

ITALY IMPLEMENTS ITS PATENT (IP) BOX

*The **Patent Box**, established with the Legge di Stabilità 2015 (Law December 23, 2014 n. 190) is a irrevocable and optional regime of detaxation, of quinquennial duration (starting from January 1, 2015), concerning the incomes deriving from the direct or indirect exploitation as well as from the license of the intangibles. The current text of the Italian Patent Box, for its substantial and subjective extent, represents an unicum in the European and, probably, the worldwide landscape.*

THE IP SUBJECT MATTER

Tax savings apply to the company incomes deriving from:

- **Software protectable as copyright;**
- **Patents and SPCs;**
- **Topography and semi-conductors;**
- **New Plant Varieties;**
- **Utility models;**
- **Designs;**
- **Know-how;**
- **Trademark applications and registrations.**

Exclusions.

The Patent Box tax savings shall not apply to de-facto trademarks and data bases.

BENEFICIARIES

The detaxation granted by the Patent Box will apply to any company incomes provided that R&D activities are performed. This definition of R&D is crucial and includes: fundamental and applied research, formulation and creation of software, trademarks and design, promotion of the trademarks, as well as legal and counselling activities for the valorisation and protection of the admitted intangibles (priority searches, marketing analysis, anti-counterfeiting technologies, filing and prosecution expenses, etc.).

All the above, regardless of the title of exploitation of the intangibles, such as ownership or license, as well as of the nationality of the requesting party, it being admitted to tax rebates both for Italian and foreign companies, on condition that a permanent establishment exists in Italy. In this case, the intangibles must be included in the assets of the permanent establishment.

Exclusions.

Tax savings shall not apply to:

- revenues of inventors;
- simple partnerships;
- companies subject to liquidation or bankruptcy.

HOW IT WORKS

The Patent Box excludes from the taxable base the 50% for the incomes coming from:

- **direct exploitation,**

- **licensing;**
- **assignment.**

In case of direct exploitation, a *ruling* procedure with the Tax Authorities will be compulsory.

Both for direct and indirect exploitation, the tax reduction rate must be multiplied by a certain “alfa” factor and then by the percentage of applicable rebate; the “alfa” factor is, in its turn, determined on the basis of the function between R&S qualified costs and overall costs of the product; in case of assignment, the incomes are fully detaxable, on condition that the 90% of the revenues is re-allocated in R&D for the maintenance or the development of existing or new intangibles, to be carried out no later than the end of the second tax period subsequent to that in which the assignment was made. The expenses for acquisition of new intangibles are not considered as qualified re-allocations.

The Tax saving has been construed on a progressive scheme, according to which in the fiscal year 2015 the rebate shall be 30%, in fiscal year 2016 40%, until 50% starting from fiscal year 2017.

It is likely that starting from the next *Legge di Stabilità*, Italian legislation shall comply with the guidelines and recommendations set forth by OECD in the “*Action Plan on Base Erosion and Profit Shifting*” and in “*Action 5 on Modified Nexus approach for IP regimes*”, by excluding, or limiting, the savings for Trademarks and Know How. Thus, in connection with Trademarks and Know How, it is advisable to opt for Patent Box no later than 30 June 2016, in order to be admitted to the tax savings for the first five years-period (i.e up to 2021).

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