

A new IP regime in Luxembourg

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The bill of Law n°7163 implementing the new tax regime applicable to intellectual property assets (the “**new IP regime**”) was approved by a first constitutional vote on 22 March 2018 and should be exempt from the second constitutional vote.

It is therefore likely that the new IP regime set out in article 50ter of the Luxembourg Income Tax Law (“**LITL**”) will enter into force from the start of the 2018 tax year. The new IP regime will apply to any Luxembourg-resident taxpayer carrying out a business activity in Luxembourg.

An 80% exemption will apply to income and capital gains deriving from IP eligible assets according to a new calculation method, i.e. the nexus approach, meaning that a company’s R&D expenses will be an indicator of “substantial activity” allowing the taxpayer to benefit from the 80% exemption regime pro rata with the proportion of R&D expenditure. This exemption will therefore apply to revenues generated by R&D activities of the Luxembourg company and of any other non-affiliated entity.

The eligible assets under the new IP regime will be limited to patents, utility models, supplementary protection certificates granted for a patent on a medicinal product or a plant protection product, extensions of additional protection certificates for a medicinal product for paediatric use, plant variety certificates, designations of orphan medicinal products, and software protected by copyright under national or international provisions.

Therefore, there’s certainly likely to be some reorganisation of corporate groups involved in IP activities in Luxembourg.

Note that the former IP regime will still apply to IP income of Luxembourg entities received between 1 July 2016 and 31 December 2017 on IP rights developed or purchased before 1 July 2016. As from 1 January 2018, the transitional provisions have been repealed and replaced by the new article 50ter of LITL.

A more detailed analysis will be provided soon.

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