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IMPORTANT TAX ADVANTAGES FOR INTELLECTUAL PROPERTY IN LUXEMBOURG

Luxembourg – 7 January 2008 – Any income generated through copyright on software, patents, trademarks, registered designs is exempt from tax at a rate of 80%. On 21 December 2007, the legislative chamber has adopted the Law Project 5801, which introduces a new article 50 bis into the Law concerning income tax.

Support for Innovation

This measure is destined to encourage innovation in companies established under Luxembourgish law, by allowing them to reduce taxation on income generated from innovations protected by intellectual property. The Minister for the Economy and International Trade, M. Jeannot Krecké, has indicated that “by reducing taxation on income generated by a patent, a copyright on a software, a trademark, a design, we encourage companies located in Luxembourg to invest in research and development.”

This exemption at a rate of 80% applies in particular to income from licences (hire) or from assignment (sale) of copyrights on software, of patents (protecting technical innovations), of trademarks (protecting the name of a product or service), of designs (protecting the exterior appearance of a product).

In order to promote research and development, the law stipulates that companies using their own patents can deduct from their profits the equivalent of 80% of the income they would have had if they had granted a licence instead of exploiting their patent themselves. This tax exemption must however be integrated in the taxable income of the company in case the patent application is refused.

Tax Advantage

This law is, according to the Ministry for the Economy and International Trade, the first measure adopted by Luxembourg in this field since 1880. It has arisen as part of the Lisbon process, but also aims to be a response to similar legislation, although less efficient, recently entered into force in certain countries of the Union.

This new legislation thus enables to reduce taxation of income generated by intellectual property, by **reducing the normal tax rate of about 30% to about 6%** for such income.

Conditions

Only the rights created or acquired as from 1st January 2008 can benefit from this new law.

The expenses, amortisations and depreciations concerning these rights must be integrated in the assets of the balance sheet of the company, if these costs have not been compensated by revenues during the same fiscal year.

In case of an acquisition of IP rights, a certain number of restrictions apply. Indeed, the fiscal benefits are not available if :

- a) the company acquiring the IP rights holds a direct participation of at least 10% in the capital of the company benefiting from the payment,
- b) 10% of the capital of the company acquiring the IP rights is held directly by the company benefiting from the payment,
- c) 10% of the capital of the company acquiring the IP rights is held directly by a third company and this third company detains at least 10 % of the capital of the company benefiting from the payment.

For evaluation of the value of the intellectual property, the taxpayer should generally choose an internationally recognised method. This evaluation should hence preferably be carried out by professionals in the field of intellectual property. Micro, small or medium companies may however use an estimated value based on a simple formula as provided by the law.

Proceed with Applications for Intellectual Property Rights

This new tax measure encourages companies to better protect their intellectual property through patent, trademark and design applications. It is therefore necessary that the IP rights are protected by filings. These filings, as well the licence contracts and the assignment contracts, require careful drafting so as to maximize the fiscal advantage. It is therefore recommended to use the services of a patent and trademark attorney.

For more information:

The law (article 1, 3rd paragraph – pages 3 and 4):

<http://www.legilux.public.lu/leg/a/archives/2007/2342712/2342712.pdf>

The official statement of the Minister for the Economy:

http://www.eco.public.lu/salle_de_presse/com_presse_et_art_actu/2007/12/21_fiscal/index.html

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