

## **Amendments to the Cyprus Intellectual Property Regime**

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*We would like to bring to your attention that certain amendments have been published in the official Gazette of the Republic of Cyprus on 27 October 2016 in relation to the introduction of the new Cyprus Intellectual Property (IP) Regime in accordance with the recent international developments and recommendations of BEPS Action 5 of the OECD. These amendments are to be applied retrospectively from the 1st of July 2016.*

*It is noted that the effective tax rate of 2.5% of the current IP Regime will remain unchanged, with the main purpose of the amendments being to take into account the "modified nexus approach" and therefore restrict the application of the regime to companies fulfilling the criteria for such an approach.*

*It should also be noted that detailed guidance on the application of the nexus approach will be provided in Regulations, which have not yet been voted by the House of Representatives.*

### **Transition rules and grandfathering provisions**

One of the main purposes of the amendments is to limit the entrants into the current IP Regime and at the same time abolish its effect by **30 June 2021**. The current IP Regime will apply until this date in relation to IPs which:

- i. Qualified under the current IP Regime before the 2nd of January 2016, or,
- ii. Were acquired directly or indirectly from a related person during the period starting from the 2nd of January 2016 and ending on the 30th of June 2016 and for which at the time they have been acquired qualified for benefits under the current IP Regime or other similar Regime and their acquisition was not made with a principal purpose (or having as a principal purpose) the avoidance of tax, or,
- iii. Have been acquired or developed by the taxpayer itself, during the period starting 2nd of January and ending on the 30th of June 2016.

Any IPs which have been acquired directly or indirectly from a related person during the period from 2nd of January 2016 to 30th of June 2016 and subparagraph ii) above does not apply, will qualify for benefits up to the **31st of December 2016**.

### **New IP Regime Amendments**

Under the new IP Regime amendments, it is clarified that the profit which arises from the usage or sale of intangible assets, also includes:

1. Embedded income derived from the trading use of the intangibles which fall under the definition of qualifying asset as this will be defined in Regulations which will be issued by the Council of Ministers.
2. Income from a qualifying asset irrespective of its date of acquisition or development and for which there is only economic ownership.

The definition of qualifying assets is expected to include:

- Patents
- Computer software
- Other IP assets that are non obvious, useful and novel

In addition, the amendments also exempt from income tax any capital gains arising from the disposal of a qualifying asset under the new IP Regime and introduces capital allowances on capitalised expenses over the useful economic life of the asset in accordance with generally accepted accounting principles with a maximum period of 20 years. In addition, a taxpayer has the option to claim only part of the capital allowances for such intangible assets.

Under the new IP Regime, 80% of the qualifying profits of the qualifying intangible will be exempt from tax. A taxpayer has the right to claim only part of this discount in a tax year.

*It is noted that in case where there is a loss instead of profits, only 20% of this loss can be claimed by the taxpayer. The definitions of qualifying profits will also be defined in the Regulations which will be issued by the Council of Ministers.*

*In cases where the intangible assets qualify under both, the current IP Regime and the new IP Regime, then the provisions of the current IP Regime will be applicable up to 30 June 2021.*

*Also, the Law has introduced provisions so that Foreign Permanent Establishments (PEs) can make an election so that their profits are taxed in Cyprus. Any taxes paid abroad, in the case the PE has been taxed overseas, will be claimed in Cyprus up to the amount of tax which is payable in Cyprus on the relevant profits. In this respect, Foreign PEs which are subject to tax in Cyprus will be considered as qualifying taxpayers for the new IP Regime.*

*We would be pleased to discuss further with you and assist you in obtaining a more detailed insight as to how the above changes can affect your business.*

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