LRBC Luxembourg Russia Business Chamber

NEWSLETTER

LEGAL & TAX UPDATE

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WELCOME

Dear Members of the Luxembourg Russia Business Chamber!

We are happy to send you this June 2017 Newsletter with an update on some of the most relevant legal and tax developments in Russia and Luxembourg.

This issue covers two topics: the Russian Ministry of Finance clarifications on the CFC rules in Russia and the development of the Patent box regime in Luxembourg.

Since the first issue of the Newsletter, we have received very positive feedback from the Members of our Chamber on this initiative. I would like to thank the members of the Law & Tax Group for their continuous support and to extend gratitude to our colleagues practicing in Russia for their valuable contribution.

We all sincerely hope that this initiative will help build bridges between the businesses of our countries.

If you have legal and tax news to share - please contact us.

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RUSSIA

The Russian Ministry of Finance explained the rules on controlled foreign companies

Russian tax residents had to report for the first time on controlled foreign companies ("CFCs") by 20 March 2017 and declare the profits of CFCs by 2 May 2017. In light of inquiries by taxpayers on their participation in CFCs, the taxation of profits and income of controlling persons, the Ministry of Finance of the Russian Federation issued Letters No. 03-12-11/2/7395 of 10 February 2017 and No. 03-12-11/2/9197 of 17 February 2017.

These letters deal with a wide range of issues that are often encountered by controlling persons in the context of the application of the CFC rules. Please click here to see our outline of the most significant explanations given by the Ministry of Finance.

Despite the fact that these letters bring some certainty with respect to controversial issues arising when applying the CFC rules, uncertainties remain in certain respects:

- The procedure for classifying certain types of income as active or passive remains unclear.

- The procedure for determining the result of transactions with securities and other financial instruments included in the profit of the controlling person remains ambiguous.

- It is not clear whether the CFC rules apply to consolidated groups of taxpayers.

Russian tax residents who are controlling persons and do not wish to be faced with the difficulties arising from the new rules can, until 31 December 2017 inclusive, opt for the voluntary liquidation of their CFCs, to avoid being held liable for failure to pay taxes and fees.

For more information and details please contact Hayk Safaryan

LUXEMBOURG

New Luxembourg patent box

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Since the law dated 21 December 2007, a privileged Luxembourg tax regime exists for income in relation to IP rights by the insertion of a new article 50bis in Luxembourg income tax law, the IP box.

In short, under the IP box, Luxembourg taxpayers are entitled, subject to certain conditions, to benefit from an exemption of 80% on the net income derived from and capital gains realized on patents, trademarks, designs and models, domain name rights as well as from copyrights on software, involving an effective taxation of the income in case of a Luxembourg corporation having its registered office in Luxembourg city at a rate of 5.56% in 2017.

In line with the BEPS action plan as well as arrangements between OECD and EU countries, the law of 18 December 2015 abrogated the IP box and article 50bis with effect of 1 July 2016 and at the same time, introduced a transitory period.

From 1 July 2016 to 30 June 2021 (the transitory period), the IP box continues to apply to IP rights which benefit from such tax regime on 30 June 2016.

On 26 April 2017, Luxembourg Prime Minister Xavier Bettel announced the entering into force in 2018 of a new privileged Luxembourg tax regime for income deriving exclusively from patents, the patent box.

Xavier Bettel did not provide details in his announcement, however it seems clear that the patent box will have to comply with the framework defined by BEPS Action 5 report and accordingly, certain predictions can be given.

In this respect, the patent box should only apply to technical or scientific innovations benefiting from patent protection (so that trademarks, designs and models, domain name rights as well as copyrights should be excluded from the patent box).

Moreover, the taxpayer should be required to have incurred a significant proportion of the R&D costs and this should involve that part of the R&D activities have been carried out in Luxembourg.

An important point to clarify is the tax incentive attached to the patent box and in order to place Luxembourg as an international hub for research and technologies, it may be considered that the Luxembourg Government will make it as attractive as possible.

Finally, the IP box and the patent box will probably co-exist during the years 2018-2021 and thereafter, it is possible that patents which have benefited from the IP box will be eligible to the patent box.

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Thomas Biermeyer, associate at Wildgen

For more information and details please contact Lionel Bonifazzi and Thomas Biermeyer

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13 June 2017 **LRBC Annual General Meeting**

Cocktail Party

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