

“Cyprus evolving into a leading IP location”

1. Preface

The principle of property rights is a cornerstone of a free society. The right to property is the recognition that an individual has ownership over that property, and may use it as he wishes, and that nobody else can lawfully use it without his authorisation.

Intellectual property “IP” refers mainly to the legal rights which result from the creativity of people: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce.

The rights granted under national laws allow people to own their creativity and innovation in the same way that they can own any other kind of physical property. The owner of IP related work may use the work as he wishes, and may prevent others from using it without his authorisation.

Generally speaking, intellectual property law aims at safeguarding creators and other producers of intellectual goods and services by granting them certain time-limited rights to control the use made of those productions.

2. Why Cyprus

Cyprus is a long established and reputable international financial centre. It has gained this enviable position through its attractive tax system, transparent legal system, world-class professional and banking services and superior global telecommunications capabilities. Cyprus’s accession to the EU on 1 May 2004 and the adoption of the Euro on 1 January 2008 has come to add to the country’s impressive advantages.

Cyprus has been developing the area of IP law along with the rest of the world so as to protect local as well as international IP rights. It is a member and signatory to a number of treaties and furthermore the IP Law in Cyprus has been recently amended and is now in full compliance with the *acquis communautaire*, and international IP laws.

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3. IP Protection in Cyprus

The protection of IP rights is dealt extensively in Cyprus. There is a comprehensive system in place that guarantees that the results of innovation and creativity are protected at a European and an International level.

Patents

As far as patents are concerned, a new invention is protected in the following ways in Cyprus:

- A national patent certificate is granted by the Department of Registrar of Companies and Official Receiver.
- A European Patent issued by the European Patent Office.
- An International Patent under the provisions of the Patent Cooperation Treaty, administered by the World Intellectual Property Organization (WIPO).

Trade marks / Industrial Designs

As far as Trademarks and Industrial Designs are concerned, protection is granted in the following ways:

Registration under the provisions Capital 268 offering protection at a National level.

- EU Regulation 207/2009 of 26 February 2009 on the Community Trademark and EU Regulation 6/2002 of 12 December 2001 on the Community Design offer via Cyprus uniform protection throughout the territory of the European Union.
- Cyprus being a signatory to the Paris Treaty on the Protection of Industrial Property, as administered by the World Intellectual Property Organization (WIPO) and a party to the Madrid Protocol, offers global protection of trademarks, service marks and designs.

Copyrights

Copyrights are protected under Law N.59/76 on the Protection of Intellectual Property which offers protection at a National level.

Cyprus being a signatory to the Bern Convention for the Protection of Literary and Artistic Works which covers broad range of rights, including software copyrights. This guarantees protection to all the Convention member states with no further process being required.

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4. The New IP Tax Regime

Main Condition

The IP property has been acquired or has been developed by the Cyprus resident company, post 1st of January 2012.

Cyprus company is not the owner of the IP

Royalties received by a Cyprus resident company that is granting licenses to overseas licensees are taxed at the standard corporate income tax rate of 10% after deducting the following expenses:

- Royalties paid to overseas licensors
- Deduction of all expenses wholly and exclusively incurred for the production of income

Based on our experience with the tax office department in Cyprus the below margins are acceptable profit margins by the Cyprus tax authorities.

Royalties Received	Margin
In excess of €5.000.000	1.25%
Below €5.000.000	2.50%

Practical Example

A Cyprus tax resident company acts as an intermediary Royalty company to a BVI company.

It derives royalty income amounting to Euro10.000.000. In accordance with acceptable tax practice a margin of 1,25% should remain as profit margin in the Cyprus company. Thus the Cyprus company will pay Royalties to the BVI company equal to 98,75% of gross royalty income received.

During the year the Cyprus company has also incurred and other expenses of Euro25.000.

Royalties Received	10.000.000
Royalties Paid	(9.875.000)
Other expenses	<u>(25.000)</u>
Net Profit	100.000
Tax @ 10%	10.000

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Cyprus company is the owner of the IP

Royalties received by a Cyprus resident company that is granting licenses to overseas licensees are taxed at the standard corporate income tax rate of 10% after deducting the following expenses:

- General deduction of 80% on Net Royalties received (Gross Royalties minus direct expenses)
- The Cost of purchase (if any) or development of the IP, can be amortised over 5 years (20% on cost of purchase will be shown as an expense in the Income Statement of the Company).
- Deduction of all expenses wholly and exclusively incurred for the production of income.

Effective tax rate of less than 2%.

Practical Example

A Cyprus tax resident company derives royalty income amounting to Euro10.000.000.

During the year the Cyprus company has also incurred and directly related expenses of Euro200.000. as well and other general expenses of Euro60.000.

Royalties Received	10.000.000
Direct Expenses	<u>(200.000)</u>
Net Income	9.800.000
80% Exemption	<u>(7.840.000)</u>
Gross Taxable Income	1.960.000
Other expenses	<u>60.000</u>
Net Taxable Income	1.900.000
Tax @ 10%	190.000

Effective tax rate 1,9%

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Cyprus company is the owner of the IP

Tax treatment on the assignment of Royalties

In general, any gains realised by a Cyprus resident company, upon the transfer/assignment of Intellectual Property are taxable to 10% income tax after deducting the following expenses.

- General deduction of 80% on the Net Sale Price (Gross sale price less – Cost of purchase). Any amortization claimed is added back.
- Deduction of all expenses wholly and exclusively incurred for the production of income

Practical Example

A Cyprus tax resident company disposes of an IP for a total sale price of Euro10.000.000.

The cost of purchase of the aforementioned IP was Euro5.000.000.

The Cyprus company had claimed amortization for two years.

Sale Proceeds	10.000.000
Less: Acquisition Cost	<u>(5.000.000)</u>
	5.000.000
Add back: Amortisation	<u>2.000.000</u>
	7.000.000
80% Exemption	<u>(5.600.000)</u>
Taxable Income	1.400.000
Tax @ 10%	140.000

Effective tax rate 1,4%

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5. Other tax benefits

No withholding tax on Royalties Paid

A Cyprus resident company that receives income derived from sources outside Cyprus, shall not apply any withholding tax on payments to overseas licensors.

Controlled Foreign Companies (CFC) Rules

Cyprus does not have in its legislation CFC rules and as a result, no income can be appropriated to a Cyprus parent company even if the income arises in a tax haven company.

Thin Capitalisation

Most of the European countries, with some exceptions (such as Austria and Ireland), have thin capitalisation rules, such as rules imposing minimum debt to equity ratio requirements.

Under these rules, if a company is thinly capitalised, part of the interest deduction may be disallowed and treated as a dividend distribution.

Cyprus tax legislation does not contain thin capitalisation provisions.

Loss Relief

When a loss is not wholly set-off against income from other sources in the same year, it can be carried forward and set-off against future profits of the company.

The loss is automatically set-off against the first available profits of the company. There is no time limit for claiming a loss relief and losses can only be carried forward.

Tax treatment of outward dividends

Outward dividends paid by a Cyprus company to its ultimate parent company do not suffer any withholding tax in Cyprus.

The exemption applies to dividend payments made to both resident and non-resident companies, irrespective of the country of residency of the parent company, whether it is resident in a EU country or not.

Outward dividends paid by a Cyprus company to individuals non-resident in Cyprus also do not suffer any withholding tax in Cyprus.

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