IP, IT & Media News from Luxembourg

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LUXEMBOURG IP TAX REGIME TO BE REPEALED

*Bill No 6900 for the budget for 2016, presented on 14 October 2015 by the Luxembourg Minister of Finance Pierre Gramegna, is about to be adopted. It repeals the existing business-friendly tax regime encouraging the exploitation of intellectual property rights ("**IPRs**") as from 1 July 2016, with a transitional period beginning on 1 July 2016 and ending on 30 June 2021.*

As a reminder, on 1 January 2008, with the Law of 31 December 2007 adding Article 50bis to the Income Tax law, Luxembourg introduced a favourable tax regime for incomes derived from certain IPRs, namely patents, trademarks, designs and models, and copyrights on software. This regime was extended to domain names on 1 January 2009.

Article 50bis provides that Luxembourg companies and Luxembourg-based branches of foreign companies may, under certain conditions, benefit from an 80% exemption from income tax on net income (royalties) derived from IPRs (leading to an effective tax rate under 6%) and on capital gains resulting from their assignment. Also, self-developed patents that are not licensed to third parties but used in-house for the internal needs of the taxpayer may benefit from an 80% exemption from income tax on the income that would have been expected if the patents have been licensed to third parties. IPRs also benefit from a full exemption of net wealth tax.

Among the conditions to qualify to this regime, IPRs must have been acquired or constituted after 31 December 2007, and they must not have been acquired from a so-called "affiliated company". A company is deemed as affiliated if it directly holds at least 10% of the share capital of the company which benefits from the IP right income, or if at least 10% of its share capital is directly held by the company which benefits from the IP right income, or at least 10% of its share capital is directly held by a third company which directly holds at least 10% of the share capital of the company which benefits from the IP right income.

MOLITOR Avocats à la Cour 8, rue Sainte-Zithe PO Box 690 L-2016 Luxembourg T (+352) 297 298 1 www.molitorlegal.lu

On 26 February 2015, Pierre Gramegna announced that this regime will be amended in order to comply with the "**Modified nexus approach for IP regimes**" agreed by all OECD and G20 Countries on 5 February 2015.

In order to align with this new approach, the 2016 budget bill that should be adopted in the following weeks:

- **Repeals the existing IP tax regime as from 1 July 2016:**

Tax payers already benefitting from the IP tax regime would continue to benefit from it **until 30 June 2021**.

New entrants will also be able to benefit from the IP tax regime **until 30 June 2021** for IP rights:

(i) developed or acquired from unrelated parties before 1 July 2016 (including improvements to those IP rights completed before 1 July 2016),

(ii) acquired (including under any tax neutral transaction) from any related party, within the meaning of Article 56 of the Income Tax Law, before 31 December 2015, and

(iii) acquired (including under any tax neutral transaction) from any related party between 31 December 2015 and 1 July 2016, if the IP rights were already eligible for the previous IP tax regime at the time of their acquisition OR if they benefitted in a foreign country from an IP tax regime corresponding to the previous Luxembourg IP tax regime.

IP rights acquired from any related party after 31 December 2015 which do not meet the above conditions would only be eligible to the Luxembourg IP tax regime until 31 December 2016.

- **Enhances transparency:**

Luxembourg tax authorities will, in order to enhance transparency, be required to spontaneously communicate the identity of the taxpayers benefitting from the current IP regime for all IP rights acquired or created after 6 February 2015, to the competent authorities of foreign countries 3 months after the date they become aware of it or no later than 1 year after filing of the tax return for the relevant tax year by the Luxembourg taxpayer.

In its opinion of 17 November 2015, the State Council ("*Conseil d'Etat*") drew attention to the consequences of the repeal of the IP tax Regime on the attractiveness of Luxembourg, especially with regards to the similar existing tax schemes in other EU Members States.

The current bill No 6900 does not include any tax measures of substitution in the areas of innovation, research and development. Given that the bill must be voted by the end of the year, it is very unlikely that it be amended to this end in such a short time. We may, however, bet, or at least hope, that a new project will be launched in this respect within the following months. To be continued…

For more information please contact:

Claire LEONELLI

Partner, Avocat, Member of the Paris Bar and the Luxembourg Bar (list IV)

claire.leonelli@molitorlegal.lu

Claire DENOUAL

Senior Associate, Avocat à la Cour, Member of the Luxembourg Bar

claire.denoual@molitorlegal.lu