Fact Sheet – Intellectual Property Company

Background

The Luxembourg tax regime for income and capital gains from intellectual property (IP) is defined in the law of 21 December 2007 and defined in Art. 50bis of the Luxembourg Tax Code.

Scope of the law

All individuals or companies either residing or carrying on activities in Luxembourg can benefit from the IP regime according to which 80% of the net income and capital gains generated by, or issued from, copyrights on software, patents, trademarks (including "service marks" and "domain names") designs, patterns and models, acquired or instituted after 31 December 2007, shall be exempt from tax, while only 20% shall be taxed at the ordinary combined (income tax and municipal business tax) rates.

Details on tax treatment:

The tax benefits can be summarized as follows:

- 80% exemption, i.e. only 20% of the NET income (including capital gains) will be taxed.
- All expenses directly connected with the acquisition and constitution (including financing costs and amortization) can be deducted.

In practice this reduces the effective tax rate below the normal 6% rate (see case study).

Note: Like any taxable company, the IP Company can benefit from the EU participation exemption regime with regards to taxation of dividends and capital gains (please refer to our Soparfi tax guide).

Restrictions:

There is no restriction as to type shareholder of the IP Company (origin, nationality, country of residence or domicile, corporate or private).

However, IP rights cannot be acquired from a company in which owns the IP Company or which is owned by the IP Company, the same applies to sister companies. It is therefore advisable to establish the IP Company in the early stages of development.

Comparison with other jurisdictions:

While favorable tax treatment may be available in other jurisdictions, the Luxembourg IP Company has a clear advantage:

1. The IP Company is not required to host the development related to the IP Rights in Luxembourg.
2. The IP Company can deduct expenses as outlined above to further reduce its tax rate and the IP Company can benefit from the extensive double-tax treaties (62 as of 1.1.2013) and from the EU participation exemption regime.
3. Luxembourg provides a stable and pragmatic environment with access to proven solutions and industry experts in international structures. Relocation to Luxembourg is also an attractive option which is attractive.

Case Study:

A foreign investor (a company or a private individual) has developed or owns an IP Right (e.g. copyright on software). He contributes this IP Right into a Luxembourg company. Generally the said company will be a Société à Responsabilité Limitée (SàRL) and no preliminary external valuation needs to be carried prior to incorporation.

Assumptions:

- Value of software rights: 800 and amortized over 10 years
- Royalties of 200 per year
- Legal and other development costs associated for 20 per year

The tax situation of the Luxembourg IP company will become as follows:

Royalties received	200	
Amortization over 10 y.	-80	purchase price of 800 over 10 years
Costs associated with the IP rights	-20	legal and other developments
Gross Profits	100	
IP tax regime exemption	-80	(100 x 80%) Art 50bis LITC
Taxable income	20	
Corporate Income Tax (Luxembourg-city)	-5,84	20 @ 29,22%
Net Profit LuxGaap	94,14	
Effective Tax Rate	2.92%	5.84 tax on income of 200

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