

With IP BOX, the most questionable issue is the cost

I. Tax authorities continue to issue numerous tax rulings on IP BOX

At the beginning of 2019, new legislation introduced the possibility of a preferential tax rate of 5% for business operators who generate income from commercialization of intellectual property rights they have created or developed (the so-called Innovation Box). The income must be earned by the taxpayer from intellectual property rights of which that taxpayer is owner, co-owner or user, or which it is entitled to use under a license agreement, and which are protected under applicable national or international law e.g. by a patent, supplementary practical new-type patent, or industrial design registration rights. These are treated as "qualified intellectual property rights" for the purposes of the aforementioned provisions (hence the different abbreviated name of the relief, IP Box after the English term of qualified intellectual property). The relief can also be enjoyed if the taxpayer has purchased qualified intellectual property rights. However, this is only possible if the taxpayer subsequently incurs costs related to development or improvement of the acquired right. However, the IP BOX provisions are not easy for taxpayers to apply, as evidenced by the number of tax rulings issued. In this issue of the Alert, we present the latest of such rulings.

II. Transfer of the right to the design and implementation documentation without preference

A paid transfer of copyright covering only the design and implementation documentation is not a sale of a qualified intellectual property right within the meaning of the Personal Income Tax Act, and thus the consideration earned from such transfer does not constitute income from a qualified intellectual property right. As a result, the taxpayer cannot apply the preferential tax rate of 5% in such a situation – see tax ruling of 7 September 2022 (Ref. 0115-KDWT.4011.494.2022.3.JPO).

III. Subscription to an accounting firm may also constitute an eligible expense

If the taxpayer has actually incurred expenses that qualify as costs of its research and development activities, expenses related to the creation, development and modification of the qualified IP within the scope of such activities should be treated as actual costs incurred by the taxpayer for its direct research and development activities related to the qualified IP. Expenses incurred for the purchase of computer hardware, office equipment, accounting services, a cell phone, professional literature and professional training, as well as the costs of telephone and Internet connection subscriptions, may constitute costs of the taxpayer's directly conducted R&D activity related to the qualified IP right – see tax ruling of 7 September 2022 (Ref. 0114-KDIP3-1.4011.618.2022.2.MZ).

Tax authorities continue to issue numerous tax rulings on how to use the preferential 5% tax rate on income from commercialization of so-called qualified intellectual property rights (IP BOX). This demonstrates both the unflagging interest in this solution on the part of taxpayers and the problems they have with proper application of these regulations.



IV. In the case of fixed assets, only the depreciation expenses are eligible as qualified costs.

In the case of assets that constitute depreciable fixed assets (or intangible assets), the cost of purchasing such fixed assets (intangible assets) that are subject to tax depreciation and are related to the creation of qualified IP may be included in the Nexus index, but only depreciation write-offs made by the taxpayer in the tax year in which that taxpayer will benefit from the preferential tax rate may be taken into account – see tax ruling of 6 September 2022 (Ref. 115-KDWT.4011.509.2022.3.MG).

V. Rent for the premises is not included in the costs associated with IP

Costs referred to in the Nexus index do not include expenses that are not directly related to qualified IP, that is in particular interest, financing fees and real estate costs. For example, costs not included in the Nexus index are the maintenance costs of the real property where the R&D activity takes place that aims at creating qualified IP, or the interest on a loan taken out for the purchase of that real property. Thus the expense involved in lease of the premises cannot be recognized as a cost of research and development activities related to qualified IP right – see tax ruling of 5 September 2022 (Ref. 0111-KDIB1-3.4011.122.2022.3.KG).

VI. Subscription to a code writing application may be included in the cost of the works

Development is an activity involving the acquisition, combination, formation and use of currently available knowledge and skills, including information technology tools or software, for production planning and the design and creation of changed, improved or new products, processes or services, excluding activities involving their routine and periodic changes, even if such changes are in fact improvements. The cost incurred for the monthly fee for the use of an application needed for and improving code writing may be recognized as direct cost of research and development activities related to the creation of intellectual property rights – see tax ruling of 2 September (Ref. 0112-KDWL.4011.661.2022.2.AS).



VII. Taxpayer creating only an element of the IP is not entitled to apply the preferential rate

The taxpayer is not entitled to apply the preferential 5% tax rate to income earned from a transfer of the right to works created by that taxpayer in cooperation with the software development team in a situation where a part of the software is created that only constitutes a qualified intellectual property right when combined with other parts created by other members of the development team, and each team member concludes an individual copyright transfer agreement – see tax ruling of 2 September 2022 (Ref. 0112-KDWL.4011.564.2022.2.PS).



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VIII. Social Security contributions and car lease payments may also be included

Expenses that the taxpayer incurs for: accounting services (the cost of annual subscription to an accounting package in the form of a web-based application), computer peripherals (the purchase of a monitor, printer, mouse, headset, USB hub), computer hardware (the purchase of a laptop), professional literature (the purchase of a textbook for a programming language), car lease (the cost of lease installments), telecommunications costs and a smartphone (the purchase of a smartphone and the cost of a subscription to telephone and Internet connections), the purchase and operating costs of a car (purchase of an insurance policy, fuel and the cost of inspections and periodic maintenance), social security contributions - may all constitute expenses included in the costs of research and development activities related to qualified intellectual property rights - see tax ruling of 1 September 1 (Ref. 0111-KDIB1-2.4011.185.2022.2.LSP).

The information presented herein does not constitute comprehensive information or opinion. Consult your adviser before making any decisions.

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