

Malta's New Patent Box Regime

Malta published new Patent Box Regime (Deduction) Rules in August 2019.

By **Jonathan Vassallo**, 19th September 2019

Malta published new Patent Box Regime (Deduction) Rules in August 2019. The rules apply to relevant income derived from qualifying intellectual property (qualifying "IP") as from 1 January 2019.

Qualifying Intellectual Property

Qualifying IP is defined as:

- a patent or patents, whether issued or applied for (if applied for it assumes the patent is granted);
- assets for which protection rights have been granted in relation to national, European or international legislation;
- utility models;
- software, protected by copyright, under national or international legislation;
- in relation to small entities, other IP assets defined as being, 'useful, novel and having features similar to those of patents'. Malta Enterprise will define and confirm this category by issuing certificates as appropriate

Marketing related intellectual property assets including; brands, trademarks
tradenames do not constitute qualifying IP.

Conditions

Detailed information regarding the conditions, to claim the deduction, are available from the Dixcart office in Malta.

Deduction Calculation

The Patent Box Regime deduction is calculated using the following formula:

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

The *income or gains derived from qualifying IP* include:

- taxable income which is derived from the use, enjoyment and employment of the qualifying IP;
- royalty or similar income;
- advances and similar income derived from the qualifying IP;
- any sum paid for the granting of a licence in relation to the qualifying IP;
- compensation for infringements in respect of qualifying IP;
- gains on disposal of qualifying IP.

The determination of qualifying income or gains must always be made using an appropriate Transfer Pricing method.

The costs taken into account when calculating Qualifying IP Expenditure consist of:

- expenditure incurred directly and/or relevant subcontracting costs; and
- other equivalent expenditure but excluding; interest payments, building costs, acquisition costs and/or any costs that cannot be directly linked to a specific qualifying IP asset.

Expenditure for general and speculative R&D which cannot be included in the qualifying IP expenditure of a specific qualifying IP asset can be divided pro rata across all of the qualifying IP assets.

Total IP Expenditure

Qualifying IP Expenditure can never exceed Total IP Expenditure.

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

- relevant expenditure incurred by the beneficiary and constituting qualifying IP expenditure and other expenditure incurred by another person which would constitute qualifying IP expenditure had it been incurred by the beneficiary; and
- acquisition costs and expenditure for outsourcing activities.

Losses from Qualifying IP

If the beneficiary incurs a loss in respect of the qualifying IP which he is entitled to set against income or gains he can elect to benefit from one of the following:

- a deduction corresponding to 5% of the loss; **or**

- a deduction corresponding to the full amount of the loss subject to:
 - the beneficiary not being entitled to claim the tax treatment for any subsequent year of assessment; **and**
 - in any subsequent year of assessment, any such loss being deducted from the “Income or Gains derived from qualifying IP” until such losses are fully utilised.

Additional Information

If you would like any further information on this subject, please contact the Dixcart office in Malta: advice.malta@dixcart.com or your usual Dixcart contact.