

Malta's Intellectual Property Regime, Unpacking All the Nuts and Bolts That Could be of Interest to You

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By **Jonathan Vassallo**, 19th July 2023

In an increasingly global and competitive world, countries are constantly seeking ways to attract foreign investment, foster innovation, and promote economic growth. One such initiative is the Intellectual Property (IP) Box Regime, a tax incentive scheme offered by Malta. In this article we will explore the key features of the IP Box Regime, its benefits, and its impact on Malta's economy.

The IP Box Regime in Malta is a tax incentive programme designed to encourage the development, acquisition, and exploitation of intellectual property assets. This attractive regime combined with other incentives and Malta's favourable business environment, makes it an appealing choice for businesses looking to establish their intellectual property rights and conduct research and development activities.

What Are the Advantages of the Malta IP Box Regime?

The reduced tax rate provides a competitive advantage, incentivising businesses to establish their IP rights in Malta and ensuring that a larger portion of their profits remains within their control. The tax advantages are explored in detail below.

This strategy enables companies to allocate resources towards further research, development, and innovation, ultimately leading to enhanced competitiveness and growth. In addition to this, the IP Box Regime promotes collaboration between academia and industry.

The Malta IP Box Regime attracts foreign direct investment (FDI) by offering an attractive tax environment for businesses involved in intellectual property-driven sectors. This influx of FDI stimulates economic growth, creates job opportunities, and expands Malta's knowledge-based economy. In addition, the regime enhances Malta's reputation as an innovative and business-friendly jurisdiction, which can further attract foreign companies seeking to establish a European presence.

What is Qualifying IP?

In terms of the Maltese Rules, qualifying IP includes:

- a) Patents that have been issued or are in the process of being applied for.

- b) Assets in respect of which protection rights are granted in terms of national or international legislation. This includes rights relating to plant and genetic material, plant or crop protection products and orphan drug designations; or utility models; or software protected by copyright under national or international legislation.

- c) In the case of a small entity (defined in the Rules), other intellectual property assets that are 'non-obvious', useful, novel and have features similar to those of patents, and as are certified as such by Malta Enterprise.

Marketing-related intellectual property assets such as; brands, trademarks and trade names do not constitute qualifying IP.

What are the Conditions to Claim a Deduction?

The definition relates to, activities that must be carried out by the beneficiary:

'The research, planning, processing, experimenting, testing, devising, designing, development or similar activities leading to the creation, development, improvement or protection of the qualifying IP.'

Further criteria relating to the 'beneficiary', include:

1. functions performed by employees of other enterprises, provided that such employees are acting under the specific directions of the beneficiary in a manner equivalent to its employees;

2. functions carried out through a permanent establishment situated in a jurisdiction other than the jurisdiction of residence of the beneficiary, where such permanent establishment derives income which is subject to tax in the jurisdiction of residence.
3. The beneficiary is required to be the qualifying IP's owner or the holder of an exclusive license in respect of the qualifying IP;
4. The qualifying IP is granted legal protection in at least one jurisdiction;
5. The beneficiary maintains sufficient substance in terms of physical presence, personnel, assets or other relevant indicators in the relevant jurisdiction in respect of the qualifying IP.

What is the Patent Box Regime Deduction

The patent box deduction is calculated as follows:

$$95\% \times \frac{\text{Qualifying IP Expenditure} \times \text{Income or Gains derived from qualifying IP}}{\text{Total IP Expenditure}}$$

The resultant figure is the amount that is deductible from the gross income of the company, that created and developed the IP in Malta, thereby reducing the income that is taxable.

Qualifying IP Expenditure is established at the time when incurred, and consists of the following:

- a) Expenditure incurred directly by the beneficiary for, or in the creation, development, improvement or protection of the qualifying IP;
- b) Expenditure incurred by the beneficiary for activities related to the creation, development, improvement and protection of the qualifying IP, subcontracted to persons which are not related to the beneficiary; and
- c) Where other expenditure not falling within (a) and (b) above has been incurred, that expenditure may also be included as part of Qualifying IP Expenditure, however the amount of this expenditure is capped at 30% of the amounts referred to in (a) and (b) above.

Total IP Expenditure comprises expenditure directly incurred in the; acquisition, creation, development, improvement or protection of the qualifying IP, being the sum of:

- All expenditure actually incurred by the beneficiary and constituting qualifying IP expenditure and any other expenditure incurred by any other person which would constitute qualifying IP expenditure had it been incurred by the beneficiary;

and

- Acquisition costs and expenditure for outsourcing activities made to related parties.

Summary

The IP Box Regime in Malta serves as an effective tool to attract investment, promote innovation, and strengthen the country's economy. By providing a favourable tax environment for businesses involved in intellectual property, Malta has positioned itself as an attractive destination for companies seeking to harness the potential of their intellectual assets.

Dixcart Malta has a wealth of experience across financial services, offering legal and regulatory compliance insight. Our team of qualified Accountants and Lawyers are available to set up and manage the structure as well as ensuring overall efficiency.

Additional Information

For further information about the Malta matters please contact Jonathan Vassallo, at the Dixcart office in Malta: advice.malta@dixcart.com.