

Proposed Abolition of the Luxembourg IP Tax Regime

The Luxembourg preferential IP Box Regime will be repealed as of tax year 2016 in order to comply with the conclusions of the European Union and the OECD regarding intellectual property (“IP”) taxation.

Indeed, the Budget Bill for 2016 released by the Luxembourg Government in October 2015 (the “**Budget Bill**”) provides, amongst other tax measures, that the IP tax regime currently applicable in Luxembourg will be abolished, subject to grandfathering provisions.

The main rules are the following:

1. The applicable provisions should be repealed as of July 1, 2016 regarding income tax and January 1, 2017 regarding net wealth tax.
2. According to the grandfather clause, existing IP companies may continue to benefit from the current favorable regime (i.e. an 80% exemption from income tax on income and gains deriving from the qualifying IP rights and a full net wealth tax exemption) until June 30, 2021.
3. In addition, the current rules should also be applicable during the same period (i.e. until June 30, 2021) to IP rights developed or acquired before June 30, 2016.
4. However, the benefit of the transitional period should be reduced to December 31, 2016 regarding income tax and January 1, 2018 regarding net wealth tax, if the IP rights have been acquired after December 31, 2015 directly or indirectly from a related enterprise as defined in article 56 of the Luxembourg income tax law (based on article 9 of the OECD double tax treaty model), except if the IP right benefited at the time of its acquisition from the current Luxembourg IP regime or from a similar

tax regime in a foreign country. As a reminder, enterprises are considered as related enterprises *where one enterprise participates directly or indirectly in the management, control or capital of another enterprise, or where the same persons participate directly or indirectly in the management, control or capital of two enterprises.*

5. Lastly, to ensure the agreed tax transparency at an international level, the Luxembourg direct tax authorities will, under the proposed measures, spontaneously communicate the identity of the taxpayers benefiting from the Luxembourg IP tax regime to foreign tax authorities as regards IP developed or acquired after February 6, 2015. The automatic exchange of information, based on existing tax treaties and international agreements stipulating such an exchange of information, will be made irrespective of the issue of an advance tax decision by the Luxembourg tax authorities.



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