



INTELLECTUAL PROPERTY RIGHTS AND LUXEMBOURG HOLDING COMPANY

CONTACT :

Hance Law Avocats
3A Sentier de l'Espérance,
L-1474 Luxembourg
Tel: +352 274 404
luxembourg@hance-law.com

APPLICABLE INTELLECTUAL PROPERTY RIGHTS

DEFINITION

Luxembourg taxpayers owning Intellectual Property Rights (IP rights) may benefit from a special tax regime introduced in 2008. A company may benefit from a tax exemption of 80% on the net income derived from royalties for the use and/or exploitation of IP rights as well as a tax exemption of 80% on revenue derived from a sale or an alienation of IP rights in Luxembourg.

Therefore this regime adequately combines two objectives: it allows for a full deduction of all R&D expenses for projects that do generate any commercial results.

However, successful R&D projects are not penalized through excessive taxation once they are applied in real life.

LEGAL BASIS

The IP rights tax regime was introduced by the Law of 21 December, 2007, which introduced new provisions of Article 50bis §1 and 3 LIR. On March 5, 2009

Luxembourg tax authorities issued a Circulaire on the Luxembourg IP tax regime, which includes guidance on interpretation of the new provisions.

The tax regime applies to the following IP rights acquired by a Luxembourg company after January 1st, 2008:

- Copyrights on software;
- Domain name;
- Patents;
- Trademarks;
- Designs; and
- Models.

The following rights do not fall under the scope of the Luxembourg IP tax regime: copyrights of literary or artistic works, secret formulas and/or processes.

Expenses in direct economic connection with the IP must be recorded as an asset in the balance sheet during the first year for which the benefit of this tax regime is claimed.

An IP right may not have been acquired from a person that is assimilated to an "affiliated company". A company A is considered as affiliated to company B within the meaning of the law if:

- it directly holds at least 10% of the share capital of B; or
- B holds at least 10% of its share capital; or
- at least 10% of the share capital of A and of B is directly held by a third company.

ENTITIES THAT MAY BENEFIT FROM THE IP TAX REGIME

All Luxembourg taxpayers that derive income from the stated IP rights are entitled to claim the tax exemption. In addition, taxpayers that themselves develop and use IP rights (patent) are also entitled to claim the exemption.

Unlike other jurisdictions Luxembourg allows that economic ownership of IP rights is used to claim the tax exemption in addition to actual legal ownership.



CONTACT:

Hance Law Avocats
3A Sentier de l'Espérance,
L-1474 Luxembourg
Tel: +352 274 404
luxembourg@hance-law.com

TAX TREATMENT

An exemption of 80% is applied to net income derived from the use, exploitation and disposal of qualifying intellectual property rights. Net income is defined as gross royalty income decreased by any expenses in direct connection with the income.

Capital gains arising from the sale of IP rights benefit from the 80% exemption. However, expenses in direct economic connection with the IP right, which have reduced the tax base of the relevant tax year or of previous years, are recaptured up to 80% of the gain. Recaptured amount would therefore in practice be offset by loss carried forward.

If a taxpayer has created its own patent and uses this patent for the benefit of his/her own activity, he/she is entitled to a deduction of 80% of the net consideration, which a third party would have paid for a patent license under market conditions.

Positive net income is subject to a 80% exemption however negative net income remains fully tax deductible.

Due to the exemption effective tax rate never exceeds 5.72% and in most cases it will be even lower due to expenses and depreciation.

Losses can be carried forward without limitation in time and double taxation and withholding taxes can be effectively managed based on national laws and the double tax treaty network.

On top of that, in Luxembourg various incentives are available for investments in IP rights.

VALUATION OF IP RIGHTS

For transactions with related parties, generally accepted methods for valuation of IP may be used to ensure that arm's length principle is respected. Micro-, small- and medium-sized businesses (pursuant to Luxembourg size criteria) may use a valuation of 110% of the aggregate amount of expenses incurred to develop the IP right, in order to avoid expensive appraisals. When a taxpayer develops IP, its value corresponds to the sum of expenses incurred for its development, which have reduced the tax base for the relevant tax year or any previous year.

INVESTMENT INCENTIVES FOR INTELLECTUAL PROPERTY RIGHTS IN LUXEMBOURG

Luxembourg offers a full range of custom-made investment incentives designed to give new ventures a head-start and more particularly to foster R&D and innovation. Financial support may be granted for a funding of a specific investment and R&D projects in order to complement equity and bank financing.

