

The Advantages of Switzerland as an IP Management Location

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In 2011, the Swiss Canton of Nidwalden introduced its «License Box», an attractive tax regime for IP (Intellectual Property) companies with a reduced tax rate for license income. After two years of positive experience, it may be considered the most liberal and advantageous among comparable systems within the European countries.

Switzerland as location for innovation companies

Switzerland is not only one of the world's leading financial centres, but also provides an outstanding environment for innovation. Beside Switzerland's stable political situation and currency, its geographic location in the heart of Europe and high education level, Switzerland's highly competitive tax system is a relevant key factor. With the introduction of the «License Box» system in 2011, the Canton of Nidwalden further reduced the tax burden for IP companies on net license income: The income tax rate on net license income derived from the use of intellectual property is only 8.8%.

Concept of the License Box

The IP tax regime allows a legal entity with a statutory domicile in the Canton of Nidwalden to operate a separate division, the «License Box», as part of its regular commercial operations. All IP and research and development (R&D) related activities, in particular related license incomes, are attributed to the «License Box» within the company. Income generated by the «License Box» is subject to the reduced tax rate.

Consequently, the «License Box» system allows a company to conduct any kind of operational business activities (i.e. employ personnel, conduct trade, R&D, manage or actively use IP rights) and in the meantime profit from a reduced tax rate with regard to license incomes. Thus, there are no selective criteria an entity must fulfil in order to get access to favourable tax conditions regarding its licensing income.

The «License Box» reduces the tax rate for license incomes by 80%, i.e. to a cantonal income tax of 1.2%. Together with the federal tax, the combined effective statutory tax rate for license income amounts to 8.8%.

Broad range of privileged IP Rights

The definition of license income is based on the OECD Model Convention and includes any payments received as a consideration for the use of or the right to use the following IPR (IP rights):

copyrights of literary, artistic or scientific work including cinematograph films,

patents

trademarks

designs or models

know-how

Further advantages of the system

Next to the adoption of the widest definition of license income available within Europe, the following advantages apply:

Profits from IPR registered in third countries (e.g. U.S. patents) are also eligible for the relief.

The reduced tax rate applies to income derived from IPR that have been developed before and after the introduction of the tax regime.

Swiss company must not have been involved in the development of the IPR

Applies to license incomes that have been generated through licensees situated in Switzerland as well as abroad.

Expenses in connection with R&D and the license fees may be deducted from the license income (e.g. development costs, administrative costs, depreciation).

Tax provisions may be made for future R&D investments.

Who should consider a License Box in Switzerland?

Taking into account the positive tax effect, nearly all companies having income from any form of IPR should consider a «License Box» in Switzerland. Usually, and if there is no prior Swiss presence of a company, a turnover from IP of around USD 1'000'000 p.a. is recommended to make the establishment of a Swiss «License Box» profitable. The setup and recurring costs are limited and can be agreed upfront with an appropriate service provider. These services normally include establishing and registration of the company, accounting, group reporting and tax filings as well as providing a board member or director. Depending on the specific group requirements and the size of the company (i.e. total assets, turnover) the IP Company may even abstain from being audited. The music and pharmaceutical industry were among the first to establish «License Boxes» in the Canton of Nidwalden. Other industries followed and will follow. Keeping in mind that no local context is required, «License Boxes» are an alternative for many international companies having taxable income from IPR, even if it is generated within a group.

Conclusion

The «License Box» of the Canton of Nidwalden is, taking into consideration all relevant factors, likely to be the most advantageous among the comparable systems of other European jurisdictions:

The reduced tax rate applies to a broad catalogue of IPR, and in particular, includes profits generated from know-how and trade secrets

There is no need to register additional IP in order to profit from the relief.

The tax relief also applies to license incomes gained from IPR prior to their grant. (This is of particular importance for companies operating in fast-moving markets where a technology may become outdated even before a patent registration has been granted.)

The applicability of the regime is neither limited with regard to the source of the license payment nor to the developer of the IPR.

The reduced tax rate applies to income derived from IPR that have been developed before and after the introduction of the tax regime, and irrespective from where the IPR is granted.

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MME Partners is an innovative business law firm with offices in the two Swiss economic centers Zurich and Zug. MME Partners' intellectual property (IP) team has broad experience in counseling clients and representing them in court and arbitration proceedings related to IP and competition law issues. We support our clients in protecting their developments, creations, trademarks and designs.

The IP team works closely together with our tax expert Dr. Samuel Bussmann who has extensive international experience in providing tax advice to national and international corporations and groups in the field of IP structures.

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