

KEY FACTS

PATENT BOX REGIME

THE PATENT BOX REGIME IS A TAX INCENTIVE INTRODUCED IN 2019 TO ENCOURAGE INNOVATION IN MALTA. THE REGIME BROADLY OFFERS AN ADDITIONAL DEDUCTION IN CALCULATING TAXABLE PROFITS, WITH THE EFFECT THAT THE RELEVANT INTELLECTUAL PROPERTY (IP) PROFITS ARE POTENTIALLY TAXED AT AN EFFECTIVE CORPORATE TAX RATE OF 1.75%.

In accordance with the following formula provided for in Patent Box Regime (Deduction) Rules, 2019, the beneficiary could take a 95% deduction on the income generated from the Qualifying IP:

$$95\% \times \left(\frac{\text{Qualifying IP Expenditure}}{\text{Total IP Expenditure}} \times \text{Income or Gains Derived from Qualifying IP} \right)$$

QUALIFYING IP

"Qualifying IP" means:

- > A patent or patents, whether issued or applied for, or where the issue of the patent is still pending and extensions of patent protection, so however that in the case of a patent which has been applied for and is pending, but where the application is eventually rejected, such patent shall cease to constitute qualifying IP; or
- > Any of the following:
 - > assets in respect of which protection rights are granted in terms of national, European or international legislation, including those relating to plants and genetic material and plant or crop protection products and orphan drug designations; or
 - > utility models; or
 - > software protected by copyright under national or international legislation;
- > In respect of a small entity, other intellectual property assets as are non-obvious, useful, novel and having features similar to those of patents, to the satisfaction of Malta Enterprise ("the Corporation"), which shall determine this through a transparent certification process in terms of guidelines issued by the Corporation:

Provided that marketing-related intellectual property assets including brands, trademarks and tradenames shall not constitute qualifying IP.

TOTAL IP EXPENDITURE

The Total IP Expenditure shall be calculated as the Qualifying IP Expenditure (before including any uplift as provided by Rule 5 of the Rules) actually incurred in the development of the qualifying IP. That is, the Total IP Expenditure shall also include any Qualifying Expenditure subcontracted to or acquired from a related company and the acquisition costs of IP assets acquired from third parties required to develop the Qualifying IP asset.

TRIDENT CORPORATE SERVICES (MALTA) LIMITED IS AUTHORISED BY THE MALTA FINANCIAL SERVICES AUTHORITY TO ACT AS A COMPANY SERVICES PROVIDER IN TERMS OF THE COMPANY SERVICE PROVIDERS ACT, 2013.] TRIDENT TRUST COMPANY (MALTA) LIMITED IS AUTHORISED BY THE MALTA FINANCIAL SERVICES AUTHORITY TO ACT AS A TRUSTEE AND TO PROVIDE OTHER FIDUCIARY SERVICES IN TERMS OF THE TRUSTS AND TRUSTEES ACT. THE COMPANY ALSO PROVIDES THE BUSINESS OF COMPANY SERVICE PROVIDER IN TERMS OF THE COMPANY SERVICE PROVIDERS (EXEMPTION) REGULATIONS S.L. 529.02.

DETERMINATION OF ELIGIBILITY

Taxpayers wishing to benefit from the provisions of the Patent Box rules must request a determination from the Corporation. The request must be made on the appropriate application form and must include documentation confirming the research activity carried out by the applicant and the Qualifying IP Expenditure being claimed. The Corporation may request such further information, clarifications and documentation as it may deem fit, in order to carry out and finalise its determination.

On determining eligibility, the Corporation shall issue a Certificate confirming the eligibility of the IP and the Qualifying Expenditure. The Certificate shall have a validity of not more than five (5) years (which may be extended in case of IP with a longer protection period) but in no instance shall it extend beyond the protection period of the IP.

HOW WE CAN HELP

For more information, please contact Albert Cilia, Managing Director of our Malta office, at acilia@tridenttrust.com, or either of our Trustee and Corporate Services Directors, Josianne Cascun Montebello at jcascunmontebello@tridenttrust.com or Janice Copperstone at jcopperstone@tridenttrust.com.

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