



Luxembourg, an attractive IP destination.



MINISTRY OF THE ECONOMY  
AND FOREIGN TRADE  
Board of Economic Development

## INTELLECTUAL PROPERTY AS A KEY ASSET

In knowledge-based economies, intangible assets play a critical role in business performance and economic growth. In many sectors investments in intangible assets are now much greater than those in fixed capital equipment. Indeed, while in the past advanced industrial economies used to invest large amounts in plant and machinery, companies now invest mainly in R&D, software and information technology, human resources and

includes consolidating and migrating IP portfolios and innovation bases to attractive destinations.

In other words, in today's knowledge economy costs and fixed assets are only part of the equation; it is innovative ideas that drive global competitiveness. Luxembourg is well aware of this challenge and therefore the Government endeavors to offer



advertising. As a result an increasing share of corporate market value is generated from intellectual property (IP), which has become a major driver of economic development. And companies are managing their intangible assets more actively, which

a responsive and supportive environment that stimulates and creates research, that rewards innovation and excellence, and that promotes intellectual property management.

## AN IP-CONSCIOUS GOVERNMENT

Luxembourg has been proactive in developing its IP standards and is party of all the major IP treaties and conventions, including the Berne Convention, the Patent Cooperation Treaty (PCT), the Paris Convention and the Patent Law Treaty (PLT), as well as the Madrid Agreement and Protocol. The country has been a signatory of the European Patent Convention – which has set up the European Patent Office (EPO) – since October 1977.

Luxembourg's authorities have created a safe IP environment by implementing EU directives as well as international agreements and treaties, such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) to secure IP rights.

IP litigations are dealt with by the local courts of justice, the so-called “tribunaux d'arrondissement”.

## FOSTERING INNOVATION FOR SUCCESS

Luxembourg's Government is committed to provide an environment that is conducive to the creation, development and management of IP.

### ► A high technology environment

Research, development and innovation are critical in ensuring competitiveness and success of today's modern businesses.

That is why the Government has set up a research-driven University as well as Public Research Centers. Their missions are to boost and foster R&D activities in Luxembourg, to encourage technical and scientific cooperation as well as technology transfer between the public and private sectors and to stimulate new economic activities.

#### ► Public Research Centers:

The *Gabriel Lippmann Public Research Center* is involved in applied scientific research, technological development, technology transfer and ongoing high-level training. The Center has concentrated its activities on 3 main areas: new material technology, particularly nanotechnology and equipment development; sustainable management of natural resources; and information technology.

The *Henri Tudor Public Research Center* offers a wide range of services and activities, including contract research, technology transfer, technological assistance and consulting. Its main domains are: information and communication technologies; industrial process technologies and materials; environmental and health care technologies.

The *Public Research Center for Health* covers fundamental, applied, clinical and public health research. The laboratories of its Research Institute conduct research in virology, immunology and oncology. The Health Institute brings together a wide range of high-level expertise in epidemiology, biostatistics, quality systems, health economics and the management of sanitary information systems.

### ► The University of Luxembourg

The University was established in 2003. It is based on a research-led model – courses for Masters and PhDs are supported by an environment offering solid research capabilities, comprising research units within its three faculties: the Faculty of Sciences, Technology and Communication; the Faculty of Law, Economics and Finance; and the Faculty of Language and Literature, Humanities, Arts and Education.

### ► Luxinnovation

The National Agency for the Promotion of Innovation and Research is the first-stop shop for information and guidance on innovation and R&D in Luxembourg including on national and European funding programs.

Luxinnovation assists companies in identifying abilities and requirements, finding the right instruments for financial and technological support and facilitating access to support programs for innovation and research at national and European levels.

## INCUBATORS

Business and innovation centers offer a platform to host and assist entrepreneurs or technology-based companies wishing to set up a new and innovative activity in Luxembourg.

Incubators provide the appropriate support and guidance to new projects, thus facilitating their development and growth. They also serve as relay-centers offering a temporary location to foreign companies setting up their business in Luxembourg.

## FINANCIAL SUPPORT

Luxembourg offers a full range of custom-made investment incentives designed to give new ventures a head-start and more particularly to foster R&D and innovation.

Financial support may be granted for the funding of specific investment and R&D projects in order to complement equity and banking financing. Medium and long-term loans from the National Credit and Investment Corporation (SNCI) are available at interesting rates. CD-PME, a joint-venture between public and private banks, may also finance innovative projects.

## REWARDING TAX ENVIRONMENT

Luxembourg displays the lowest level of VAT in the EU and its effective corporate tax ranks among the most favorable in Europe. Accelerated depreciation and tax credits, applied to qualifying investments, add to an attractive tax climate, thus contributing to a successful start-up and to a high return on investment.

Furthermore Luxembourg offers an attractive environment for intellectual property management activities, among others thanks to the absence of withholding tax on royalty payments as well as to its extensive network of tax treaties.

In order to encourage R&D activities, the Luxembourg Government has recently passed a law that provides for an 80% exemption of certain types of IP-related income (or of deemed IP-income if a taxpayer creates IP for his own use) as well as capital gains realized on the disposal of such IP.

## WHY LUXEMBOURG?

What makes Luxembourg stand apart is the fact that it manages to combine a unique series of assets:

### ► Sound economic fundamentals

Far-sighted and deliberate pro-business policies, supported by a strong national consensus, have enabled Luxembourg to successfully meet the challenges of economic change over the

past decades. Today the Grand Duchy enjoys one of the highest standards of living in Europe, low inflation and unemployment rates, competitive corporate and personal income taxes and a balanced budget.

### ► Social and political stability

Public policies are characterized by predictability and continuity between successive governments. And social conflicts are avoided



past decades. Today the Grand Duchy enjoys one of the highest standards of living in Europe, low inflation and unemployment rates, competitive corporate and personal income taxes and a balanced budget.

Due to its central location in Europe, its cosmopolitan population, the high level of education, the multilingual capabilities and the high productivity of its labor force, Luxembourg offers an ideal platform to gain access to the approximately 500 million European consumers, but also for headquarters' activities, including business support services, research and development, and intellectual property management. Indeed, thanks to its large number of law and accountancy firms, Luxembourg is well positioned to serve as an efficient shared services and management center for international economic activities.

### ► An exceptional business environment

Luxembourg's economic policies value the strength of private initiative and innovative spirit. A free market approach gives businesses broad freedom of action. As a small country we cherish pragmatism and flexibility. That is why Luxembourg

offers easy access to decision-makers as well as tailor-made solutions for investment, research and development, which are spotted in close contact with the business community.

### ► A good place to live

Luxembourg City offers the vibrant, cosmopolitan atmosphere of a European capital and yet it is only a few minutes away from sweeping forests, splendid views and picturesque historical sites.

At a cultural level, Luxembourg offers first-class theater, music and cinema programs. A new philharmonic hall and a museum of modern art have just recently opened their doors.

Luxembourg is also proud of its high education standards. The recent establishment of the internationally oriented University of Luxembourg has given an additional dimension to Luxembourg's education system. The cosmopolitan character of Luxembourg is reflected even more through other established international schools, such as the European School, the French Lycée Vauban, the British St. George's School and the International School.

**Steven Kiefer**  
Managing Director  
**Delphi Customer Technology Centre Luxembourg**

*"Delphi is a world leader in mobile electronics, transportation components and systems technology. The company is present in all major markets around the world and has developed an important base in Luxembourg where it employs more than 700 people. Delphi's site in Luxembourg hosts its regional headquarters, a customer technology center and the global headquarters of the company's Powertrain division that develops innovative environmental friendly technologies. Delphi appreciates Luxembourg as a business location owing to its strategic location in Western Europe, where many of its clients are located. The skill sets and knowledge levels in Luxembourg are particularly high, and with employees from 26 nationalities, Delphi has the needed resources and competencies to serve its global customers in their own languages. Additionally, Luxembourg offers high-level access to government officials and a pro-business environment, enabling quick decision-making."*

**Karin Schintgen**  
Manager  
**Fortis Bank Luxembourg**

*"Fortis Bank is one of the largest financial institutions in Europe engaged in financial, banking and insurance services and serving private, business and institutional clients. The company is present in 50 countries and employs 60,000 persons throughout the world. The political and cultural neutrality of Luxembourg facilitates doing business in Europe. Luxembourg's authorities are quick-thinking and open to dialogue. Furthermore, the country's long tradition in the steel industry, its development as a major financial center, its status as headquarters for major European institutions have created in Luxembourg an international workforce and highly skilled competencies. In addition, the Grand Duchy lies at the crossroads of different nations and cultures, its high quality of life, safety, good educational opportunities for children as well as an amazing cultural life contribute to Luxembourg's attractiveness as a centrally-located, international, diversified and open place to be."*



MINISTRY OF THE ECONOMY  
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## Luxembourg's IP legislation



In September 2006, the Benelux laws on trademarks and on industrial designs, which came into force in 1971 and 1975 respectively, were transferred into a new Convention, which established the Benelux Organisation for Intellectual Property. The former Benelux Trademark Office and Benelux Designs Office were merged into the Benelux Office for Intellectual Property (BOIP), in The Hague.

The local court of justice, 'tribunal d'arrondissement', deals with IP litigations. The court can order a suspect of IP infringement to temporarily stop his/her activity until the completion of the trial. In case the infringement is proven in the court, the accused is required to stop his/her activity and is bound to pay compensation and damages to the owner of the IP right.

TYPE OF IP	LAW	REMARKS
Patents	Patent Law of 20 July 1992	Amended in 1998, 2001, 2004 and 2006
Trademarks	Benelux Intellectual Property Convention (trademarks and designs)	Came into effect on 1 September 2006
Industrial Designs	Benelux Intellectual Property Convention (trademarks and designs)	Came into effect on 1 September 2006
Copyrights, Related Rights and Databases	The Law of 18 April 2001	

## Treaties and conventions signed by Luxembourg

TREATY/CONVENTION	AREA	EFFECTIVE FROM
Berne Convention	Literary and Artistic Works	June 1888
Paris Convention	Industrial Property	June 1922
Madrid Agreement	International Registration of Marks	September 1924
Uniform Benelux Marks Act	Trademarks	January 1974
Uniform Benelux Designs Act	Industrial designs	January 1975
Benelux Intellectual Property Convention	Intellectual Property	September 2006
Nice Agreement	International Classification of Goods and Services	March 1975
WIPO Convention	Intellectual Property	March 1975
Rome Convention	Performers, Producers of Phonograms and Broadcasting Organisations	February 1976
Geneva Convention	Unauthorised Duplication of Phonograms	March 1976
Strasbourg Agreement	International Patent Classification	April 1977
European Patent Convention	Patents	October 1977
Patent Cooperation Treaty	Patents	April 1978
Hague Agreement	International Deposit of Industrial Designs	April 1979
Vienna Agreement	International Classification of the Figurative Elements of Marks	August 1985
Madrid Protocol	International Registration of Marks	April 1998

# How to obtain patent protection in Luxembourg



Patent protection in Luxembourg can be obtained in three ways:

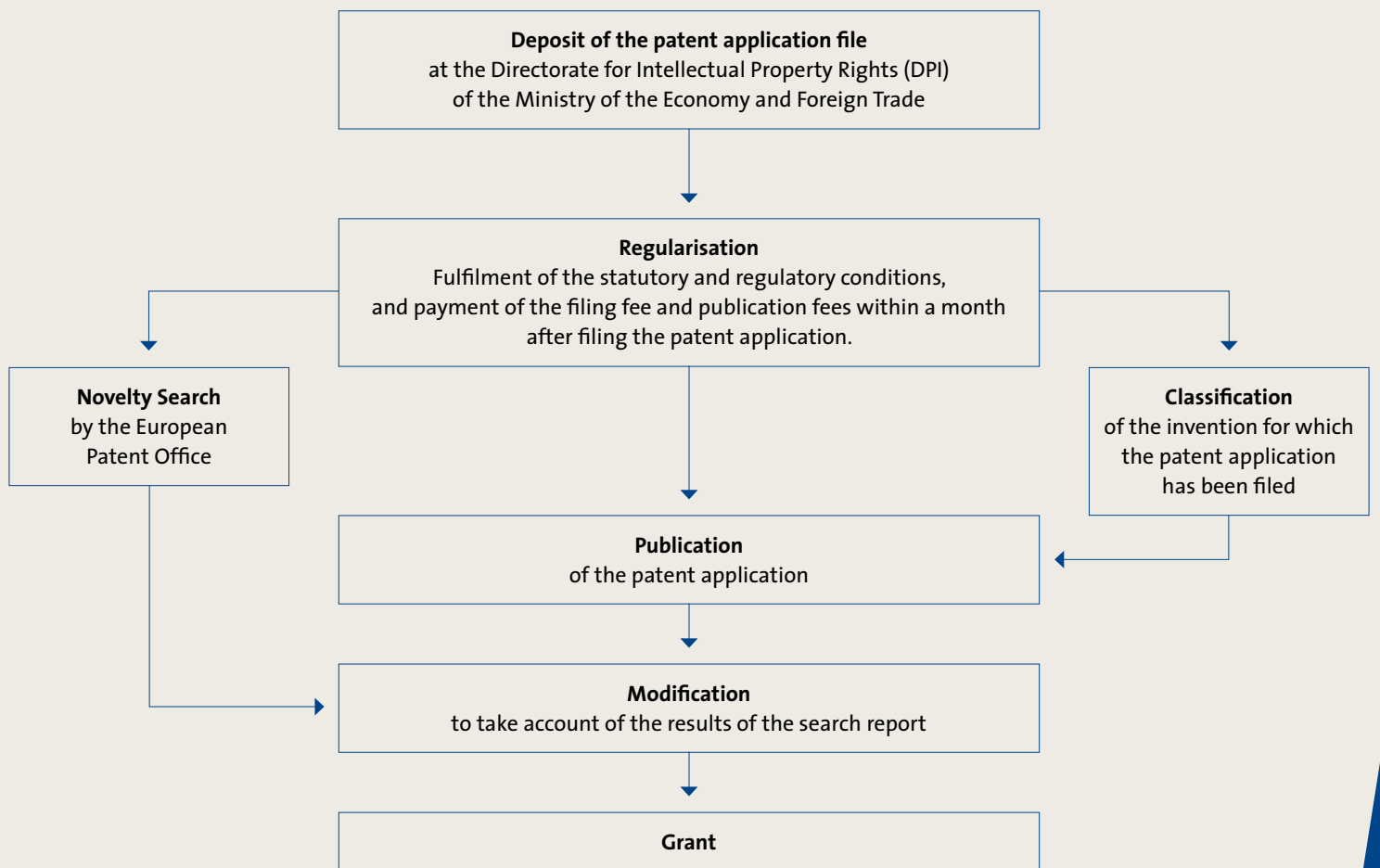
- the application of a Luxembourg patent;
- a European patent application designating Luxembourg;
- or an international PCT application for a patent designating Luxembourg or the European Patent Organization.

The European patent system is a centralized patent granting procedure carried out by the European Patent Office (EPO) in Munich and The Hague.

An international patent application under the Patent Cooperation Treaty (PCT), designating up to 130 countries, can be deposited at the World Intellectual Property Organization (WIPO) in Geneva. A novelty search and preliminary examination are carried out in a centralized procedure, while the grant of the patent is done in the national offices of the designated countries.

The European and the international procedures lead to a patent which has the same legal effects as a national patent.





## Annual fees for patents in Luxembourg

YEAR	COST	YEAR	COST
Third	EUR 29	Twelfth	EUR 145
Fourth	EUR 37	Thirteenth	EUR 160
Fifth	EUR 47	Fourteenth	EUR 175
Sixth	EUR 59	Fifteenth	EUR 190
Seventh	EUR 74	Sixteenth	EUR 205
Eighth	EUR 89	Seventeenth	EUR 220
Ninth	EUR 104	Eighteenth	EUR 235
Tenth	EUR 118	Nineteenth	EUR 250
Eleventh	EUR 130	Twentieth	EUR 270

## Annual fees for marks and designs in Luxembourg

### Charges for Individual Marks

TYPE OF FEE	COST
Basic fee	EUR 240
Supplementary fee for every class after the third class	EUR 37
Supplementary fee for fast registration	EUR 193
Availability search fee (optional)	EUR 150
Supplementary search fee for every class after the third class	EUR 20
Renewal fee	EUR 260
Renewal fee for every class after the third class	EUR 46

### Charges for Filing of Industrial Design

Filing fee	EUR 108
Publication by representation	EUR 10
Publication with description of characteristics	EUR 40
Renewal fee	EUR 95

## Main differences between the U.S. and the European & Luxembourg laws...



DIFFERENCE	U.S.	EUROPEAN & LUXEMBOURG LAWS
Rights conferred by a granted patent	A granted patent confers the same rights in the entire territory of the USA.	'Bundle' of national patents: A granted patent confers the same right as a national patent in each of the elected countries in the application.
Name to file the patent application	U.S patent applications must be made in writing by the individual inventor(s) to be valid.	<ul style="list-style-type: none"> <li>- Employers may file applications to protect the inventions made by their employees.</li> <li>- Luxembourg offers to foreign subsidiaries the possibility to file their application in the name of their parent company.</li> </ul>
Inventive step	An invention must be novel and must not be obvious.	An invention must be novel and involve an innovative step to be patentable. Being non-obvious is not sufficient to involve an inventive step.
Who is granted the rights in the case of interference?	<ul style="list-style-type: none"> <li>- First-to-Invent in the case of patents.</li> <li>- First to Use in the case of trademarks and designs.</li> </ul>	<ul style="list-style-type: none"> <li>- First-to-File in the case of patents.</li> <li>- First to Register in the case of trademarks and designs.</li> </ul>
Grace period	The inventor enjoys a one-year grace period; e.g. during one year, he can publish his invention without losing his patent rights. But doing so, he challenges his chances to get a patent in many other countries in the world.	If the invention is made public by any means before the filing of the patent application, the application will be rejected, regardless of who made the invention publicly known.
Two-part claims versus one-part claims	USPTO patent applications and patents generally contain one-part claims. If the inventor uses two-part claims in a US patent application, and accidentally puts certain novel characteristics of the inventions before the characterizing portion, the feature will be considered as prior art and this action might endanger his patentability chances.	EPO patents and applications contain so-called 'two-part claims'. The latter is a claim list made up of two distinct sections that enables the examiner of the application to identify easily the closest prior art and the characterising features of the invention.
Requirement to include the best way of application	The USPTO system requires the inventor to include the best way to practice his invention in his application.	The EPO Law does not require the inventor to include the best way to practice his invention.
Opposition procedure versus re-examination procedure	The USPTO has a re-examination procedure that allows anyone to present arguments and evidence to prove why the patent should not have been granted. It is the patent holder's duty to establish the validity of his facts and reasons towards the USPTO examiner and while the challenger remains apart from the proceedings	EPO patents can only be cancelled by separate proceedings in each of the elected countries. However, there is a nine month period after the grant of a European patent, during which the patent can be cancelled in all the countries at the same time, through an opposition procedure at the European Patent Office (EPO). The EPO bases its decision on the arguments brought forward by both parties mainly during oral proceedings

## Contact details and useful links

INSTITUTE	TELEPHONE	E-MAIL ADDRESS	URL
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<b>Benelux Office of Intellectual Property (BOIP)</b>	+31 70 349 11 11	info@boip.int	<a href="http://www.boip.int">http://www.boip.int</a>
<b>ALGOA</b> Association luxembourgeoise de gestion des œuvres audiovisuelles	+352 26 02 17		
<b>Luxorr</b> Luxembourg Organisation for Artistic and Literary Rights	+352 26 68 35 76	info@luxorr.lu	<a href="http://www.luxorr.lu">http://www.luxorr.lu</a>
<b>SACEMLux</b> Société des Auteurs, Compositeurs et Éditeurs de Musique	+352 47 55 59	info@sacemlux.lu	<a href="http://www.sacemlux.lu">http://www.sacemlux.lu</a> <a href="http://www.sacem.lu">http://www.sacem.lu</a>
<b>Luxinnovation</b> National Agency for Innovation and Research	+352 43 62 63-1	info@luxinnovation.lu	<a href="http://www.luxinnovation.lu">http://www.luxinnovation.lu</a>
<b>Ecostart</b> Enterprise and innovation centres	+352 247-84185	mario.grotz@eco.etat.lu	
<b>Public Research Centre Henri Tudor</b>	+352 42 59 91-1	info@tudor.lu	<a href="http://www.tudor.lu">http://www.tudor.lu</a>
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<b>University of Luxembourg</b>	+352 46 66 44-1		<a href="http://www.uni.lu">http://www.uni.lu</a>

<b>BUSINESS CARD</b>	
Area:	2,586 sq km
Population:	460,000 inhabitants (40% foreign residents)
Languages:	Luxembourgish (mother tongue), French, German, English
Currency:	Euro
Political System:	Constitutional Monarchy   Parliamentary Democracy
Head of State:	HRH Grand Duke Henri
<b>EUROPEAN UNION CAPITAL</b>	
European Commission Services (Translation, Publication, Statistics)   European Court of Auditors   European Court of Justice   European Investment Bank   European Investment Fund   Secretariat of the European Parliament	
<b>FOUNDING MEMBER OF MAJOR INTERNATIONAL ORGANIZATIONS</b>	
BENELUX   Council of Europe   European Union   NATO   OECD   United Nations	
<b>ECONOMIC HIGHLIGHTS</b>	
Wide open economy	
High growth potential	
Balanced macroeconomic fundamentals	
International financial center   Diversified industry	
Modern infrastructures	
Excellent connectivity to markets – Gateway to the European market	

# Luxembourg's rewarding fiscal environment



Companies in Luxembourg are subject to a corporate income tax and a municipal business tax. In 2008, the nominal combined tax rate is 29.63% for companies based in Luxembourg City. This rate is generated by combining the corporate tax rate of 22.88% (including a 4% employment fund contribution) and the municipal business tax rate for the city of Luxembourg, which is 6.75%. Municipal business tax rates vary slightly according to location.

## IP and R&D incentives

Recently Luxembourg has passed a law aimed more specifically at encouraging R&D activities and the creation of IP. Indeed, income from intellectual property acquired or created after 31 December 2007 will benefit from an exemption of 80% of the IP-related income (or of deemed IP-income if a taxpayer creates IP for his own use).

The exemption applies to income paid to Luxembourg taxpayers (individuals or companies) for the use of any software copyright, any patent, trademark, design or model.

Patents developed and used in-house may under certain conditions generate a deemed income deduction.

Capital gains generated on IP will be exempt up to 80%.

Contrary to companies located in offshore jurisdictions, a Luxembourg resident is entitled to benefit from a reduction of withholding tax on royalty income received from abroad, based on the current EU directive on royalty payments or the relevant double tax treaties.

### ► Overview of the new tax regime

*General conditions to benefit from the IP regime (article 50bis, §§4 and 5 LIR)*

Article 50bis §§ 1 and 3 LIR introduces an 80% exemption regime for income derived from IP and from the sale of IP. IP acquired from a third party may include patents, software copyrights, trademarks, designs or models. In addition, article 50bis §2 provides for a deemed deduction for patents developed in-house. This exemption is limited to registered patents only. The regime is available to both individuals and corporations.

The regime is subject to the following three conditions:  
The IP must have been acquired (or created as the case may be) after 31 December 2007;

Expenses in direct economic connection with the IP must be recorded as an asset in the balance sheet during the first year for which the benefit of this tax regime is claimed;

The IP may not have been acquired from a person that is assimilated to an "affiliated company". A company A is considered as affiliated to company B in the meaning of the law if:

- (a) it directly holds at least 10% of the share capital of B;
- (b) B holds at least 10% of its share capital;
- (c) at least 10% of the share capital of A and of B is directly held by a third company.

*Income from intellectual property (article 50bis, §§1 and 2, LIR)*

According to article 50bis §1 LIR, any net income derived by a Luxembourg taxpayer as a consideration for the use of any copyright on software, any patent, trade mark, design or model will benefit from an 80% exemption. Net income is defined in law as the gross royalty income received by the taxpayer reduced by the amount of expenses in direct economic connection with this income, including annual depreciations and write-downs.

Article 50bis §2 LIR allows a taxpayer that has developed and used its own patent to benefit from a notional deduction amounting to 80% of the net positive income it would have received from a third party as consideration for the right to use of the said patent. Net positive income is defined in the law as the fictitious gross royalty income as referred to above, reduced by the amount of expenses in direct economic connection with this income, including annual depreciations and write-downs, if any.

*Capital gains on the disposal of intellectual property (article 50bis, §§3 and 6 LIR)*

Capital gains realized on the disposal of IP, as defined in §1, will benefit from an 80% exemption.

The gain will remain taxable up to the extent of the expenses in direct connection with the income as well as depreciations and write-downs that have reduced the tax base of the taxpayer in the tax year of the disposal or in any previous tax year.

If no market value is available, article 50bis §6 provides that the estimated market value of the IP, as defined in article 27, al. 2, LIR, could be determined according to any well accepted method for the valuation of intellectual properties. In addition, companies that fulfil the required conditions in order to be considered as SME (as defined in a Grand-Ducal Decree, dated March 16th, 2005) are entitled to value the intellectual property at 110% of the expenses that have reduced their tax base for the tax year of the disposal and of any previous tax year.

The present regime hence adequately combines two objectives. It allows for a full deduction of all R&D expenses for projects that do generate any commercial results. However, successful R&D projects are not penalized through excessive taxation once they come to fruition.