KPMG

cutting through complexity

Luxembourg - A Hub for Intellectual Property

Today's economies are increasingly based on knowledge and companies predominantly invest in R&D and IP such as trademarks, trade names, patents, franchises, information technology, software, goodwill and human capital which constitute their intangible assets. The value of those intangibles can be huge and their management has become crucial for companies. In that context, finding the right location for R&D centers and IP portfolios constitutes a key issue.

Protect your Intellectual Property (IP)

Luxembourg has concluded many agreements in view of protecting intellectual property such as the Bern Convention, the Patent Cooperation Treaty (PCT), the Paris Convention, as well as the Madrid Agreement and Protocol. Luxembourg has implemented European directives and treaties such as the agreement on Trade-Related aspects of Intellectual Property Rights (TRIPS).

Luxembourg has also signed the European Patent Convention (leading to the European Patent Office) and the Patent Law Treaty (PLT).

Luxembourg thus offers a safe IP environment.

Financial Incentives

National incentive schemes

Luxembourg offers a wide range of customized incentives within the framework of national incentive schemes and European funded programs managed at a national level.

The incentives are available to large corporations, small and medium-sized enterprises (SMEs) and start-ups legally established in Luxembourg, and granted under many different forms, from cash grants to tax credits and guarantees. Co-financing rates may reach up to 100% of eligible costs and apply to investments such as R&D, vocational training, new technologies, logistics, energy and environment, economic development, feasibility studies of innovation, infrastructure etc…

European incentive scheme

Every year, the European Commission injects millions of euros to support and co-finance companies' innovative projects in various fields of activities as partly summarized hereafter.

Horizon 2020 will be the EU's new programme for co-financing collaborative **research and innovation** in Europe for the 2014-2020 period with an estimated budget of EUR 74 billion.

Marco Polo is the European Union's funding programme for projects which shift freight transport from the road to sea, rail and inland waterways. This means fewer trucks on the road and thus less congestion, less pollution, and more reliable and efficient **logistics**.

Additional areas for co-financing include higher efficiency in international road freight transport by modifying the production / distribution processes and overcoming structural market barriers to intermodal solutions - causing a real breakthrough.

LIFE is the European Union's programme to provide funding for **environmental projects** linked to nature conservation and environmental technology. The scheme co-finances innovative or pilot projects that contribute to the development of innovative policy ideas, technologies, methods and instruments.

The European Commission proposed to allocate EUR 3.2 billion over 2014-2020 to a new LIFE Programme.

Innovation is a priority

One of the Luxembourg Government's top priorities is to focus on innovation. The University of Luxembourg, Luxinnovation and Public Research Centers are public players that can mainly be contacted for R&D activities, technical and scientific cooperation and technology transfer.

Business and innovation centers offer a platform to host and assist entrepreneurs or technology-based companies wishing to set up a new and innovative activity in Luxembourg.

Several incubators provide the appropriate support and guidance to new projects, thus facilitating their development and growth. They also serve as relay-centers offering a temporary location to foreign companies setting up their business in Luxembourg.

Favorable tax environment

IP regime: Article 50bis

Luxembourg as an IP hub offers a favorable tax environment.

In an effort to become the prime location for Europe's envisioned knowledge-based economy, an IP tax regime was implemented in Luxembourg with effect from 1 January 2008 providing for a very competitive tax rate applicable to a broad range of IP income generated by Luxembourg taxpayers.

The hallmark of the Luxembourg IP tax regime is an 80% exemption on **royalties** and **capital gains** derived from most types of IP. Companies benefiting from that regime are subject to an effective tax rate as low as 5.84% on qualifying "net" IP income (i.e. gross revenue from the IP less directly related expenses, depreciation and write-downs).

Qualifying IP rights

- Patents
- Trademarks/service marks
- Designs/models
- Internet domain names
- Software copyrights related to standard software.

Conditions (cumulative)

- IP rights to have been acquired or developed after 31 December 2007
- IP rights may not have been acquired from directly related companies:
  - Relationship between the companies appreciated at the moment of the acquisition / at the moment before the contribution (in case of a contribution)
  - IP rights acquired from individual shareholders are eligible to the regime
- Expenses, amortizations, and write-downs economically related to the IP must be activated.

Qualifying IP income

- Royalty payments
- Damages
- Capital gains.

Whereas IP rights may not have been acquired from directly related companies, the licensing of IP rights to such companies is permitted so that qualifying IP income received from them may benefit from the exemption.

Tax treatment

Corporate income tax/ municipal business tax

- 80% exemption on qualifying income
- 5.84% effective tax rate (2013 rate)
  - Foreign withholding taxes are, to a certain extent, creditable / deductible.
  - Full deductibility of losses related to qualifying IP rights with a recapture system.

Net wealth tax

- 100% exemption on qualifying IP rights.

Luxembourg offers one of the most attractive locations for IP management as well as for holding and financing activities. Generally those activities are centralized in one single Luxembourg company which saves maintenance costs.

Other tax advantages

Besides the specific IP regime, Luxembourg also offers the following advantages :

- Statutory corporate tax rate: 29.22% for Luxembourg-City (2013),
- **Low Effective Tax Rate, when compared to the statutory corporate tax rate of 29.22% (even for IP that does not qualify for the IP regime, if specific approach and facts can support this).**
- No / minor taxation upon exit or refinancing strategy,
- Tax analysis letter system **to secure** upfront the corporate tax treatment of transactions: **prompt answer** from the Luxembourg tax authorities and **pragmatic approach**,
- Advance pricing agreements on intermediary financing or licensing activities, sustained by Transfer Pricing Studies,
- **No capital / stamp duties,**
- **Extensive network of tax treaties** reducing / eliminating withholding taxes on foreign income (64 tax treaties currently in force and 21 tax treaties currently in negotiation),
- **No withholding tax on royalties, interest (in principle) & liquidation proceeds,**
- **No withholding tax on dividends** paid to treaty country corporations (subject to conditions),
- **Luxembourg participation exemption** (incoming dividend, liquidation proceeds and capital gains tax exempt; **capital losses** tax deductible),
- Investment tax credit on investment (12% on additional investments in qualifying tangible assets; 7% on qualifying new investments up to EUR 150.000 and 2% on the part of the investment exceeding that amount; those rates are increased by a further 1% for investments in ecological equipment and projects, carry forward of 10 years), tax credit for professional training and tax credit for hiring unemployed,
- **Corporate tax losses** can be carried forward **without a time limitation,**
- Tax unity,
- **Access to European Directives** (e.g. Parent/Subsidiary, Interest/**Royalties**, and Merger Directives),
- **No CFC** rules,
- Ability to structure most IP transactions in a **VAT neutral** manner,
- Favorable tax regime for **highly skilled / expatriate workers**,
- Large network of bilateral investment protection treaties.

From a VAT perspective, Luxembourg offers both the **lowest "standard" VAT rate (15%)** and the **lowest "super-reduced" rate (3%)** among the European Union Member States. This 3% rate is applicable, among others, to copyrights as well as broadcasting services.

In this respect, the Luxembourg VAT legislation offers both a competitive framework for business-to-consumer ("B2C") transactions, enabling to gain **competitive advantages** through the application of low VAT rates, but also for business-to-business ("B2B") transactions where **VAT neutrality** can usually be achieved.

Our services

KPMG Luxembourg can offer a wide range of services based on expertise and experience built over many years. The services are multi-disciplinary since they involve audit, tax and advisory.

Our Luxembourg team can lean on a worldwide network which has the required local expertise.

We can then assist you from audit, tax and advisory perspectives in:

- Identifying IP in the companies of your group and valuing it,
- Recommending an adequate tax and legal structure,
- Advising on IP models (cost sharing agreement, licensing, (de)-centralization etc),
- Advising on the location of R&D centers and IP companies as well as the optimization of IP flows,
- Advising on the financing of and/or disposal of IP,
- Advising on the transfer pricing aspects related to the IP of your group: margins (benchmarking of the margin to be left in Luxembourg on back-to-back licensing activities), flows (benchmarking of royalty income), price of disposal, etc…,
- Arrange meetings with the relevant Luxembourg authorities,
- Auditing IP structures.

Contacts

Tax

Louis Thomas
Partner, International Tax
T: +352 22 51 51 5527
E: louis.thomas@kpmg.lu

Philippe Neefs
Partner, Transfer Pricing
T: +352 22 51 51 5531
E: philippe.neefs@kpmg.lu

Audit

Jean-Manuel Séris
Director
T: +352 22 51 51 6619
E: jean-manuel.seris@kpmg.lu

Advisory

Yves Courtois
Partner
T: +352 22 51 51 7503
E: yves.courtois@kpmg.lu

KPMG Luxembourg S.à r.l.
9, Allée Scheffer
L-2520 Luxembourg
T: +352 22 51 51 1
F: +352 22 51 71