

AS OF 1 JAN 2018 – NO MORE OPTIMISATION SCHEMES INVOLVING TRANSFERS OF TRADEMARKS OR CERTAIN OTHER INTANGIBLES

We have already brought you news (see our previous newsletters) of a cabinet-originated bill to amend the Corporate Income Tax Act.

Another major change taxpayers are in for as of 2018 is a radical cut down on tax optimisation schemes that use intangibles, such as trademarks, utility or industrial designs, copyrights or related rights, licenses, and know-how ("intangibles").

The new law would expand the range of non-deductible expenses to include:

- amortisation of intangibles which the taxpayer first purchased or developed, then sold and re-purchased again (Article 16(1)(64a));
- any fees or royalties for use, or right of use, of intangibles which the taxpayer first purchased or developed and then sold (Article 16(1)(73)).

→ to the extent such amortisation, fees or royalties are in excess of the proceeds of sale.

Accordingly, there will be a limit on the deductibility of this kind of expenses (amortisation, license fees, royalties) a taxpayer now incurs on intangibles the taxpayer has sold before, and the limit will equal the proceeds of the sale.

The new law is scheduled to become effective on 1 January 2018.

Importantly, in accordance with transitional provisions, **when using the limit, taxpayers are required to take into account also expense deductions made before 1 January 2018.**

Thus, businesses that sold some intangibles (e.g. a trademark) in the past and now continue to use them after re-purchase or under a license should:

- determine the historical amount of the proceeds of that sale, and
- determine the amount of amortisation, fees and royalties that they have deducted for tax purposes.

When these two amounts are compared, it may turn out that the limit has been exceeded already and the business will no longer be entitled to deduct those expenses for tax purposes as of 1 January 2018.

We will keep you up-to-date on the progress of this legislation.

If this issue pertains to your business and you are interested in our assistance, please contact your WTS&SAJA consultant or our office.

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