Flash News

February 2008

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Introduction of a partial tax exemption for IP rights

In order to position Luxembourg as an attractive centre for the holding and the management of IP, the Luxembourg government has introduced on 1 January 2008 a partial tax exemption of income and gains derived from IP. The regime is available to both individuals and companies.

IP income

The partial tax exemption is equal to 80% of the net income received in consideration for the use of or the right to use any software copyrights, patents, trade marks, designs or models. The net income corresponds to the gross royalty income reduced by the expenses in direct economic connection with this income, including yearly amortizations and write-downs.

In case a company has created a patent in-house and uses it for its own business purposes, a notional deduction equal to 80% of the remuneration it would have received from a third party (after deduction of expenses, write-downs and yearly amortizations) is available.

The partial exemption applies with regards to corporate income tax and municipal business tax, leading to an effective tax rate of 5.9% on the net IP income. However, no exemption is applicable for net wealth tax.

Capital gains on IP

The 80% tax exemption also applies to capital gains realized on the disposal of IP. However a recapture rule is foreseen according to which the exempt amount of gain is reduced by all expenses in direct economic connection with the income previously deducted from the taxable basis and which creates a carry forward loss.

Conditions to benefit from the tax exemption

The application of the partial tax exemption is subject to the following conditions:

1. The IP must be acquired (or created) after 31 December 2007
2. 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
3. The IP must not have been acquired from a related company (i.e. direct or indirect participation of 10%). The purpose of this restriction is to avoid the application of the partial tax exemption several times in the same group

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Capital duty reduced to 0.5%

As from 1 January 2008, capital duty payable upon incorporation of companies and capital increases is reduced from 1% to 0.5%.

At the time the capital duty reduction was decided, Luxembourg wanted to be in line with a proposal from the EU Commission which recommended the progressive decrease of the capital duty rate and its complete abolition by 2010. In the meantime however, the EU proposal has been amended by the EU Parliament in such a way that it now requires the Member States to abolish the capital duty by 2012 (instead of formerly 2010). Consequently, the complete abolishment of capital duty in Luxembourg may be postponed to 2012 at the latest.

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Implementation of various EU Directives in Luxembourg law

1. Luxembourg tax regime applicable to mergers has been slightly amended in order to implement the 2005 amendments to the Merger Directive.

   As a result, the scope of application is extended to the Societas Europaea (SE), the European Cooperative Society (ECS), permanent establishments and all companies having a capital divided into shares and which are treated as a company in their state of residence but are classified as tax transparent from a Luxembourg point of view. Besides, the holding condition required for capital gains exemption is reduced from 25% to 10%.
2. Luxembourg income tax law implementing the Parent-Subsidiary Directive and the Merger Directive has been extended to the European Economic Area (i.e. Norway, Liechtenstein and Iceland)
3. Luxembourg income tax implementing the EU Directives has been amended in order to take into account the EU accession of Romania and Bulgaria.

These changes have entered into force retroactively as from 1 January 2007.

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Entry into force of the protocol to the Luxembourg-France Tax Treaty

The second protocol to the Tax Treaty signed between Luxembourg and France entered into force on 27 December 2007 and is applicable as from 1 January 2008. For further details on the new tax provisions, please refer to our flash news dated October 2007.

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Tax Treaties in 2007

In order to keep expending its Tax Treaty network, Luxembourg has been very active in the development of its international relations during 2007. In this respect, please find below a summary of the Tax Treaties that have been initialled, signed or that came into force.

- Tax Treaties initialled by Luxembourg: Bahrain, Qatar, Cyprus and Kazakhstan.
- Tax Treaties signed by Luxembourg: Hong Kong, Kuwait and Moldavia.
- Tax Treaties in force as from 1 January 2007: Lithuania, Latvia and San Marino.

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