TALIADOROS AUDIT FIRM

CHARTERED CERTIFIED ACCOUNTANTS

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Intellectual Properties Box

For additional information with respect to this newsletter, you may contact the following:

Iacovos Taliadoros
Phone: +357 22475555
Email: info@taliadorosaudit.com

Charalambos Milis
Phone: +357 22475555
Email: charalambos.milis@taliadorosaudit.com

Website: www.taliadorosaudit.com

Intellectual Properties Box (IP box)

The new IP regime is applicable as from 1 July 2016 and is fully compliant with international developments in the tax treatment of IP income and OECD's guidance.

Under the new IP regime, 80% of the qualifying profits generated from the qualifying assets is deemed to be a tax-deductible expense. In calculating the qualifying profits, the new regime adopts the 'Nexus' approach, according to which, the level of the qualifying profits is positively correlated to the extent the claimant performs R&D activities to develop the qualifying asset.

For the purposes of applying the amended provisions of the ITL, the Council of Ministers has issued Regulations (ΚΔΠ 336/2016 of 18 November 2016) which determine the qualifying assets as well as the calculation of qualifying profits.

Provisions introduced in the Regulations

Qualifying asset (QA) is one which was acquired, developed or exploited by a person in the course of its business and that relates to intellectual property, is a result of research and development expenditure and for which the person is the economic owner, excluding any intellectual property relating to marketing.

Qualifying assets under the new IP regime include:

- Patents as defined in the Patent Law (as amended)
- Software computer programs
- Other intangible assets protected by law which fall under either (a) or (b) below:

(a) utility models, intellectual property intangible assets which provide protection to plants and genetic material, orphan drug designations and patent extensions

(b) that are non-obvious, useful and novel where the person who exploits these intangible assets in the course of its business does not earn revenue in excess of €7,500,000 per year from these intangible assets. In addition, in the case of a group of these persons, the group does not earn more than €50,000,000 in global turnover. For the purposes of the above calculation, an average of 5 years is used.

Qualifying assets do not include trade names, brands, trademarks, image rights and other intellectual property used for the marketing of goods and services.

Qualifying profits (QP) are calculated in accordance with the following nexus fraction:

[(QE+UE)/OE] x QA

Where:

- QE is the qualifying expenditure for the qualifying asset
- UE is the uplift expenditure
- OE is the overall expenditure for the qualifying asset
- QA is the overall income derived from the qualifying asset

Overall income (QA) derived from the qualifying asset is defined as the gross profit from the qualifying asset, i.e. the gross income less any direct costs.

Overall income includes but is not limited to:

- Royalties or any other amounts in relation to the use of the intangible asset
- Any amount for the grant of a license for the exploitation of the qualifying asset
- Any amount relating to the insurance or compensation of the qualifying asset
- Trading income from the disposal of the qualifying intangible asset
- Embedded income on the qualifying asset which is derived from the sale of goods, services or use of any processes which are directly related to the qualifying asset

Qualifying expenditure (QE) in relation to a qualifying asset is the sum of all research and development (R&D) expenditure which was incurred, in any tax year, wholly and exclusively for the development, enhancement or creation of a qualifying asset and are directly related to this qualifying asset.

Qualifying expenditure includes but is not limited to:

- Salary and wages
- Direct costs
- General expenses associated with R&D activities
- Supplies/materials expenditure associated with R&D activities
- R&D expenditure outsourced to unrelated parties

Qualifying expenditure does not include:

- The acquisition cost of the intangible asset
- Interest paid or payable
- Expenditure relating to the acquisition or construction of immovable property
- Amounts that have been paid or are payable directly or indirectly to a related person carrying out R&D, irrespective if these amounts relate to a cost sharing agreement
- Costs which cannot be proved to be directly associated with a specific qualifying asset

Up-lift expenditure (UE) of a qualifying asset is the lower of:

- 30% of the qualifying expenditure and
- The total acquisition cost of the qualifying asset and any R&D costs outsourced to related parties

Overall expenditure (OE) of a qualifying asset is the sum of:

- Qualifying expenditure and
- The total acquisition cost of the qualifying asset and any R&D costs outsourced to related parties incurred in any tax year

For the purposes of calculating the nexus fraction:

Books and records

Any person interested in benefiting from the IP regime is obligated to maintain books and records of the relevant income and expenditure separately for each intangible asset. This is essential for accurately calculating the qualifying profits and the nexus fraction.

Other amendments relating to intangible assets

In addition to the above, amendments were voted into the ITL, introducing capital allowances for all intangible assets (excluding goodwill and assets qualifying for the existing IP regime).

In accordance with these amendments, the capital costs of the assets will be tax deductible (as a capital allowance) and will be spread over the useful life of the asset, as determined by generally acceptable accounting principles (with a maximum useful life of 20 years).

Upon the disposal of such an intangible asset, a balancing statement should be prepared with any balancing addition being subject to Income Tax and any balancing deduction being tax deductible. The taxpayer has the option not to claim capital allowances for such intangible assets in a particular tax year.

We remain at your disposal should you require any information of clarification on the above.