[LU] New Law Grants 80% Tax Exemption on Income from Intellectual Property

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Marc Thewes
Thewes and Reuter, Luxembourg

Article 50 *bis* of the Income Tax Code, which came into force on 1 January 2008, makes Luxembourg one of the most attractive jurisdictions worldwide for holding certain types of Intellectual Property.

The new law introduces an 80% tax exemption on the net income derived by a Luxembourg taxpayer from a software copyright, patent, trademark or service mark, design or model. According to the Parliamentary Commission’s report, Internet domain names are also eligible. The concept of “net income” is defined in the legislation as the gross royalties received, minus the expenses directly linked to this income. This includes annual depreciations and potential write-downs.

In order for the new scheme to be applicable, a number of conditions must be met. The most important of these are: to be eligible under the new regime, the Intellectual Property must have been acquired (or created) after 31 December 2007; the Intellectual Property must not have been acquired from an “affiliated company”. For the purposes of this exclusion rule, a company is considered “affiliated”:

- if the buying company directly holds 10% or more of the share capital of the selling company;

- if the selling company directly holds 10% or more of the share capital of the buying company or

- if a third company holds 10% or more of the share capital of both the selling and the buying company.

Both individual taxpayers and companies are eligible.

Capital gains realised when selling Intellectual Property rights are also eligible, in principle, for the 80% tax exemption. However, taxable gains may be adjusted by the tax authorities under certain conditions.

Article 50 *bis* , §2 allows taxpayers who have developed their own patent for in-house use and do not derive any income from it, to claim a notional deduction of 80% of the possible income from granting the right to use it to third parties.

However, only registered patents are eligible for this deduction.

The Law accepts that if no market value is available, the market value of the IP can be determined by any well-accepted method for the valuation of Intellectual Property.