

The IP Box regime in Cyprus

Introduction

The House of Representatives of Cyprus passed amendments to the IP BOX tax laws to comply with the OECD requirements. Now the Cyprus taxation on IP Box is in full compliance with OECD.

For the old IP BOX regime, under certain rules, the benefits can be extended until 30/06/2021.

The new law includes transitional provisions for assets which qualified for the regime under the existing legislation. The new regulations apply as from 30/06/2016

The Old IP – BOX Regime and Transitional rules

The old IP Box regime was introduced in Cyprus in 2012, to benefit from the law the following should have applied:

- A Cyprus Company should own a qualifying IP
- The IP should be a qualifying IP
- The qualifying IP should be used to gain taxable income.

Qualifying IP are intangible assets as defined by the Patents Law, the Trade Marks Law and the Intellectual Property Rights Law.

The law provided for an exemption from taxation of 80% of the gross income from the use of the intangible, i.e. after deducting from the total revenues all direct costs (including interest and the amortization of the cost of the intangible over 5 years). The remaining 20% was subject to income tax at 12.5 % with an effective tax rate of 2.5%.

There are transitional provisions for persons who have entered the old IP Box regime, which enables them to continue claiming the benefit until 30 June 2021, with respect to intangible assets which:

- were acquired before 2 January 2016; or
- were acquired directly or indirectly from a related person during the period from 2 January 2016 until 30 June 2016 and which assets at the time of their acquisition were benefiting under the IP Box regime or under a similar scheme for intangible assets in another state and the purpose of the acquirement was not to avoid taxes

or

- were acquired from an unrelated person or developed during the period from 2 January 2016 until 30 June 2016

A qualifying IP acquired from related person during the period of 02/01/2016-30/9/2015 and does not meet the above criteria will continue to benefit the old rules until 31/12/2016.

THE NEW IP BOX REGIME

The new provisions apply for assets which are developed after 1 July 2016. The rules provide 80% of the qualifying profits generated from qualifying IP's will be deductible as expenses and thus 20% will be subject to income tax of 12.5%, this brings the maximum effective rate of tax at 2.5%.

Qualifying intangible asset is an asset which was acquired, developed or exploited by a person in furtherance of his business, (excluding intellectual property associated with marketing) and which is the result of research and development activities and includes intangible assets for which only economic ownership exists.

These assets are:

- patents as defined in the Patents Law
- computer software
- other IP assets which are legally protected, and they fall under one of the following:
 - utility models, intellectual property assets which provide protection to plants and genetic material, orphan drug designations and extensions of protections for patents
 - nonobvious, useful, and novel, where the person which utilizes them in furtherance of a business does not generate annual gross revenues exceeding Euro 7.500.000 (in case of a group of companies not exceeding Euro 50.000.000), which are certified as such by an Appropriate Authority in Cyprus or abroad

Business names (including brands), trademarks, image rights and other intellectual property rights used to market products and services are not considered as qualifying intangible assets.

Qualifying expenditure for qualifying intangible asset is the sum of total research and development costs incurred in any tax year, wholly and exclusively for the development, improvement or creation of qualifying intangible assets and which costs are directly related to the qualifying intangible assets

Qualifying expenditure includes, but is not limited to, the following:

- wages and salaries
- direct costs
- general expenses relating to installations used for research and development;
- expenses for supplies related to research and development activities
- costs associated with research and development that has been outsourced to non-related persons

They do not include:

- cost for the acquisition of intangible assets
- interest paid or payable
- costs relating to the acquisition or construction of immovable property
- Amounts paid or payable directly or indirectly to a related person to conduct research and development activities, regardless of whether these amounts relate to cost sharing agreement
- costs which cannot be proved directly connected to the qualified asset

Up-lift expenditure will be added to the above costs, which means the lower of:

- 30% of the eligible costs, or
- the total amount of the cost of acquisition and outsourcing to related parties for research and development in relation to the eligible intangible asset

Overall expenditure is the total capital expenditure, qualifying or not, relating to the creation of the IP.:

Overall income is the gross income in a tax year less the direct costs incurred to produce the income

Income includes, but is not limited to the following:

- royalties or other amounts in connection with the use of qualifying intangible asset
- any amount for a license for the operation of qualifying intangible asset
- any amount received from insurance or as compensation in relation to the qualifying intangible asset
- capital gains and other income from the sale of qualifying intangible asset
- embedded income of qualifying intangible asset arising from the sale of products or by using procedures that are directly related to this item

Direct costs include:

- all direct and indirect costs incurred in earning the income from the qualifying intangible asset
- the amortization of the cost of the intangible
- notional interest on equity contributed to finance the development of the qualifying intangible asset

The qualifying profit is calculated with the equation below:

$$\text{Overall income} \times \frac{\text{Qualifying expenditure + Up-lift expenditure}}{\text{Overall expenditure}}$$

Accounting Records

Any person who claims benefit under the above regime should maintain proper books and records in accordance to Cyprus Laws.

Trade Marks

This are not included in the list of Qualifying IP and therefore nor eligible for benefits under the new IP Box regime.

* The information provided above is purely a courtesy guideline and should not be constituted as advise.

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