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IP BOX in Poland from 2019

Proposed amendments in preferential taxation of income generated by intellectual property rights

On 24 August 2018 the Ministry of Finance published a project of a bill amending the Personal Income Tax Act, the Corporate Income Tax Act, the Tax Ordinance Act and several other regulations (hereinafter: "the Project").

One of the proposed amendments is the introduction of preferential taxation of income generated by intellectual property rights (hereinafter: "IP Box" or "Innovation Box").

The Innovation Box is going to be introduced into the Personal Income Tax (hereinafter: "PIT") Act and the Corporate Income Tax (hereinafter: "CIT") Act as a preferential form of taxation for entrepreneurs deriving income from commercialization of intellectual property rights.

IP Box has been implemented in other countries, e.g. the Netherlands, the United Kingdom, Ireland, and Luxembourg. The mechanism applied in those countries rely on taxation of income from intellectual property rights with reduced tax rate (e.g. in the United Kingdom – 10 percent), or exemption of part of the income from taxation (e.g. 80 percent in Luxembourg).

Regulations regarding preferential taxation of intellectual property rights should be in line with the OECD guidelines under the Base Erosion and Profit Shifting (BEPS) initiative contained in the report on Action No. 5.

The purpose of IP Box introduction

The main purpose of this tax incentive is to increase the attractiveness of conducting R&D activities in Poland by Polish and foreign enterprises. In the long term it should trigger development of a knowledge-based economy.

Subject of taxation covered by IP Box

The preferential rate – 5 percent of the tax base – will apply to income from qualified intellectual property rights created, developed or improved by a taxpayer as part of his R&D activities:

- the rights to an invention (patents),
- additional protective rights for an invention,
- the rights for the utility model,
- the rights from the registration of an industrial design,
- the rights from registration of the integrated circuit topography,

- additional protection rights for a patent for medicinal product or plant protection product,
- the rights from registration of medicinal or veterinary product,
- the rights from registration of new plant varieties and animal breeds,
- the rights to a computer program.

The aforementioned rights must be subject to legal protection under the provisions of separate acts or ratified international agreements Poland is a party to or other international agreements to which the European Union is a party. The Project also allows appropriate application of its provisions on eligible intellectual property rights to the expectative of obtaining these rights under condition that a taxpayer has submitted application to a competent authority. The catalogue of qualified intellectual property rights is exhaustive.

The Project concerns those intellectual property rights that are created, developed or improved by a taxpayer within R&D activities. The Project justification indicates, however, that the application of the relief shall be admissible if the taxpayer is the owner, co-owner, user or shall have the right to use the above-

mentioned intellectual property rights. According to the Project justification, it will also be possible to benefit from the Innovation Box relief if the taxpayer purchases the above-mentioned qualified intellectual property rights, provided that the taxpayer then incurs costs related to the development or improvement of the acquired right.

The tax rate

The tax rate on the qualified income obtained by a taxpayer from the intellectual property rights discussed above will amount to 5 percent of the tax base. In accordance with the planned amendments, the tax base will be calculated as the sum of income from qualified intellectual property rights in a given tax year.

Income (loss) for the purpose of IP Box relief application

The income/loss from the qualified intellectual property rights will include the income/loss from:

- the fees or charges arising from the license for qualified intellectual property right,
- the sale of qualified intellectual property rights,
- the qualified intellectual property rights included in the sale price of the products or services,
- the compensation for infringement of qualified intellectual property rights if obtained in litigation proceedings, including court proceedings or arbitration.

The final amount of income from the qualified intellectual property right will be determined using the appropriate formula included in the Project. This formula

will reward taxpayers who themselves or with the help of unrelated entities develop a given solution.

If it is not possible to determine the income per individual qualified intellectual property right, the taxpayer will be entitled to calculate the income for the same type of product or service, or for the same group of products or services in which the qualified intellectual property right has been used.

Losses from qualified intellectual property rights incurred in a given tax year will reduce income from the same qualified intellectual property right or the same type of product or service or the same group of products or services in which the intellectual property right has been used, in 5 consecutive tax years.

The taxpayers benefitting from the Innovation Box shall be obliged to report the income (loss) in the tax return in which the income was obtained.

Obligation to keep records

A taxpayer who is going to take advantage of the proposed preferences will be obliged to keep detailed accounting records in a way that allows calculation of the tax base, including the link of incurred R&D costs with the income from intellectual property rights.

It should be underlined that the application of IP Box (lower tax rate for qualified income) will be taxpayer's entitlement, not taxpayer's obligation. It is crucial because applying the relief involves additional obligations, in particular to keep records allowing monitoring and tracking the effects of research and development works.

If, based on the accounting records kept by a taxpayer, it would not be possible to determine the income (loss) from qualified intellectual property rights, the taxpayer will be obliged to pay the tax based on general rules.

The period of the IP Box relief application

The taxpayer shall be entitled to apply the tax relief throughout the duration of the legal protection of eligible intellectual property rights. For assets that are subject to notification procedure/ registration (the expectative of obtaining a qualified intellectual property right), a taxpayer shall be entitled to benefit from tax preference from the moment of filing or submitting an application for registration (however, there will be an obligation to return the amount of relief in case of withdrawal of the application, refusal of registration or rejection of the application).

Conclusion

In conclusion, according to the proposed Project, taxpayers who have the appropriate title to use qualified intellectual property rights are going to be entitled to Innovation Box relief. The preferential tax rate shall amount to 5 percent of the tax base.

It should be borne in mind that the Project will be subject to public consultations and further legislation process, so the final provisions of the Act could differ from the Project in current wording.

Please contact us if you would like to obtain more information on the described regulation or discuss its potential impact for you or your firm.

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Contact

Rafał Ciołek

Partner

Tel. : +48 22 528 11 97

rciolek@kpmg.pl

Anna Sińczuk

Partner

Tel. : +48 22 528 11 92

asinczuk@kpmg.pl

Przemysław Szywacz

**Director, Corporate Income
Tax Group**

Tel. : +48 22 528 10 03

pszywacz@kpmg.pl

Kiejstut Żagun

**Director, Innovation, Grants
& Incentives Group**

Tel. : +48 22 528 10 07

kzagun@kpmg.pl



KPMG Offices

Warszawa

ul. Inflancka 4a

00-189 Warszawa

Tel. : +48 22 528 11 00

Fax: +48 22 528 10 09

kpmg@kpmg.pl

Kraków

ul. Opolska 114

31-323 Kraków

Tel. : +48 12 424 94 00

Fax: +48 12 424 94 01

krakow@kpmg.pl

Poznań

ul. Roosevelta 22

60-829 Poznań

Tel. : +48 61 845 46 00

Fax: +48 61 845 46 01

poznan@kpmg.pl

Wrocław

ul. Szczytnicka 11

50-382 Wrocław

Tel. : +48 71 370 49 00

Fax: +48 71 370 49 01

wroclaw@kpmg.pl

Gdańsk

al. Zwycięstwa 13a

80-219 Gdańsk

Tel. : +48 58 772 95 00

Fax: +48 58 772 95 01

gdansk@kpmg.pl

Katowice

ul. Francuska 36

40-028 Katowice

Tel. : +48 32 778 88 00

Fax: +48 32 778 88 10

katowice@kpmg.pl

Łódź

ul. Składowa 35

90-127 Łódź

Tel. : +48 42 232 77 00

Fax: +48 42 232 77 01

lodz@kpmg.pl

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