

Luxembourg News

8 July 2021

LUXEMBOURG IP BOX TAX REGIME : END OF THE TRANSITION PERIOD

On 22nd March 2018, Luxembourg had adopted a new "IP Box" regime applicable to income (including capital gains) derived from eligible intellectual property ("IP") rights to align itself with international tax recommendations and, more specifically, the OECD's final report on Action 5 of the Base Erosion and Profit Shifting ("BEPS") plan.

This was long awaited since the repeal, in July 2016, of the previous "IP Box" regime combined with a five-year grandfathering period (i.e., ending on **30th June 2021**). In other words, the two regimes no longer co-exist ; the old regime is definitively replaced by the new regime.

So as to continue to benefit from a specific "IP Box" regime after 30th June 2021, the income (including capital gains) has to meet the conditions of the new article 50ter of the Luxembourg Income Tax Law ("LITL") (applicable since 1 January 2018), aligned with the BEPS "nexus approach".

The nexus approach requires that the benefit of any preferential tax regime should be conditional on the existence of substantial economic activities in the jurisdiction granting such regime and that there be a direct link between the income benefiting from preferential treatment and the R&D expenses contributing to the income.

Exemption

The previous "IP Box" regime allowed, in substance and under certain conditions, to benefit from a tax exemption of up to 80% of the net income derived from the exploitation of a patent, a trademark, a design, a software or a domain name by a Luxembourg taxpayer. With the new regime, the 80% exemption is maintained, but is now linked to the existence of a real activity, which is measured by research and development expenses.

Eligible income

The 80% exemption is therefore calculated on the adjusted and compensated eligible income according to the nexus ratio ("*modified nexus approach*"). Such ratio is obtained by dividing the eligible expenses by the total expenses directly related to the creation or development of a protected invention or software. Interest and financing costs, together with real estate costs are not taken into account.

Qualifying IP assets

The new article 50ter LITL provides a definition of eligible IP assets, which includes any patent (in the broadest sense) and copyrighted software constituted, developed, or improved after 31st December 2007. In comparison with the previous "IP Box" regime, trade names, trademarks, domain names, as well as designs and models are therefore excluded from the new "IP Box" regime.

Conclusion

The aim of the new "IP Box" regime is to stimulate research and development (R&D) activities since the extent of the tax benefit depends on their importance. Moreover, by implementing a new regime, three main changes could be observed in comparison with the old regime. First, trade names, trademarks, domain names, designs and models are no longer eligible. Secondly, the tax benefit is subject to the condition that the taxpayer is involved in the creation, development or improvement of the intellectual property. And finally, a tax exemption can be obtained on the use of one's own intellectual property.



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