

**Guideline**

of the Cantonal Tax Office Nidwalden of

17/01/2011

Validity:

from the 2016 tax period

**Taxation of Licence Income****1. Legal Bases****Art. 85 Tax Law (StG) Limited Companies and Cooperatives**

<sup>3</sup> For net licence income from the use of intellectual property, the corporate income tax amounts to 20 percent of the ordinary corporate income tax rate in accordance with Section 1. The Executive Council may define the intellectual property for which the licence income is subject to this tax rate.

**§ 57a Tax Ordinance (StV) Net Licence Income**

<sup>1</sup> A reduction of the corporate income tax rate for net licence income from the use of intellectual property is granted only upon request and provided that there is no self-use. Such a reduction excludes the possibility of taxation as a holding or management company. The person liable to taxation is responsible for providing evidence of licence income.

<sup>2</sup> The proportion of the profits on patents based on the research and development work of the taxable person amounts to licence income. Capital gains and income from the use of patents among affiliated companies also amount to licence income.

<sup>3</sup> Net licence income corresponds to licence income minus the proportionate financing costs, the administrative expense allocated and apportioned to revenue as well as the proportionate taxes. The Tax Office reserves the right to demand proof of the actual administrative expense. Financing costs are defined as interest on debts as well as other costs which in economic terms can be equated with interest on debts. In addition, directly attributable depreciation as well as licence payments to other companies (sublicensing) must be deducted.

**2. General Points**

2.1 The definition of income from qualifying intellectual property rights (IP) corresponds to the proposed (current) wording within the framework of Business Tax Reform III as well as international standards (OECD).

- 2.2 Only legal entities with a registered office or subsidiary in the Canton of Nidwalden can make use of the license box rules (IP box rules).
- 2.3 For tax assessment purposes, a breakdown of income and costs by segment/source ('Spartenrechnung') must be drawn up. This must be enclosed with the tax return.

### 3. Guideline

- 3.1 In line with inter-cantonal tax law and in order to avoid double taxation, a significant operational infrastructure (company-owned / company-occupied offices, qualified personnel etc.) must be located at the registered office or subsidiary of the legal entity. This infrastructure must be necessary for managing the company.
- 3.2 The legal entity must provide evidence of the licence income subject to taxation in accordance with Art 85 (3) of the Tax Law (StG) by means of the relevant licence agreement.
- 3.3 Payments for so-called milestones are recognised as licence income, if they can actually be assigned to a usable intellectual property or right at a later point in time.
- 3.4 The flat-rate tax credit for foreign licence income will be processed in accordance with Art. 5 of the Ordinance on Flat-Rate Tax Credits and in accordance with Item 6 of the Memorandum on Flat-Rate Tax Credits, if the applicable double taxation agreement provides for this arrangement. Alternatively, the maximum amount for federal tax and cantonal tax respectively will be calculated separately. In each case, the credit will be limited to the relevant maximum amount for federal and cantonal.
- 3.5 If at least 90% of the total gross income is licence income, and if the other gross income not derived from license income does not exceed CHF 50,000.00, a segment accounting statement can be dispensed with.

If licence income amounts to less than CHF 50,000.00, a simplified breakdown is sufficient. In that case, the financing costs, administrative expense and taxes can be deducted at a flat rate of 25%.

- 3.6 Taxes are paid on the overall profit at most. Expenditure surpluses from one segment/source are set off against income surpluses of the other. These recognised segment losses will be carried back to the relevant segments in subsequent years.

### Cantonal Tax Office Nidwalden