

Hungary becoming a new centre of international IP investments

As a result of the latest amendments to the local tax laws Hungary will become one of the top IP-holding locations within the European Union. Beside the existing tax benefits relating to the utilisation of IP rights, as from 1 January 2012 the tax exemption of the 'reported IP' has been introduced. With this new tax benefit Hungary can become an important, internationally recognized location for IP developments and distribution.

Hungary has been an attractive location for IP investment and distribution structures since years. As opposed to the comparably high tax burden of the surrounding countries, in Hungary the tax rate on the profit realised from the utilisation of different types of IP rights (i.e. patent, trademark, IP protected by industrial property rights, know how, etc.) can be decreased to 5%. Furthermore, due to the double tax treaties Hungary has concluded with numerous countries, it is ensured that no (or only limited) withholding tax is levied on cross-border royalties received by a Hungarian entity. For instance, Hungary has concluded double tax treaties with several countries in the Far East with no withholding tax (e.g. Korea) or with limited withholding tax (e.g. Hong Kong).

The introduction of the reported IP rules in January this year has further increased the tax benefits by allowing a favourable tax treatment to the development of IP assets in Hungary. According to the new rules the IP acquired or developed by a Hungarian entity after 1 January 2012 can



later be sold tax-free, provided that the taxpayer acquiring the IP has reported the acquisition to the tax authority within 60 days and the sale is completed after the elapse of a one-year holding period.

The act has also introduced rules for the case the taxpayer did not or could not make use of the reported IP tax benefit. In such cases, if the taxpayer decides to use the proceeds of the IP sale to acquire another IP within a 3-year period then the profit of the original IP sale becomes exempt from corporate income tax. Upon the acquisition of such new IP the taxpayer will have the choice to apply the rules of the reported IP rules – i.e. the later sale of such IP will be exempt from corporate tax. This possibility can give a solution to the cases when the IP was acquired before 1 January 2012 or, otherwise, the taxpayer has failed to apply for the reported IP tax benefit.

The new rules make Hungary an ideal location for such IP structures where the creation or value increasing development of the IP is realised in a project company while the utilisation of the IP is carried out by other group companies. In such case, if the IP is developed in Hungary then, subsequently, it can be transferred at a high value to the distribution companies without tax payment obligation, while the distribution companies, due to the high capitalised value of the IP, can account for a significant amortisation deductible against their profits realised on the utilisation of the IP. As it appears, a tax-free 'step-up in

basis' can be achieved by the simple insertion of a Hungarian project company into the structure.

As it can be highlighted from the above example, the rules introduced at the beginning of the year provide an extremely flexible framework for building up IP structures

in Hungary. With appropriate planning both the development as well as the utilisation of the IP rights can be carried out at the level of a Hungarian company, with a minimum tax burden. As a result, it is foreseen that Hungary will become the centre of several international IP investment and distribution structures in the near future.