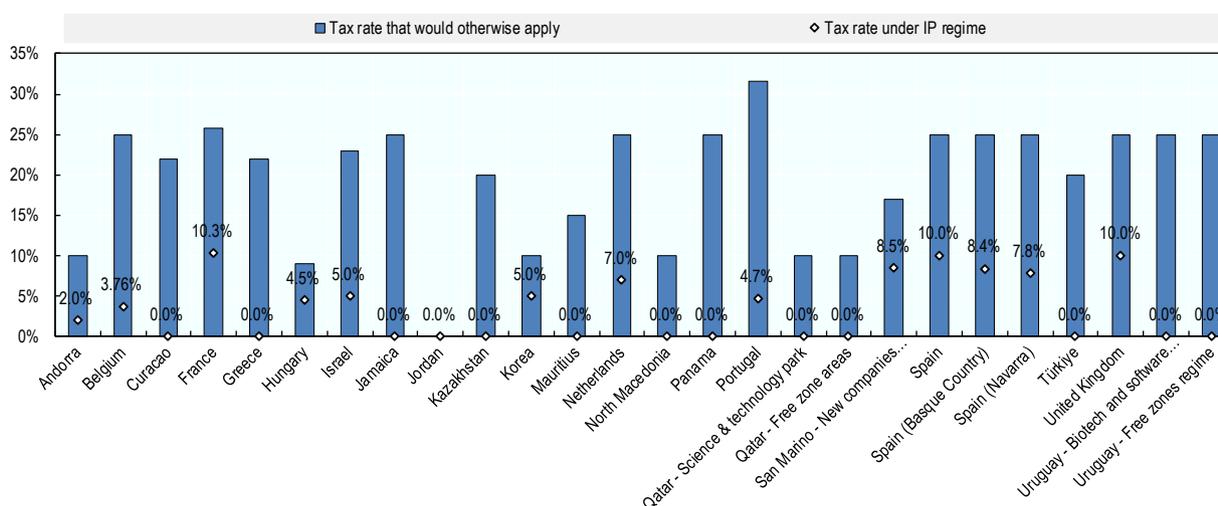
Figure 6.2. Reduced rates under non-harmful intellectual property regimes, 2023



Note: IP income in Switzerland can benefit from a 90% exemption of qualifying IP income from cantonal taxation. However, this exemption is subject to a cap: only 70% of a firm's total profits (IP or non-IP) can be exempt. The canton of Zurich is chosen as the representative canton. The 8.11% in 2023 applies to qualifying IP income and assumes that the firm has sufficient other income (non-qualifying IP or non-IP income) that is taxed at higher rates so that it is not subject to the 70% maximum relief limitation. If the firm had enough qualifying IP income that the 70% maximum relief limitation did apply, the rate applied to IP income in the city of Zurich would increase steadily from 8.11% to 11.38% in 2023 (100% IP Income). Where multiple rates are available for royalties or capital gains, the rate applicable to royalties has been used.

StatLink <https://stat.link/jnwb75>

Figure 6.3. Reduced rates under non-harmful (amended) intellectual property regimes, 2023



Note: Where multiple rates are available for royalties or capital gains, the rate applicable to royalties has been used.

StatLink <https://stat.link/fga2et>



From:
Corporate Tax Statistics 2023

Access the complete publication at:
<https://doi.org/10.1787/f1f07219-en>

Please cite this chapter as:

OECD (2023), "Intellectual property regimes", in *Corporate Tax Statistics 2023*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/c2796aae-en>

This document, as well as any data and map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area. Extracts from publications may be subject to additional disclaimers, which are set out in the complete version of the publication, available at the link provided.

The use of this work, whether digital or print, is governed by the Terms and Conditions to be found at <http://www.oecd.org/termsandconditions>.