Pharma and Life Sciences Tax News: Vol. 8, No. 13: Luxembourg IP and R&D regimes and life sciences cluster

Recent developments in Luxembourg law considerably strengthen Luxembourg's position as a highly attractive EU location for R&D activities as well as IP holding and management activities particularly for life sciences and pharmaceutical companies.

1. Tax incentives

1.1 Specific Intellectual Property (IP) Tax Regime

Income and capital gains from qualifying IP rights can benefit from an effective tax rate of 5.7%. Various types of IP qualify for the regime and include: patents, trademarks, designs and models, copyright related to software and domain names.

The regime basically provides for:
- 80% exemption of the net income derived from the use or the right to use qualifying IP rights;
- 80% exemption of net capital gains realised upon disposal of qualifying IP rights;
- Notional deduction corresponding to 80% of a deemed royalty income for taxpayers who created a patent and use it in their own activity;
- 100% exemption of the value of qualifying IP rights from net wealth tax.

In order to qualify for the regime, the Luxembourg taxpayer should have acquired or created the rights after December 31, 2007. Moreover, the rights must not have been acquired from a entity qualifying as a "related company" under the regime before the acquisition ("related company" is defined narrowly as it includes participations of 10% in direct parent companies, 10% direct subsidiaries and "sister" companies which are held directly for minimum 10% by the same parent company).

The application of the regime is not subject to the development or registration of the respective IP rights in Luxembourg. However, the general business framework in Luxembourg and the additional incentives which can be available for R&D activities make Luxembourg an attractive location for the centralization of both R&D and IP holding functions.

1.2 Other general tax incentives

In addition to the tax IP regime, other incentives are available, such as:
- Special depreciation scheme;
- Tax credit for specific investments;

2. Specific incentives for innovative activities and Research & Development (R&D)

Luxembourg entities involved in innovative and R&D activities can benefit, in addition to the specific IP tax regime and general tax incentives, from financial support (e.g. cash grants or interest subsidies). The table enclosed in annexure 1 summarises the maximum percentage of costs eligible for government aids for all systems and measures, as provided for in the law of June 2009.

Innovation[**] Loans may be granted by the *Société Nationale de Crédit et d'Investissement* and may carry a fixed interest rate lower than the market rate. Financial support may also be granted, in the form of cash grants or interest subsidies:

R&D projects or programmes receive support up to a maximum eligibility (percentage of costs eligible for the incentives) depending on the size of the beneficiary (private research companies or organisations):
- Large (25% to 100% depending on the investment);
- Mid-size (35% to 100%);
- Small (45% to 100%).

These incentives are available for:
- Experimental development:
- Experimental development and cooperation:
- Industrial research:
- Industrial research and cooperation:
- Fundamental research:

Innovation in process and organisation and investment in innovation pools[***] can benefit from support between 15% and 35% (50% for public research companies).

Promotion and development of innovation pools can benefit from support up to:
- 50% for private organizations;
- 75% for public research companies.

Research regarding technical feasibility if prior to experimental development can benefit from support of up to 40% or 50% and up to 65% or 75% if prior to experimental research.

For further details the above incentives, including those available for small and medium enterprises, please refer to Annexure 1.

3. Life sciences cluster

The Luxembourg government announced in June 2008 its willingness to invest approximately EUR 140 million over 5 years in key strategic partnerships with research institutions in order to develop a centre of expertise in the area of molecular and personalized medicine. The creation of a Luxembourg biobank within a partnership is the centerpiece of this overall project.

This strategic partnership between Luxembourg's research institutes and renowned U.S. research organisations is a unique opportunity to:

- develop a centre of expertise that will increase research activities in the Grand Duchy and strengthen both national competencies and international influence;
- favor economic diversification by developing expertise in a high-technology and fast-growing sector; and
- serve the interests of the general population as the healthcare system could greatly benefit from the research findings.

[**] Innovation is defined in the law as any novelty presented in the form of a product/service/process/method/organizational structure which result from the application of new ideas or efforts in research development.

[***] Innovation Pools are defined in the law as a grouping of enterprises innovating in a specific sector or within a specific region for the purposes of mutual help and cooperation.

Details of the projects and areas of research:

- Integrated Biobank of Luxembourg (IBBL) – a collaborative effort of three Luxembourg public research centers and the University of Luxembourg in partnership with the Translational Genomics Research Institute (TGen) in Phoenix, the Institute for Systems Biology and the Fred Hutchinson Cancer Research Center in Seattle;
- The Lung Cancer Project – in collaboration with the consortium Partnership for Personalised Medicine in Phoenix, under the direction of Prof. Lee Hartwell, Nobel Prize winner 2001; and
- Two research projects in collaboration with the Institute for Systems Biology: sequencing the genome of 100 members of the Luxembourg population and determining blood protein biomarkers specific to certain organs to support the development of rapid diagnostic tests.

The PwC report, *Diagnostics 2009: Moving towards personalised medicine*, includes a case study on the IBBL project and provides insights on the development of personalized medicine. The report was a collaboration between the Luxembourg and the US firms and is available at www.pwc.com/pharma/publications

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Annexure 1: Overview of R&D Incentives

System types	Types of R&D project or program	Maximum Eligibility Large private research company or organization	Mid-size private research company or organization (bonus: 10%)	Small private research company or organization (bonus: 20%)	Public research centre
R&D project or program	Experimental development	25%	35%	45%	n/a
	Experimental development + cooperation (bonus: 15%)	40%	50%	60%	n/a
	Industrial research	50%	60%	70%	n/a
	Industrial research + cooperation (bonus: 15%)	65%	75%	80%	n/a
	Fundamental research	100%	100%	100%	n/a
Research on technical feasibility	Prior to an experimental development	40%	50%	50%	n/a
	Prior to industrial research	65%	75%	75%	n/a
Protection of the IP of research companies or organizations that comply with SMEs'* criteria	Following an experimental development	n/a	25%	25%	n/a
	Following an experimental development + cooperation (bonus: 15%)	n/a	40%	40%	n/a
	Following industrial research	n/a	50%	50%	n/a
	Following industrial research + cooperation (bonus: 15%)	n/a	65%	65%	n/a
	Following fundamental research	n/a	100%	100%	n/a
Support to startup companies involved in innovation(for SME)**	n/a	n/a	n/a	EUR1 million	n/a
Consulting/support to innovation(for SME)**	n/a	n/a	EUR200.000	EUR200.000	n/a
Temp. relocation of highly qualified staff (for SME)	n/a	n/a	50% (only companies)	50% (only companies)	n/a
Innovation in process and organization**	n/a	15%	25%	35%	n/a
Investment in innovation pools***	n/a	15%	25%	35%	50%
Promotion of innovation pools***	n/a	50%	50%	50%	75%
Residual category (innovation not falling within a specific category)**	EUR200.000				n/a

* SMEs are defined as companies (i) employing less than 250 persons, (ii) having a turnover of less than EUR 50 million and (iii) having a total balance sheet below EUR 43 million

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*** Innovation Pools are defined in the law as a grouping of enterprises innovating in a specific sector or within a specific region for the purposes of mutual help and cooperation