Italy’s new Patent Box regime – additional flexibility

February 18, 2015

In brief

As outlined in the Tax Insight dated December 2, 2014, Italy has introduced a Patent Box regime based on the “nexus approach” set out by the Organisation for Economic Co-operation and Development (OECD). Only a month after the Italian Parliament approved the 2015 Finance Act (Law no 190 of December 23, 2014), which enacted the Italian Patent Box regime, the Italian Government has extended its scope through a Law Decree “Investment Compact”, which is due to be converted into law within 60 days of its publication in the Official Gazette on January 24, 2015.

The Investment Compact extends benefits of the Patent Box to trademarks, removing the stipulation that they have to be “functionally equivalent to patents” although maintaining the requirement that the Patent Box applies to research and development (R&D) activities/costs. It reduces the number of instances in which it is necessary to obtain an Advance Pricing Agreement (APA) in order to take advantage of the regime, which previously was obligatory in all cases. In addition, it extends the situations where Italian taxpayers that do not perform R&D themselves or through universities are able to benefit from the regime.

These factors make the regime more attractive, although it is still necessary to await the Regulations which are expected to provide a definition of total qualifying expenditure to understand exactly how the provisions will apply.

The regime entered into force on January 1, 2015 and grants an exemption for Corporate and Regional Tax purposes in respect of income sourced from specified intangible assets. It is being phased in during 2015 and 2016, reaching the final target exemption percentage of 50% by 2017.

In detail


As described in the original Tax Insight, dated December 2, 2014, the Italian Patent Box regime is available to both Italian and foreign taxpayers. Foreign taxpayers need to meet certain conditions; including residence in states that both have a double tax agreement with Italy and undertake an effective exchange of information. An election for the Patent Box regime lasts for five fiscal years, cannot be revoked once made and can be used in conjunction with other special Italian tax regimes.

The regime allows a taxpayer to exclude from its tax base, for both Corporation Tax (IRES) and Regional Tax (IRAP) purposes, a percentage of the
income derived from the relevant intellectual property. The regime ultimately looks to exclude 50% of relevant income, although in the 2015 and 2016 fiscal years the exemption is limited to 30% and 40% respectively.

**Changes in assets to which the exemption can be applied**

Whilst the 2015 Finance Act included trademarks among the assets to which the exemption could be applied, provided they were “functionally equivalent to patents”, the Investment Compact removes this limitation. However, where trademarks are largely dependent on activities other than R&D it remains to be seen the extent to which they will benefit; for example through the proportion of R&D expenditure allowed in the formula implementing the nexus approach. Other than this, the assets remain as defined in the 2015 Finance Act and discussed in the earlier Tax Insight.

**Income types for which the exemption is available**

No change has been made to the income types covered by the exemption, which include:

- third party or intercompany royalties received in respect of the relevant intellectual property;
- an appropriate element of profit deriving from business activities where the intellectual property is used in producing goods or services for sale; and
- gains arising on the transfer of ownership of relevant intellectual property, with a more generous exemption of 100% available where 90% or more of the proceeds are re-invested in similar assets. The normal exemption of 50% may apply where the reinvestment provision is not met, although it is necessary to await the Regulations to determine whether this will be the case.

**Changes in the requirement to enter into an APA**

In the Finance Act it was obligatory to enter into an APA in order to access the regime, where the taxpayer directly used intangibles in the production of goods or provision of services, or where the intangible is licensed or sold to related parties.

The Investment Compact makes the requirement to enter into an APA optional for intercompany royalties and probably also for intra-group transfers of ownership. However, an APA remains mandatory where exemption is sought for a portion of the profit from the sale of goods incorporating R&D.

**“Nexus approach” and changes in the qualifying expenditure formula**

No change has been made to the general stipulation that the income eligible to benefit from the exemption is to be determined by applying the ratio of qualifying expenditure over total expenditure incurred to develop the assets.

The Finance Act defined qualifying expenditure as R&D expenditure related to the asset and incurred by the taxpayer or by universities. Based on the Investment Compact, R&D commissioned from third parties can now be included. In addition, expenditure by group companies can also be taken into account, subject to a limit of 30% of the total expenditure incurred by the taxpayer, universities and third parties in relation to the development and maintenance of the asset.

**Further information**

Further administrative regulations from the Italian Revenue Agency are still awaited to provide more detail on implementation practice.

**The takeaway**

The original provisions reflect the Italian Government’s desire to make the Italian tax environment friendlier to technological developments and the local ownership of intangibles, whilst recognising the impact the OECD’s BEPS initiative is already having in the formulation of individual country rules. The changes implemented by the Investment Compact demonstrate an early willingness to make the rules more user friendly.

The full regime should be in place by 2017 with more limited exemptions in 2015 and 2016.
Let’s talk

For more information, please contact your regular PwC contact or one of the individuals listed below:

Transfer Pricing

Alessandro Caridi, Milan
+ 39 02 9160 5003
alessandro.caridi@it.pwc.com
Paolo F. Tripoli, Milan
+39 02 9160 5517
paolo.francesco.tripoli@it.pwc.com
Ugo Cannavale, Milan
+39 02 9160 5503
ugo.cannavale@it.pwc.com

Luigi Mira, Milan
+ 39 02 9160 5512
luigi.mira@it.pwc.com

Transfer Pricing Global and US Leaders

Isabel Verlinden, Brussels
Global Transfer Pricing Leader
+32 2 710 44 22
isabel.verlinden@pwc.be
Horacio Peña, New York
US Transfer Pricing Leader
+1 646 471 1957
horacio.pena@us.pwc.com

Stay current and connected. Our timely news insights, periodicals, thought leadership, and webcasts help you anticipate and adapt in today’s evolving business environment. Subscribe or manage your subscriptions at:
pwc.com/us/subscriptions

© 2015 PricewaterhouseCoopers LLP, a Delaware limited liability partnership. All rights reserved. PwC refers to the United States member firm, and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see www.pwc.com/structure for further details.

SOLICITATION
This content is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.