Cyprus amends its IP regime

31 December 2015 - **The Cyprus Ministry of Finance announced yesterday an amendment to the island's Intellectual Property (IP) tax regime.**

The amendment should be finalised and enforced by mid-2016 at the latest.

The said amendment will include OECD's recommendations of Action 5 'Agreement on Modified Nexus Approach for IP Regimes' as well as the Conclusions of the ECOFIN Council adopted on 8 December 2015.

Action 5 deals with preferential IP tax regimes. The approach of the Action 5 (i.e. the modified nexus approach) requires the existence of material activity which includes the clear interconnection between the rights which create the income and the activity which contributes to that income.

One parameter of Action 5 is that there should be no new entrants to the existing IP tax regime after the date that a new regime consistent with the modified nexus approach takes effect, and no later than 30 June 2016.

'New entrants' include both new taxpayers not previously benefiting from the regime and new IP assets owned by taxpayers already benefiting from the regime.

It is further understood that new entrants are expected to be only those that fully meet all substantive requirements of the regime and have been officially approved by the tax authorities, if required. New entrants therefore do not include taxpayers that have only applied for the regime. It is expected that a Circular will be issued by the Commissioner of Taxation on the subject matter clarifying any grey areas.

Also some grandfathering rules, a grace period of sorts, are likely to be introduced as well. Under such rules, all taxpayers benefiting from the existing IP tax regime may keep such entitlement until the "abolition date" which is expected to be 30 June 2021. After that date, no more benefits stemming from the respective old regimes may be given to taxpayers.

Guidance on the definition of qualifying IP assets is also probable to be included either in the amendment provisions of the tax law or the Circular expected to be issued by the Commissioner of Taxation. Under the modified nexus approach the only IP assets that could qualify for benefits under an IP regime are patents and functionally equivalent IP assets that are legally protected and subject to approval and registration processes, where such processes are relevant. The modified nexus approach explicitly excludes from receiving tax benefits marketing-related IP assets such as trademarks.

As soon as the amendment is finalised, a more detailed Tax Update will be issued.

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