

Luxembourg tax regime for IP rights

In order to enhance its attractiveness, Luxembourg introduced on 21st December 2007 a competitive tax regime in favor of income derived from a broad range of intellectual property rights.

The IP tax regime provides for an 80% exemption on royalties and capital gains derived by Luxembourg taxpayers from any patents, software copyrights, trade marks, domain names, designs or models. The partial exemption applies on the net income which corresponds to the gross income reduced by the expenses in direct economic connection with this income, including interest derived from the financing of IP rights, yearly amortizations and write-downs if any.

Luxembourg companies benefiting from the IP tax regime are therefore granted an 80% exemption on IP-derived income leading to an effective tax rate of 5.84%. Moreover, the IP rights are excluded from the net wealth tax basis.

It must be noted that the IP tax regime also provides for an 80% deemed income deduction for self-developed patents used by Luxembourg companies for own business purposes. In other words, that means that any Luxembourg company having developed patents in-house is allowed to deduct a notional income equal to 80% of the remuneration it would have earned from a third party (after deduction of expenses, write-downs and yearly amortizations).

Conditions in order to benefit from the IP regime

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

1. The IP right must be acquired (or created) after 31st December 2007

The creation date for patents, trademarks, designs, models and domain names is, in each case, the date of application for registration. The only exceptions are copyrights on software for which registration is not applicable, as the creation date in this case is the day when all the necessary work for the new software to run is completed.

2. The IP right must not have been acquired directly from a “related company”

The term “related company” is defined in Luxembourg law as:

- a parent company holding a direct participation of at least 10% in the capital of the company that acquires the IP right;
- a subsidiary company directly held for at least 10% by the parent company that acquires the IP right; or
- a sister company held by a common parent company holding at least 10% in both the sister company and the company that acquires the IP right;

- The acquisition of an IP right from an indirectly affiliated company or individual shareholder is therefore not subject to this limitation.
3. Expenses in direct economic connection with the IP right must be activated, i.e. recorded as an asset in the balance sheet and added to the taxable base during the first book year for which the benefit of this tax regime is claimed, to the extent that expenses connected with the IP right have exceeded related income.

The expenses include the acquisition price or the cost price for materials used to create the IP right, salaries paid to employees who have developed the IP right.

Conclusion

The scope of the Luxembourg IP tax regime is broader than in any other European country, even if it does not cover copyrights on literary, musical, cinematographic or other artistic works. It clearly positions Luxembourg as a jurisdiction of choice in Europe for the management and exploitation of IP rights.

Besides the appealing IP tax regime, the attractiveness of Luxembourg is further enhanced by the fact that Luxembourg companies benefit from the EU Directives and the extensive tax treaty network which can reduce or eliminate the foreign withholding taxes born on cross-border royalty payments.

For inquiries please contact us at **+352 269 255-1** or email us at experta@experta.lu.

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The objective of this fact sheet is to provide a concise summary on relevant aspects relating to Luxembourg tax regime for IP rights, as well as to outline some aspects of applicable law. No action should be taken without further consultation with Experta, as this document alone cannot cover all aspects relating to Luxembourg tax regime for IP rights. The information contained in this fact sheet is provided for information purposes only and should not be understood as legal or fiscal advice.

Experta Corporate and Trust Services S.A.,
Luxembourg
Website: www.experta.lu

Address: 42, rue de la Vallée, L-2661 Luxembourg
Phone: +352 269 255 1
Fax: +352 269 255 3366