

New taxation regime for the revenue of some intellectual property rights

Article 50bis of amended Income Tax Law, Law of 21 December 2007 – Entry into force 1 January 2008

Executive Circular letter LIR n°50bis/1 of 5 March 2009 relating to the partial exemption of the income derived from some intellectual property rights

Eligible IP rights	<ul style="list-style-type: none"> ▪ Copyrights on software which are original works based on an intellectual invention of their author. The original character is based on the source-code. The proof regarding the existence of the software and the date of creation is established by any means, the « i-dépôt » at the BeNeLux Office for Intellectual Property is for e.g. a mean of proof. ▪ Patents which grant an exclusive right on a technical/industrial invention to an inventor for a limited period of time. Qualifying patents must be protected, and thus registered with a State or a Supranational Body. The patent is qualifying for the new regime as from the date the patent is requested. ▪ Trademarks, designs and models (including products and services) which are registered. A trademark is a sign that distinguishes certain goods or services from those of the competitors. ▪ Domain names which are registered.
Qualifying conditions	<ul style="list-style-type: none"> ▪ These IP rights must be acquired or created after 31 December 2007 ▪ IP rights must be acquired from a person which is not considered as an « affiliated company » (indirect holding through a transparent entity is seen as directs shareholding): <ul style="list-style-type: none"> ○ Acquirer (parent Company) which holds at least 10% of the selling entity (subsidiary); ○ Seller (parent Company) which holds at least 10% of the acquirer (subsidiary); ○ At least 10% of the share capital of the seller and acquirer are held by a third Company. ▪ IP rights acquired from an individual person e.g. the shareholder of the IP management company is qualifying. ▪ The new regime applies to the entity which has the economical ownership of the IP rights, regardless of the entity/person in the name of whom the IP right is registered/recognized.

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Tax regime	<p>The net profit derived from the remuneration of the use or the licensing of these IP rights is exempt from corporate income tax up to 80% and is exempt from net wealth tax.</p> <p>The net profit is considered as being the gross revenue reduced by all expenses economically linked to the revenue (including the depreciation charge of the IP rights)</p>
Effective tax rates	<p>Corporate income tax and municipal business tax (28,59%) => effective rate = 5,718%</p> <p>Net wealth tax: 0.5% of the net asset value of the company as at 1st January => full exemption for the qualifying IP rights</p>