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Intangible rights under the OECD BEPS 8th action plan

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Introduction

The Organization for Economic Co-operation and Development (OECD) and G-20 member countries have set 15 action plans within the scope of "Base Erosion and Profit Transfer (BEPS)" in order to prevent tax losses caused by differences in local and international regulations. Action plans were first published as drafts in 2013 and opened to commentary from all over the world. They were finalized in October 2015 with arrangements based on the comments received.

The Action Plan 8 basically consists of the regulations on intangible rights. Within the context of Action Plan 8, section VI of Transfer Pricing Guide for Multinational Corporations and Tax Administrations published in 2010 (“OECD Guideline”) has been amended.

Intangible Rights

The latest arrangements according to OECD's BEPS Action Plan 8 are as follows;

- Intangible rights refer to assets that arise between unrelated entities that are not physical assets or financial assets and can be owned or controlled for use in commercial activities and are comparable in terms of use or transfer. Additionally, any distinction is not made in relation to intangible rights for commercial or marketing purposes, soft or hard, routine and non-routine intangible rights.
- It is mandatory to determine, through function analysis, which members are involved in developing, increasing value, ensuring sustainability, maintaining and exercising control over intangible rights, which members are providing the necessary funding and other assets, and which members are undertaking different risks.
- If comparable data are not available under the OECD BEPS Action Plan 8, valuation methods can be used to reach the arms length price of intangible rights transferred between related companies.

Valuation methods under BEPS Action Plan 8

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Revenue-based valuation methods, particularly will be the valuation methods, making the calculation of the estimated value of the estimated future incomes or cash flows from the exercise of valued intangible rights as basis.

Valuation of intangible rights under Corporate Tax General Communique series no.8

The regulations regarding the valuation of intangible rights in our country were enacted through the Article 5-B of the Corporate Tax Law and Corporate Tax General Communique series no.8.

The 50% of inventions arising as a result of research, development, innovation and software activities in Turkey carried out by corporate taxpayers is exempt from corporate tax as of 1/1/2015 if certain conditions are met.

As per the Corporate Tax General Communique series no.8, the taxpayers shall include all proceeds and income they received until the first day of the advance tax period comprising the date in which they applied to the Revenue Administration in the preliminary valuation report to be issued regarding their inventions patented or with a utility model certificate registered by TPI,

Valuation methods to be used for valuation report are;

- Cost based methods,
- Market methods,
- Revenue based methods.

Latest regulations on the valuation of intangible rights under the Corporate Tax General Communique series no.11

As per the Corporate Tax General Communique series no.11 published in the Official Gazette dated 31/12/2016, the exemption implementation is maintained, however articles regarding the preparation of valuation report and application of valuation methods have been removed from the text of the Communique.

As a result, the OECD BEPS 8th Action Plan introduced new regulations on the definition and valuation of intangible rights globally. In that context, new developments to be considered by OECD member countries on intangible rights have come out. We expect to see advancements in member countries regarding the valuation methods arising from the action plan.

With regard to the income obtained through intangible rights in Turkey, it's indicated in the legislation that 50% of these gains would be exempted from corporate tax provided that they meet certain conditions. However, as well as the exemption implementation is maintained through the Corporate Tax General Communique series no.11, articles regarding the preparation of valuation report and application of valuation methods have been removed from the text of the Communique.