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Intellectual Property Rights (IP-Box) in Luxembourg

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Your LCG Team

Intellectual Property Rights (IP-Box) in Luxembourg

I. Intellectual Property-Box (IP-Box) in Luxembourg

The so-called IP-Box is an internationally recognised and, now, widely used instrument for the tax incentivising of research and development. It involves a special tax regime within which income from intellectual property rights (IP) is subject to preferential taxation.

Such a tax regime exists in Luxembourg to the extent that income from intellectual property rights is subject to preferential tax treatment. Within this framework, the application of Luxembourg's tax relief can result in the partial exemption of income from intellectual property from taxation.

II. Intellectual property rights (IP) in Luxembourg

For the purposes of Luxembourg's tax relief, the following constitute intellectual property rights (IP): Patents, copyright; software; trademarks; industrial designs and utility models; models; domain names; brands for services and goods as well as production and know-how.

III. Company for Intellectual Property Rights in Luxembourg

Intellectual property rights (IP) are increasingly a decisive success factor in international competition. Through a tax efficient structuring, the value of intellectual property rights (IP) can be further increased. This includes their relocation abroad enabling the subsequent receipt of income from licensing by a Company for Intellectual Property Rights which is subject to preferential tax treatment. Profits and tax revenue particularly accrue in the place where the intellectual property rights are located. Moreover, such assets can, in principle, be transferred relatively easy to a Company for Intellectual Property due to them not being tied to one particular geographical location.

Companies for Intellectual Property Rights are subsidiaries which have been formed especially in a country having a particularly advantageous tax system and subsidiaries, in which the intellectual property rights of a company are concentrated. The Company for Intellectual Property Rights is thereafter responsible for the establishment of and/or the further development, protection, management and exploitation of the intellectual property rights. In addition, the said company subsequently licenses such rights to group companies or third parties.

1. Luxembourg's Company for Intellectual Property Company as a tax optimisation instrument

A Company for Intellectual Property Rights in Luxembourg can be formed as a corporation and may accordingly take the form of the Public Limited Company (PLC., Corp./SA), Limited Liability Company (LLC., Ltd./SA); Partnership Limited by Shares (SCA) as well as Co-operative in the form of the Public Limited Company (SCOSA). In principle, a Company for Intellectual Property Rights in Luxembourg is formed through the recording of its articles of associations by a notary and their subsequent publication in the Official Bulletin (Mémorial C). Moreover, the articles of association are lodged with Luxembourg's Trade and Companies Register. The minimum capital required depends upon the particular legal form chosen.

If intellectual property rights are transferred to a Company for Intellectual Property Rights in Luxembourg, the profits made therefrom can be liable to Luxembourg's preferential taxation.

2. Structuring possibilities of Luxembourg's Company for Intellectual Property Rights

Over time, business models have been developed which use IP-SOPARFI-Holding Companies in Luxembourg, belonging to a group of companies, to minimise tax paid on income from the use and exploitation of their own or third-party intellectual property rights by a Company for Intellectual Property Rights. Such companies can be organised free from tax. Lastly, through transferring valuable intellectual property rights to IP-SOPARFI-Companies resident in Luxembourg which are preferentially taxed, the profits are accordingly relocated and are liable subsequently to Luxembourg's tax relief.

IV. Advantages of a Company for Intellectual Property Rights in Luxembourg

1. Preferential taxation of income from intellectual property rights (IP)

1.1 Tax incentives for income from the use of intellectual property rights (IP)

In principle, corporations in Luxembourg have been liable to corporate taxation of 29.22% (21% or 20% corporate income tax, increased through the solidarity surcharge of 7% as well as the municipal business tax at a rate of 6.75%) from January 1st, 2013.

Notwithstanding this, net income and capital gains made from the use, licensing and sale of intellectual property rights (IP) in Luxembourg are taxed at a rate of only 20% under application of the tax relief. 80% of the said income accordingly remains exempt from taxation in Luxembourg, resulting in the income subject to preferential taxation being liable to an effective tax burden of 5.84%. Therein, depreciation and financing costs are, among others, deductible.

1.2 Tax exemptions

In Luxembourg, intellectual property rights are not liable to the net wealth tax of 0.5% on taxable assets.

Additionally, companies in Luxembourg are not liable to withholding tax on profits from liquidation, licence fees nor interest. Moreover, it is possible for dividend distributions to be exempt from withholding tax under application of the parent subsidiary Directive.

1.3 Requirements

Luxembourg's tax relief of 80% applies upon satisfaction of the following requirements:

The intellectual property rights (IP) must have been acquired or developed after December 31st, 2007. It is required that the intellectual property rights have, at the least, a beneficial owner. In principle, a patent is not required; the right to the exclusive use within a certain scope is required. Moreover, it is required that the intellectual property rights and the development costs have already achieved a favourable trade balance. Where intellectual property rights (IP) are acquired, it must be demonstrated that the acquisition was for reasons unrelated to tax. The acquisition of intellectual property rights from directly connected or affiliated companies is not permitted. This concerns the transfer from parent/subsidiary companies having an investment of more than 10% and affiliated companies with common shareholders. Furthermore, it is required that a Company for Intellectual Property Rights has a company address in Luxembourg and at least one director who is resident in Luxembourg.

2. Further advantages

In tax practice in Luxembourg, the assessment framework is flexibly administered. Information on the scope of tax liability and undertakings relating to taxation (so-called tax rulings) can be sought from Luxembourg's tax authority prior to the tax being due. In principle, these can be relied upon by both sides. In Luxembourg, such tax ruling procedures can be completed within weeks.

Moreover, the unlimited carrying forward of losses is possible in Luxembourg and consequently a reduction of the tax burden.

Additionally, Luxembourg is a signatory to double taxation agreements (DTA's) with many countries which prevent the double taxation of income from transactions which has already been taxed. It is possible to set off withholding tax paid abroad on licensing income insofar as no setting off excess arises therefrom.

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