The New Intellectual Property Regime in Cyprus

Cyprus has recently implemented, as from 1 January 2012, a new IP regime that is expected to stimulate the growth driving sectors of IP exploitation. Resting on a sound legal system based on Common Law principles, together with the conclusion of International Conventions on the Protection of Intellectual Property, Cyprus' new IP Regime guarantees maximum protection and certainty for IP owners. Below are the main points of the new IP regime:

1. An 80% exemption on royalty income and capital gains upon disposal of IP

80% of the profit earned from the use of intangible assets is exempt for tax purposes. Since any dividend income generated and paid to non-resident shareholders is exempt from Cyprus tax of any sort, a Cyprus company can be used to generate royalties under licensing or similar arrangements with third parties and to distribute profits to its shareholders by way of dividends with minimal tax leakage.

80% of any profit resulting from the disposal of relevant intangible assets is also exempt from tax purposes.

2. No recapture system for previously generated losses – losses can be carried forward indefinitely

3. Gross IP income reduced by expenses incurred for the production of IP income with no limitations

4. Competitive amortization provisions over a 5 year period

The cost of acquisition or development of an IP right may be capitalised and amortised on a straight line basis over five years, giving an annual writing down allowance of 20%.

This is a considerable acceleration compared to the previous amortisation regime, where rates were determined by reference to the estimated useful life of the underlying asset. For example, if a patent had a validity of 20 years its useful life would be deemed to be 20 years and the annual writing down allowance would be 5%. The acceleration of writing down allowances will result in substantial cash flow benefits by reason of the deferral of tax liabilities, especially where the value of the IP asset is substantial.

5. Wide range of qualifying IP rights

A Tax Circular is expected to be issued by the Cyprus Tax Authorities that will provide a detailed list of IP rights.

6. Effective Tax rate of 2% or less

The amount subject to tax under the new rules is calculated by deducting the writing down allowance, the costs (including interest) of financing the acquisition or development of the assets and any other direct expenses from the revenue earned, and dividing the resulting amount by five. Applying the Cyprus corporate income tax rate of 10% produces an effective tax rate of two per cent of the net income. Given that generous deductions are available against gross income, the effective rate should generally be well below 2%. This rate compares very favourably with the competition: the United Kingdom's optional new "patent box" regime gives an effective rate of 10% on relevant income. The Irish scheme is more complex, and it is not possible to directly compare rates, but it will generally produce a rate close to the UK rate. The Luxembourg and Netherlands schemes are somewhat better, with effective tax rates of 5.76 %and 5 %respectively, but they are both considerably less beneficial than Cyprus.

The new regime provides very attractive opportunities for structuring the exploitation of IP assets through Cyprus and in particular through the use of Cyprus-resident IP owners, especially in the context of Cyprus's extensive network of double tax treaties under which foreign withholding taxes on royalty income are either eliminated altogether or substantially reduced.

We at Aspen Trust Group can assist you and your clients to structure your IP holdings in the most beneficial way. We look forward to hearing from you and being of service.

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