

# RUSSIA TAX OUTLOOK

#2, April 2009

## Are you innovative in managing your innovation?

Pursuant to the adoption of Part IV of the Russian Civil Code and Part II of the Russian Tax Code (Federal Law No.195-FZ dated 19 July 2007 regarding "*Creating Favorable Tax Conditions for Financing Innovation*"), significant amendments have been introduced in the Russian legislation.

As a result, tax incentives (for profits tax and VAT purposes) as well as a comprehensive codification of legislation on Intellectual Property (general provisions and special regulations for different types of intellectual property) are available to companies operating in the sphere of innovation and new technologies and managing Intellectual Property (IP) rights in Russia.

In light of the above-mentioned changes and within the context of the financial crisis, companies need more than ever to carefully analyze their IP rights portfolio from the operational, legal and tax perspectives in order to identify effective cost savings. In particular, companies must ensure they have the proper IP rights structure in place in order to maximize profits without increasing their exposure to potential tax and legal risks (e.g., economic justification of royalty expenses, recognition of deemed income, denial of VAT exemption for retail sales of software copies, justification of overall IP rights structures, etc.).

In order to initiate some thought on these matters, you may consider the **following FAQs**:

- Are you fully aware of the IP rights used as part of your business activities?
- Have you ever thought of amending the current contractual structures of your IP rights for tax and legal compliance and to achieve optimization as well as a reduction of paperwork?
- Does the current remuneration and operating structure of your IP rights take into account the specifics of your industry segment as well as the latest trends in the taxation of your industry (e.g. by integrating properly documented advertising, promotional and other costs)?

If you are uncertain, or see any opportunity for improvement of your existing structures, we would be pleased to meet you and discuss this further.

## CMS can offer you the following assistance:

- Audit of your current IP rights portfolio and IP rights management procedures: identification of IP rights used as part of your business activities, review of their protection status from a legal perspective, analysis of corresponding contractual arrangements from tax and legal perspectives;
- Advice on the choice of the most suitable and efficient forms of contractual arrangements for using IP rights (license and sub-license agreements, contract for alienation of rights, franchise agreements, etc.) depending on your business structure, operational constraints and industry specifics;
- Draft and/or review IP rights agreements and register them with the relevant state bodies;
- Audit of existing or planned R&D expenses (OPEX and CAPEX) in view of their tax optimization (cost reduction) from profits tax and VAT perspectives through proper structuring;
- Tax and legal planning of your current IP holding structure, or assistance in the design and implementation of new or revised IP structures;
- Transfer pricing analysis of existing or planned IP rights structures/transactions (royalties, know-how payments, franchise fees, etc.) and assistance in preparing a full set of supporting documentation;
- Review of customs implications arising from the cross-border transfer of IP rights (optimization, valuation, documentation, etc.).

If you have any questions on the matters referred to in our RUSSIA TAX OUTLOOK, please feel free to contact Dominique Tissot, Partner, or your regular contact person at CMS Russia

### **CMS, Russia**

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