

Keyword Luxembourg: Article 50bis better known as patent box or IP-regime

Based on a law of 2007, better known as "Article 50bis" of the Luxembourg income tax law of 1967, income derived from qualifying IP rights acquired or created after December 31, 2007 as well as capital gains realized on the sale of such rights may benefit from a tax exemption of 80%. Said income is *de facto* subject to an effective tax rate of approximately 6%.

On December 17, 2015, the Luxembourg Parliament adopted the budget law 2016. Hidden in the text on budgetary measures were also provisions concerning the abolition of the system in a near future.

As part of its international commitments, particularly in the context of the actions of the OECD / G20 concerning base erosion and profit shift (BEPS), the Luxembourg legislature has chosen to completely abolish this system.

A transitional period enables right holders, which already benefit from the system, to claim the benefit of the exemption until June 30, 2021.

With regard to the acquisition of rights from an associated company after December 31, 2015, special conditions apply. In relation to such rights, the transition period ends already on December 31, 2016 unless the acquired rights were already eligible under article 50bis at the time of the acquisition. The Luxembourg legislature intended to prevent massive "intra-group" transfers of intellectual property rights during the transition phase.

Newly created rights until June 30, 2016, e.g. through a new trademark application, can be eligible until June 30, 2021. Regarding rights acquired by registration, such as a trademark, the filing date is normally decisive.

Right holders should review their IP strategy until June 30, 2016 and take into account that existing structures have probably to be adjusted. Not protected rights should be necessarily filed before June 30, 2016 since the existing transitional measures make of the Luxembourg IP system still one of the most interesting systems concerning the taxation of income derived from intellectual property until 2021.

It is still unclear whether there will be a new edition of the patent box after 2021. According to well-informed sources, the institutions already work on an "Article 50ter". So far, the Ministry of Finance, however, has still not submitted a legislative proposal. A text is expected by the end of the first half of 2016.

According to the specifications of the OECD in terms of BEPS, a future system should only be applicable to income derived from patents and copyrights on software and not concerning trademarks, Internet domains and designs.

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Raymond Bindels

Conseil en propriété intellectuelle

Senior European and Benelux Trade mark and Design Attorney

raymond.bindels@thg-ip.solutions

THG IP Solutions Sàrl

61, Gruuss-Strooss, L-9991 Weiswampach

www.thg-ip.solutions

Member of  *group*