

Brazil Desk Email Bulletin

This email bulletin is issued by the Brazil Desk of Loyens & Loeff. It is intended to provide you on an ad hoc basis with news flashes or background information on topical corporate, finance and tax law issues in the Benelux.

Year End Tax Bulletin: Luxembourg

Content:

- Main changes with effect from 1 January 2009 and 1 January 2010
- Clarifications on Luxembourg IP regime
- New exchange of information agreements

Main changes with effect from 1 January 2009 and 1 January 2010

From 1 January 2009, the following improvements to the Luxembourg tax law took place:

- The reduction of the corporate income tax rate from the rate of 29.63% to a general combined rate for Luxembourg City of 28.59%.
- The abolishment of Luxembourg capital tax.
- A broader domestic exemption from dividend tax. Dividends paid by a Luxembourg company to a shareholder resident in a tax treaty country are exempt from Luxembourg dividend tax if (i) the shareholder is subject to a tax comparable to Luxembourg tax, i.e. statutory tax rate in excess of 10.5% and comparable tax base, and (ii) the shareholder owns at least 10% of the share capital of the Luxembourg company or a participation of which the acquisition price exceeds at least € 1,200,000 for an uninterrupted period of at least 12 months.

On 29 September 2009, the Finance Bill for 2010 was submitted to the Luxembourg Parliament. The Finance Bill extends the exemptions for income tax and net wealth tax, applicable to various organisations (including collective institutions serving the public interest) to similar institutions established in EU Member States. In addition, allowances for business income and agriculture and forestry income received by individuals would be reintroduced. These proposals should enter into force as of 1 January 2010.

Brazil Desk Email Bulletin # 10b 18 December 2009

Loyens & Loeff is an independent Benelux law firm with over 900 lawyers and offices in the main financial centres around the world. Loyens & Loeff combines an integrated corporate law, regulatory and tax practice.

In order to be able to give the best advice possible to our clients, Loyens & Loeff formed the Brazil Desk.

The members of the Brazil Desk strongly focus on Brazilian clients that invest or trade in Europe or other regions, as well as on international companies and financial institutions that want to expand their businesses to Brazil. In many cross border (including cross Atlantic) transactions, benefits can be derived by investing through the Benelux (Belgium, Netherlands and Luxembourg).

The team comprises members from various Loyens & Loeff practice groups. Members of the Brazil Desk visit Brazil three to four times a year.

Members of the Brazil Desk speak the Portuguese language.

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Loyens & Loeff N.V.

Fred. Roeskestraat 100
1076 ED Amsterdam
T: +31 20 578 57 85
F: +31 20 578 58 20

Millenniumtoren
Weena 690
3012 CN Rotterdam
T: +31 10 224 62 24
F: +31 10 412 58 39

Clarifications on Luxembourg IP regime

On 5 March 2009, the Luxembourg tax administration issued Circular LIR no 50bis/1 providing clarifications on the IP regime introduced with effect from 1 January 2008. The IP regime provides for an 80% corporate income tax exemption for income and gains derived from copyrights on software, patents, trademarks, designs, models and domain names. As a result, the effective tax rate on such income is 5.7%.

The Circular provides, inter alia, for the following main clarifications:

- IP rights are exempt from net wealth tax as from 1 January 2009.
- A common characteristic of IP rights is that the owners have a monopoly with respect to the exploitation or the use of the IP rights in the country for which protection is obtained.
- In the case of a split between legal and economic rights, the exemption must be claimed by the economic owner.
- Companies and companies of a collective character that have legal personality qualify for the IP regime; transparent entities do not.
- If a foreign company migrates to Luxembourg, the original acquisition date of IP held by that company is decisive for the applicability of the regime. The regime only applies to IP acquired or constituted after 31 December 2007. The same rule applies in case of the establishment of a permanent establishment in Luxembourg, or in case a tax-exempt company established in Luxembourg becomes taxable. A step up in basis for the value of the IP is provided for upon migration into Luxembourg.

New exchange of information agreements

In a press release of 13 March 2009, Luxembourg announced that it will comply with the OECD standards on administrative assistance in its tax treaties to combat tax evasion. Luxembourg accordingly dropped its reservations to Article 26 (on exchange of information) of the OECD Model Tax Convention. Since March 2009, Luxembourg has signed new agreements or protocols to existing treaties on exchange of information for tax purposes to implement the internationally agreed tax standard with Austria, Belgium, Denmark, Finland, France, the Netherlands, Norway, Spain, Switzerland, Turkey, the United Kingdom and the United States. In addition, Luxembourg submitted a bill to the parliament on the ratification of recently signed new tax treaties and protocols to existing treaties on 1 October 2009 (after being categorised by the OECD as having substantially met the internationally agreed tax standards). This bill contains the domestic procedural framework necessary for exchanging information upon request. Please note that Luxembourg will not be required to exchange information spontaneously.

We trust to have fully informed you. Should you have any questions, please do not hesitate to contact us.

Michiel van Kempen

T: +31 10 224 63 96

michiel.van.kempen@loyensloeff.com

Jeroen Janssen

T: +31 20 578 54 00

jeroen.janssen@loyensloeff.com

Juliana Dantas (Portuguese speaker)

T: +31 20 578 51 67

juliana.dantas@loyensloeff.com

Peter Adriaansen

T: +31 10 224 62 32

peter.adriaansen@loyensloeff.com

For more information about the Loyens & Loeff Brazil Desk please see:

www.brazildesk.nl