

International Fiscal Association

2026

Melbourne Congress

cahiers

de droit fiscal
international

VOLUME 110

A: Taxation of royalties for
the use of, and gains from
the sale of, intellectual
property/intangibles



1938-2026

Summary and conclusions

This branch report aims to analyse the tax regime applied to IP and PR transactions from a Luxembourg domestic and international perspective, a topic which will be addressed during the next International Fiscal Association 2026 Melbourne Congress, namely *Taxation of Royalties for the Use of, and Gains From the Sale of, Intellectual Property/Intangibles*.

Under the Luxembourg Income Tax Law, the tax treatment of royalties depends on whether the transaction involves a transfer of ownership or a grant of usage rights. Assignments of IP are treated as disposals of intangible fixed assets, generating capital gains or losses. Licensing arrangements, where ownership remains with the transferor, produce taxable royalty income. Payments for IP use are deductible for the transferee, and acquisition costs are capitalised and amortised over the asset's useful life. Royalty income is subject to corporate income tax and municipal business tax and is included in net wealth tax calculations alongside the underlying IP asset. Luxembourg imposes no domestic withholding tax on royalties or IP gains, except for a narrow regime applicable to certain non-resident artists and athletes.

A preferential regime under article 50ter LIR provides an 80% exemption from CIT and MBT on net income derived from "eligible assets," which include patents, utility models, supplementary protection certificates, plant variety rights, designated orphan medicinal products, and copyrighted computer software. Eligible assets must result from qualifying research and development activities carried out by the taxpayer. The regime applies to royalties and gains from disposals and uses a modified nexus approach consistent with OECD BEPS standards, ensuring that relief is tied to genuine value creation. Eligible assets are also exempt from net wealth tax. Net eligible income is calculated by subtracting direct and indirect expenses, including R&D costs and acquisition expenses, from gross income, subject to adjustments to ensure cumulative profitability. A 30% uplift on qualifying expenditure may apply under specific conditions. This structure prevents double advantages by excluding IP assets from reinvestment deferral regimes and requiring per-asset or per-product computations.

Timing rules follow general Luxembourg tax and accounting principles. Lump-sum and non-contingent payments are recognised when due, while contingent payments require provisions and reversals depending on certainty. Tax-neutral reorganisations do not trigger immediate taxation of unrealised gains on IP; these gains transfer to the absorbing entity.

¹ Antonio A. Weffer is a Tax Principal at Baker McKenzie and Head of Transfer Pricing in Luxembourg, with over 25 years of international tax experience, specializing in transfer pricing and cross-border transactions.

² Julien Lamotte is Tax Partner at Deloitte Tax & Consulting in Luxembourg, with over 22 years of international tax experience, specialising in corporate tax aspects and employment tax aspects of domestic and cross-border transactions. The views expressed in this article are those of the author and do not necessarily reflect the views of Deloitte or its affiliates

However, reinvestment deferrals for substitute fixed assets exclude eligible IP assets, avoiding cumulative benefits.

For cross-border transactions, Luxembourg taxes residents on worldwide income and non-residents only on Luxembourg-source income. There is no special source rule for IP; sourcing follows the ordinary categories, business profits attributable to a Luxembourg permanent establishment, income of artists or athletes performing in Luxembourg, and liberal professions exercised or enhanced in Luxembourg. In practice, royalties and IP gains are taxed in Luxembourg when earned by residents or by non-residents with Luxembourg nexus under these rules. Luxembourg levies no domestic withholding tax on royalties or technical service fees; a narrow 10% withholding can apply to certain Luxembourg-source income of non-resident artists and athletes. Outbound royalties are paid gross. Cross-border IP structures are subject to the anti-abuse framework, including transfer pricing, anti-hybrid rules, the interest-limitation rule, controlled-foreign-company rules, the GAAR, and the exit tax. Since 2021, royalty payments to related enterprises located in jurisdictions on Annex I of the EU list are non-deductible unless valid economic reasons are demonstrated.

Luxembourg's treaty network generally follows article 12 of the OECD Model Tax Convention, granting taxing rights to the state of residence of the beneficial owner. However, most treaties preserve a limited source-state right to withhold tax, contrary to the OECD Model's exclusive residence approach, and adopt UN-style provisions to determine the source of royalties, typically the payer's residence unless the payment is borne by a permanent establishment in the other state. Where royalties are effectively connected to a permanent establishment, article 7 (business profits) applies. Treaty definitions vary, and some explicitly cover gains from transfers of rights to use intangibles. Luxembourg has not made reservations on article 12 and generally aligns with the OECD Commentary for distinguishing royalties from service fees and for analysing software and cloud arrangements. Mixed contracts are broken down or apportioned based on OECD guidance.

Administrative guidance focuses on the IP box regime and its technical application. Case law is limited, but practice confirms reliance on OECD principles for characterising payments. EU directives and OECD standards strongly influence Luxembourg's rules: the modified nexus approach anchors preferential IP taxation in qualifying R&D activity, while transfer pricing and anti-abuse measures constrain aggressive cross-border IP planning.

Two themes dominate Luxembourg's approach. First, the domestic system combines ordinary taxation of royalties and IP gains with a competitive IP box regime that offers substantial relief but conditions access on substance and economic reality. Second, treaty policy and OECD guidance shape cross-border outcomes: Luxembourg's zero domestic withholding tax contrasts with treaty-based source taxation rights, and characterisation issues, particularly for software and technical services, are resolved by reference to the OECD Commentary. Overall, Luxembourg's framework reflects alignment with international standards, a focus on genuine value creation, and a pragmatic treaty practice that balances competitiveness with integrity.

Part one: Introduction and legal background³

1.1. How different types of transferable IP/PR are protected under non-tax law

Patents

Patents in Luxembourg are protected under national law⁴ and international conventions. A patent is defined as an industrial property right granting its holder exclusive rights to exploit a protected invention for up to 20 years within a specific territory. This exclusivity allows the patent holder to prevent others from making, using, selling, or importing the invention, and to profit through direct use, licensing, or sale. In exchange for this protection, the inventor must publicly disclose the invention in detail. To be patentable in Europe and thus in Luxembourg, an invention must be new, involve an inventive step, be industrially applicable, and not fall within excluded categories. Assignment of patents⁵ and patent licenses must be in writing⁶ and registered with the Office for Intellectual Property (OPI) to be enforceable against third parties.⁷ Supporting documents for registration must be originals or certified copies, and communications must be in French, German, or Luxembourgish (English may be accepted at OPI's discretion). If not recorded, the assignment is not opposable to third parties, but the record is declarative, not constitutive. Co-owners have a right of first refusal for three months if a share is sold. No domestic professional representative is required. The official fee for recording a patent assignment is EUR 7 per patent.⁸

Copyrights

In Luxembourg,⁹ original creations are automatically protected by copyright from the moment they are created and fixed in a tangible form – no formal registration is required. To qualify for protection, the work must (i) be original, meaning it reflects the author's own intellectual creation and (ii) be materialised, i.e. expressed in a concrete form (not just an idea or concept). This protection grants the author exclusive moral and economic rights over the work, valid for their lifetime plus 70 years after death, and applies to a wide range of works, including texts, software, music, visual art, and more. Moral rights are inalienable and include rights of attribution, integrity, and withdrawal, while economic rights, which are transferable, allow authors to earn income from the exploitation of their work under clearly defined contractual terms. There is no copyright register in Luxembourg, so assignments or licenses do not need to be publicly registered.

³ Ministry of the Economy, "List of applicable legislation on Intellectual Property".

⁴ Law of 20 July 1992 on Patents, as amended.

⁵ Ministry of the Economy, How to file a patent in Luxembourg – An applicant's guide, 2024.

⁶ Law of 20 July 1992 on Patents, art. 54.

⁷ Law of 20 July 1992 on Patents, art. 53.

⁸ Ministry of the Economy, "Appendix 1 – Fees table for patents".

⁹ Law of 18 April 2001 on Copyright, Related Rights and Databases, as amended.

Trademarks

In Luxembourg, trademark protection is governed through the Benelux¹⁰ and European Union¹¹ systems, as there is no national trademark regime. Applicants can choose between a Benelux trademark (covering Luxembourg, Belgium, and the Netherlands) or a European Union trademark (covering all EU member states), depending on their commercial reach and strategic needs. Trademarks can be words, designs, shapes, colours, or sounds, provided they are distinctive and can be represented on the register. Trademark protection requires formal registration, as mere use does not confer legal rights. Registration is done through the Benelux Office for Intellectual Property (“BOIP”) for a Benelux trademark and through the European Union Intellectual Property Office (“EUIPO”) for an EU trademark. Both BOIP and EUIPO hold public databases where it is possible to check the availability of a trademark. Trademark protection lasts ten years and can be renewed indefinitely for further ten-year periods. Trademarks may be licensed for all or some goods/services, and licenses must be recorded in the BOIP register to be enforceable against third parties.

Assignments of trademarks must be in writing and recorded in the BOIP register to be effective against third parties.

Trademark rights are transmissible upon death and can be assigned or licensed for all or part of the goods/services.

Franchise rights

Luxembourg does not have a specific franchising statute. Instead, franchise agreements are governed by general contract law, competition law, and IP rules. Jurisprudence fills gaps in the absence of specific legislation.¹² The European Code of Ethics for Franchising, developed by the European Franchise Federation (EFF), acts as a self-regulatory framework across Europe. It sets principles of good faith and fair dealings, fairness, transparency and loyalty that should govern the franchisor-franchisee relationship at all the following stages: pre-contractual, contractual, and post-contractual. Luxembourg does not have its own national franchise association listed among EFF members (unlike France or Belgium), so there is no formal national extension of the Code. However, franchisors operating in Luxembourg often adhere to the European Code voluntarily, especially if they are part of networks linked to EFF members in neighboring countries (e.g., Belgium or France). The Code serves as a best practice benchmark for disclosure, recruitment, and ethical conduct, complementing Luxembourg’s contract law and EU rules.

Trade secrets and know-how

Trade secrets and know-how are protected under the law of 26 June 2019 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.¹³ implementing Directive (EU) 2016/943. Trade secrets must be confidential, have commercial value, and be subject to reasonable steps to maintain

¹⁰ Benelux Convention on Intellectual Property, 25 February 2005.

¹¹ Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark.

¹² For Example, Cour d’appel, Arrêt N° 119/24 IV-COM, 2 July 2024.

¹³ Law of 26 June 2019 on the Protection of Undisclosed Know-How and Business Information (Trade Secrets).

secrecy. Unlike intellectual property rights, the protection granted to a trade secret is not limited in time. A trade secret remains protected as long as it meets the required conditions, particularly as long as it retains its confidential nature. The unlawful acquisition of a trade secret occurs when it is obtained without the consent of its holder, particularly through unauthorised access, appropriation, copying, or any conduct deemed contrary to honest commercial practices. Similarly, the use or disclosure of a trade secret is considered unlawful if the secret was acquired illicitly, or if the person violates a confidentiality agreement or any obligation restricting its use or disclosure. In cases of unlawful acquisition, use, or disclosure, the law grants trade secret holders protections similar to intellectual property rights, including the ability to request provisional measures (such as injunctions or seizure of infringing goods) and, subsequently, definitive remedies such as corrective actions, injunctions, and damages through court proceedings.

NIL (Name, Image, Likeness)

NIL rights are not specifically regulated; protection may be available under general personality or privacy laws.¹⁴

Indigenous knowledge

Indigenous knowledge is not specifically addressed; it may be protected under general IP or trade secret provisions.

1.2. Types of transactions involving transfer of IP/PR

1.2.1. Transfers of the use of IP/PR where the transferor retains some meaningful right to use the IP/PR ("Licensee Transactions")¹⁵

Licenses can be exclusive or non-exclusive, limited by territory, field of use, or time.

- **Geographic rights:**
 - Trademarks: Licenses may cover all or part of Benelux; must be recorded for opposability.
 - Patents: Must be in writing and registered with OPI for opposability; can be for all or part of the territory.
 - Copyrights: Economic rights can be assigned/licensed for specific territories.
 - Trade secrets: Licenses may grant exclusive rights within a territory, but only while the know-how remains secret.

The IP owner grants rights to use the IP/PR in specific countries or regions. Such transactions are treated as licenses. The licensor retains ownership and may grant exclusive or non-exclusive rights for defined territories. The scope, exclusivity, and territory must be clearly defined in the license agreement.

¹⁴ Law of 11 August 1982 on the Protection of Privacy.

¹⁵ O. Laidebeur, P. Kihn, B. David, T. Bovier, *La propriété intellectuelle au Luxembourg*, Promoculture Larcier, 2018, pp. 77 and seq.

- Field of use rights:
 - Trademarks: Licenses may be limited to certain goods/services.
 - Copyrights: Economic rights may be assigned/licensed for specific uses (e.g., adaptation, translation).
 - Patents: Licenses may be exclusive/non-exclusive and limited to certain uses/fields.
 - Trade secrets: Licenses may restrict use to specific activities/customers.The IP owner grants rights to use the IP/PR for specific activities or purposes. These are also licenses. The licensor may restrict use to certain fields (e.g., medical, automotive). The agreement should specify the permitted activities and any restrictions.

- Limited period rights:

Licenses may be granted for a defined period, after which rights revert to the licensor. Exclusive licenses grant sole rights for the term; non-exclusive licenses allow multiple licensees.

1.2.2. *Transfer of the ownership of IP/PR, where the transferor gives up all rights for future use of IP/PR ("Sale Transactions")*¹⁶

- Assignments:
 - Must be in writing for trademarks, copyrights, and patents.¹⁷
 - Benelux trademark assignments must cover the whole Benelux territory.
 - Copyright assignments of economic rights must be proved in writing and are interpreted restrictively.
 - Assignments or licenses do not need to be registered for copyrights, but registration is required for trademarks for opposability. For patents, both assignments and licenses must be in writing and registered with the OPI to be enforceable against third parties.¹⁸
- Contingent consideration:

Sale agreements may include contingent consideration (e.g., payments based on future revenues or milestones). The assignment remains valid regardless of how consideration is structured (fixed, contingent, or variable). This does not affect the legal transfer of ownership but affects risk allocation, valuation, and accounting. The value of IP/PR may derive from licensing fees, exploitation, or market value. The agreement should clearly define the calculation and payment of contingent consideration and any audit or reporting obligations.
- Contractual rights of reversion:

Contracts may include clauses allowing IP/PR rights to revert to the licensor upon

¹⁶ O. Laidebeur, P. Kihn, B. David, T. Bovier, *La propriété intellectuelle au Luxembourg*, Promoculture Larcier, 2018, pp. 114 and seq.

¹⁷ Law of 20 July 1992 on Patents, art. 54.

¹⁸ Law of 20 July 1992 on Patents, art. 53(3).

specified events (e.g., bankruptcy, non-use, expiration). Luxembourg copyright law provides for reversion in publishing contracts under certain conditions.¹⁹

- **Transferor's right to sue for infringement:**²⁰
After full assignment, the transferor generally loses standing to sue for infringement. The assignment agreement may specify whether the transferor retains the right to sue for past infringements (before the assignment) or whether this right passes to the assignee. For future infringements, the right to sue typically passes to the new owner. The agreement should clarify the allocation of rights to enforce the IP/PR and to recover damages for past or ongoing infringement.
Only the registered owner or holder of copyright may bring infringement actions. For copyrights, moral rights remain with the author, allowing continued action for infringement of those rights.

1.3. Determining whether transactions involve transfers of IP/PR or something else

1.3.1. *Transfers of tangible property/inventory with rights to retransfer or otherwise use embedded IP rights (e.g., patent, copyright or trademark)*

Transfer of tangible property (e.g., selling a product that incorporates patented technology or a copyrighted design) does not automatically transfer the underlying IP rights. The buyer receives the physical item and, typically, an implied license to use the embedded IP as necessary for the intended use of the product.

Rights to re-transfer or use embedded IP depend on the terms of the sale and any accompanying license. If the seller grants the buyer the right to resell the product, this is usually covered by the doctrine of exhaustion (first sale doctrine), meaning the IP owner cannot control further distribution of the product within the EU once sold with consent.

Example: Selling a patented smartphone gives the buyer the right to use and resell the phone, but not to manufacture new phones using the patented technology unless the patent itself is assigned or licensed.

The following factors may influence the analysis: (i) whether the transaction includes an explicit assignment or license of IP rights, (ii) whether the product is sold within the EU (exhaustion applies), and (iii) any contractual restrictions on use or resale.

1.3.2. *Transfers of software with limited rights to copy but no resale rights*

Software transactions are typically structured as licenses, not transfers of ownership. The user receives limited rights (e.g., to install and use, sometimes to make backup copies), but does not acquire ownership of the copyright.

No resale rights: If the license prohibits resale, the transaction is a license, not a transfer of IP rights. The copyright holder retains ownership, and the user's rights are defined by the license terms.

¹⁹ Law of 18 April 2001 on Copyright, Related Rights and Databases, art.16.

²⁰ Law of 22 May 2009 on the Transposition of Directive 2004/48/EC.

Example: Purchasing a software license for a word processor allows installation and use, but not resale or transfer to another party unless the license explicitly allows it.

1.3.3. Transfers of know-how provided in the form of technical services

Know-how (confidential business information, trade secrets) may be transferred by assignment or licensed for use. However, when know-how is provided as part of technical services (e.g., consulting, training), the transaction is usually a service contract, not a transfer of IP rights.

The recipient may receive a right to use the know-how for a specific purpose, but ownership remains with the provider unless explicitly assigned.

1.3.4. Use of NIL as part of performing services

NIL rights are governed by general personality or privacy laws, and are not specifically regulated in Luxembourg. NIL rights (name, image, likeness) are personal rights, often protected under copyright, trademark, or personality rights. Using NIL as part of performing services (e.g., advertising, endorsements) is typically governed by a license or consent agreement, not a transfer of ownership.

The service provider (e.g., athlete, celebrity) grants the client the right to use their NIL for specific purposes and duration. Ownership of the underlying rights remains with the individual.

Example: An athlete agrees to appear in a commercial. The contract allows the company to use the athlete's image for advertising, but the athlete retains ownership of their NIL rights.

Part two: Domestic law principles for taxation of purely domestic IP/PR transfers

2.1. Characterising transactions for tax purposes

For purposes of characterising IP/PR transactions under the Luxembourg Income Tax Law ("ITL"),²¹ the legislation does not distinguish between individuals and business entities. The tax treatment follows the legal and economic nature of the transaction: a transfer of ownership is treated as a disposal of an intangible asset, while a grant of use generally gives rise to royalty (leasing-type) income, subject to reclassification where the income falls within business income, a liberal profession, or agricultural income.

This approach reflects the structure of the ITL, under which the same income-category rules apply for both Personal Income Tax and Corporate Income Tax. Likewise, access to the IP Box regime under article 50ter ITL depends on the nature of the eligible income and compliance with the modified nexus requirements, rather than on the taxpayer's legal form.

²¹ Luxembourg Income Tax Law dated 4 December 1967, as amended.

2.1.1. *Types of transactions that are treated as transfers of IP/PR (as compared to treatment as sales of goods, treatment as services, software leases, etc.)*

Under the ITL, transactions involving IP/PR should be classified as sales of intangible assets when they involve the transfer of ownership of IP/PR, and as the provision of services when they involve granting usage rights. Royalties should likewise be recognised as income derived from the leasing of assets,²² except where they constitute business income, income from a liberal profession, or agricultural income.²³ These transactions are generally fully taxable unless they qualify for the Luxembourg IP box regime, which provides for a partial exemption. Whether these transactions are subject to the IP Box regime depends on whether they are eligible transactions on eligible assets within the meaning of article 50ter ITL.

An eligible asset for the purposes of the IP Box regime is defined as an IP asset other than commercial IP assets, provided that it was created, developed or improved after 31 December 2007 in the course of research and development activities.²⁴ This asset may take the form of an invention protected under national or international provisions such as patents, or software protected by copyright under national or international provisions.²⁵ An exhaustive list of eligible assets is listed: Patents, utility models, supplementary protection certificates under a patent for a medicinal product, a medicinal product for pediatric use or a plant protection product, plant variety certificates, designation of orphan medicinal products and copyright of computer software.²⁶

Eligible transactions are also listed by the ITL, and they include the use of, or the right to use, an eligible asset and the disposal of an eligible asset. Moreover, compensation obtained in connection with legal or arbitration proceedings relating to an eligible asset, as well as revenues directly linked to an eligible asset, when such revenues are incorporated in the sale price of a product or service, are included in the IP Box regime.²⁷

2.1.2. *Types of IP/PR transfers that give rise to royalty income and expense*

Royalty income, within the meaning of article 50ter, arises from eligible transactions where the transferor retains ownership of the eligible IP/PR and grants usage rights to the transferee. As previously mentioned, the use of, or the right to use, an eligible asset, as well as the resulting royalties, are subject to the IP Box regime.

An eligible expense within the meaning of article 50ter is defined as the sum of expenditure required for research and development activities, directly related to the creation, development or improvement of an eligible asset.²⁸ Personnel costs for researchers

²² ITL, art. 98, (1), 3.

²³ ITL, art. 98, (5).

²⁴ ITL, art. 50ter, (1), 1; Circular ITL n° 50ter/1 dated 28 June 2019, p. 15; Act on the promotion of research, development and innovation, art. 1, n°27dated 17 May 2017.

²⁵ ITL, art. 50ter, (1), 1, a and b.

²⁶ ITL, art. 50ter, (1), 1, a and b; The Circular ITL n° 50ter/1 dated 28 June 2019 provides a detailed breakdown for each asset from pp. 7 to 14.

²⁷ ITL, art. 50ter, (1), 7.

²⁸ ITL, art. 50ter, (1), 3.

and technicians, the cost of raw materials and study costs are all examples of eligible expenses.²⁹

Insofar as the royalties do not constitute an expense incurred for the research and development related to the creation, development or improvement of an eligible asset, royalty expenses are not considered as eligible expenses. As a result, when calculating the net income subject to the IP Box regime, royalties are excluded.

Acquisition costs within the meaning of the IP Box regime³⁰ include expenses for the acquisition of an IP asset, expenses for the acquisition of a right to carry out research, as well as royalty expenses incurred as remuneration for the use of or the right to use an IP asset, as long as such expenditure is directly related to the creation, development or improvement of an eligible IP asset and provided that it is reflected in the value of the eligible IP asset. Acquisition costs do not constitute eligible expenses.

Moreover, as royalties constitute a business expense, they remain deductible from the taxable base for corporate income tax ("CIT") and municipal business tax ("MBT") purposes.³¹

Furthermore, investments and operating expenses related to software and patents may benefit from Luxembourg's investment tax credit regime. As of fiscal year 2024, there are two frameworks.³² The first applies to investments and expenses linked to digital transformation or ecological and energy transition. This requires prior certification from the Ministry of Economy and grants a tax credit of 18% on software and patent acquisitions, licenses, and related expenses, provided they are not made within an intragroup context.³³ The second framework is the global investment tax credit, which grants a 12% credit on software acquisitions, subject to the same intragroup restriction and provided they have not already benefited from the first regime.³⁴ For software under this second regime, the credit is limited to 10% of the CIT due for the year³⁵ and cannot be carried forward.³⁶ This tax credit may not be combined with the IP box regime.³⁷

2.1.3. *Types of IP/PR transfers that give rise to gain or expense on the sale of IP/PR*

The sale of eligible IP/PR assets gives rise to either capital gains or losses. As previously mentioned, expenses for the acquisition of an IP asset are acquisition costs, which are not eligible expenses within the meaning of the Luxembourg IP box regime.

Tax-neutral transactions under the ITL, such as mergers or absorptions, do not trigger immediate taxation of unrealised capital gains. These gains are transferred to the absorbing or the newly formed entity.³⁸ However, when the aforementioned transactions involve an eligible IP asset, the income and expenses linked to the eligible asset continue to be taxed

²⁹ DSM Avocats à la Cour, A. PHAM, « Taxation overview, IP Tax regime and ATADs in Luxembourg », 24 January 2024, p.7.

³⁰ ITL, art. 50ter, (1), 2.

³¹ ITL, art. 45, (1).

³² ITL, art. 152bis.

³³ ITL, art. 152bis, §4.

³⁴ ITL, art. 152bis, §7.

³⁵ ITL, art. 152bis, §7, (4).

³⁶ ITL, art. 152bis, §8, (1).

³⁷ ITL, art. 152bis, §3, (4), and §7, (5).

³⁸ ITL, art. 170, 170bis and 170ter.

under the IP Box regime, as if the transfer did not happen, in the hands of the absorbing or merged entity.³⁹

Furthermore, the ITL allows taxpayers to sell fixed assets and delay the taxation of the resulting capital gain by reinvesting said gain into a substitute fixed asset.⁴⁰ *A priori*, as IP rights are treated as fixed assets, they may seem eligible to qualify as substitute fixed asset. However, eligible IP rights are explicitly excluded, thereby avoiding a double tax advantage.⁴¹

2.1.4. Circumstances in which transactions involving IP/PR transfers will be treated as giving rise to royalties vs. giving rise to services payments

The distinction between royalties and service payments depends on the correlative asset and the nature of the transaction.

If the transaction involves an eligible asset and an eligible transfer of the rights to use IP/PR without transferring ownership within the scope of the IP Box regime, the payment is treated as a royalty income benefiting from the partial exemption. The benefit of the partial exemption is granted if the conditions of the IP Box regime are met. Similarly, income directly linked to an eligible asset and incorporated in the sale price of a service is included in the IP Box regime. However, the portion of the income that is directly attributable to the eligible IP must be able to be identified.⁴²

On the other hand, the income stemming from an asset and/or a transfer of the rights to use IP/PR without transferring ownership, that does not fall under the definition of an eligible asset and/or an eligible transaction, is treated as a royalty payment falling out of the scope of the IP Box regime, and therefore does not benefit from the IP Box regime.

In summary, the non-immediate taxation regimes for unrealised capital gains don't apply to assets and transactions falling within the scope of the IP box regime, thereby avoiding the grant of a double tax advantage, materialised through a double non-taxation, to the taxpayer.

2.2. Timing of income recognition

2.2.1. Lump sum payments

The Luxembourg IP Box regime does not specifically target the recognition timing of lump sum payments. As such, they are subject to the general Luxembourg tax and accounting regulations.

Lump sum payments for the use of IP/PR are recognised when the payment is made. In the case of a sale, the income is recognised at the time of transfer of ownership.

Under article 50ter ITL, the income must be adjusted to reflect prior losses and amortization, as well as eligible expenses.⁴³ These adjustments result in the net eligible

³⁹ ITL, art. 50ter, (5) ; Circular ITL n° 50ter/1 dated 28 June 2019 p. 43.

⁴⁰ ITL, art. 54.

⁴¹ ITL, art. 54, (1).

⁴² ITL, art. 50ter, (1), 7, b.

⁴³ ITL, art. 50ter, (2).

income that serves as the basis for applying the exemption provided for under the IP Box regime. The exemption applies only if the net eligible income is positive. If it is negative, it will be carried forward for the following year and will be imputed on the potential net eligible income before applying the exemption.⁴⁴

2.2.2. *Advance contingent payments*

The Luxembourg IP Box regime does not specifically target the recognition timing of advance contingent payments. As such, they are also subject to the general Luxembourg tax and accounting regulations.

Advance contingent payments are not specifically treated in the Luxembourg Generally Accepted Accounting Principles ("LuxGAAP"). However, if there is a certain level of certainty that the contingency will be respected, then it will be recognised as the payment is made.⁴⁵

In the transferor's profit and loss account, if there is a risk that the contingency will not be met, a provision for risk should be made to account for the advance. If the contingency is met, the provision will become permanent payment. If the contingency is not fulfilled, a reversal of the provision should be made, as the advance is reversed.

In the transferee's profit and loss account, the payment should be recognised as income when the payment is made. If the contingency is not fulfilled, the transferee should make a payment to the transferor, which should be recognised as a refund.

2.2.3. *Periodic contingent payments*

The Luxembourg IP Box regime does not specifically target the recognition timing of periodic contingent payments either. As such, they are subject to the general Luxembourg tax and accounting regulations.

Periodic contingent payments are not specifically treated in LuxGAAP. They should be accounted for in the same manner as advance contingent payments as described above, with the difference that recognition occurs periodically rather than up front.

2.2.4. *Noncontingent payments*

The Luxembourg IP Box regime does not specifically target the recognition timing of noncontingent payments. Since there is no contingency, the noncontingent payments should be treated in the same manner as advance contingent payments, as described above.

⁴⁴ ITL, art. 50ter, (2).

⁴⁵ D. COLIN, *Précis de droit comptable*, 2023, p. 191.

2.3. Tax treatment applicable to types of income from IP/PR transfers

2.3.1. Ordinary tax treatment of royalty income

Royalty income is taxed as ordinary income under Luxembourg law. It is included in the taxpayer's taxable income and is subject to CIT and MBT.⁴⁶ Moreover, it should be taken into account during the determination of the net business wealth for the purposes of the Net Wealth Tax ("NWT"), together with the underlying IP asset.

2.3.2. Special regimes for taxing royalties (e.g., patent boxes)

When income is derived from an eligible asset under the Luxembourg IP box regime, 80% of the net eligible income should be exempt from CIT and MBT.⁴⁷ Furthermore, eligible assets are exempt from the NWT:⁴⁸

Adjusted Net Income benefitting from the 80% exemption =
Net Eligible income * Modified Nexus Ratio

Net Eligible Income = Eligible Income – (Total Direct Expenses + Indirect Expenses)⁴⁹

Net Eligible Income = Eligible Income – ((Eligible Expenditure + Acquisition Costs + Expenditure required for R&D activities)⁵⁰ + Expenses indirectly related to an eligible asset)

The net eligible income must also be adjusted and compensated.⁵¹ This adjustment/compensation is applied to ensure that the IP box exemption is granted only when the cumulative net eligible income from the exploitation of the eligible asset exceeds the cumulative operating expenses related to that asset. If the cumulative result is negative, no exemption is granted, and the loss is carried forward to offset future income.

The adjusted net eligible income should be determined per eligible asset. However, when the taxpayer has more than one eligible asset and if the taxpayer is able to establish that his R&D activity is so complex that it is not possible to track each eligible asset, the determination of the adjusted and compensated net eligible income is to be made by (i) product, (ii) service or (iii) group of products or (iv) group of services from eligible assets.

Two calculation methods are provided for adjusting the net eligible income: (i) the first method applies when the expenses relating to the creation of the eligible asset have been deducted in the operating years in which they were incurred, while (ii) the second method is used when the operating expenses relating to the creation of the eligible asset have been capitalised.

Modified Nexus Ratio = (Eligible expenses * 30% uplift under certain conditions) / (Total Direct Expenses)⁵²

⁴⁶ O. HOOR, "Transformation of the Luxembourg tax environment towards the post-BEPS era", 15 April 2021, pp. 200-201.

⁴⁷ ITL, art. 50ter, (8).

⁴⁸ Valuation Act of 16 October 1934 as amended, §60ter.

⁴⁹ Circular ITL n° 50ter/h dated 28 June 2019, p. 27.

⁵⁰ Circular ITL n° 50ter/h dated 28 June 2019, p.24.

⁵¹ Circular ITL n° 50ter/h dated 28 June 2019, p.29-34.

⁵² ITL, art. 50ter, (6); Circular ITL n° 50ter/h dated 28 June 2019, p.24; Arendt & Medernach, « New Luxembourg IP Box regime adopted », Tax update, 4 April 2018, p.2.

30% uplift applies insofar as:

The Increased amount of eligible expenditure < The sum of the total expenditure incurred by the taxpayer during the current and previous financial years.⁵³

The Modified Nexus Approach ensures that any partial exemption for IP income is contingent upon a direct link between the income and qualifying R&D expenditures incurred by the taxpayer, and that such income is derived from eligible IP.⁵⁴

2.4. Treatment of payments by the transferee of IP/PR

2.4.1. Deduction or amortisation for lump sum and advance and periodic contingent payments for the use of IP/PR

Payments made by the transferee for the use of IP/PR, whether they are lump sum, advance contingent, or periodic contingent payments, are generally treated as deductible business expenses.⁵⁵ However, under the IP Box regime, these payments may be considered costs of acquisition if they are directly linked to the constitution, development, or improvement of an eligible asset.⁵⁶

Under Luxembourg GAAP, expenses follow the accrual principle and must be recognised when the economic obligation arises, not when cash is paid.⁵⁷

A lump-sum upfront payment that provides benefits over several periods cannot be expensed immediately; it must be capitalised as a prepaid asset and amortised over the period in which the related benefits are consumed.

In the case of an advance contingent payment, the amount must remain recorded as an asset until the contingent event is fulfilled; only then may the cost be recognised, and if the resulting benefit extends across periods, the expense must be allocated through systematic amortisation.

2.4.2. Deduction or amortisation for lump sum and advance and periodic contingent payments for the use of IP/PR

In case of the acquisition of IP/PR, the acquisition cost should be capitalised and amortised over the life of the eligible asset in question.⁵⁸⁺⁵⁹ The amortisation annuities should be regarded as deductible business expenses.⁶⁰

Luxembourg law does not provide a closed statutory list of amortisable intangibles. Under LuxGAAP, intangibles with a finite useful life are amortised, whereas intangibles

⁵³ ITL, art. 50ter, (6); O. HOOR, "Transformation of the Luxembourg tax environment towards the post-BEPS era", 15 April 2021, p. 199.

⁵⁴ O. HOOR, "Transformation of the Luxembourg tax environment towards the post-BEPS era", 15 April 2021, p. 198.

⁵⁵ ITL, art. 45, (1) ; D. COLIN, *Précis de droit comptable*, 2023, p. 52.

⁵⁶ ITL, art. 50ter, (1), 2.

⁵⁷ Law of 20 December 2002, Trade and Companies Register as well as the accounting and the annual accounts of undertakings, art. 51, (1)

⁵⁸ It is the case from patents and trademarks: D. COLIN, *Précis de droit comptable*, 2023, p. 53.

⁵⁹ Up to 20 years from patents and 10 renewable years for trademarks.

⁶⁰ ITL, art. 45, (1).

with an indefinite useful life are not amortised but instead tested for impairment.

In practice, most intellectual property rights have a limited legal or economic life and therefore qualify for amortisation.⁶¹ However, patents, leasehold rights, concessions, operating licenses, copyrights and similar rights are amortisable only if they appear on the balance sheet. This is automatically the case when such rights are acquired for consideration. When such rights are self-created, LuxGAAP permits their recognition as intangible assets; alternatively, the creation costs may be expensed directly.

Where these rights are recognised as assets, they must be systematically amortised over their probable period of use, reflecting the period during which the entity expects to derive economic benefits. Amortisation is justified whereby the value of the right declines predictably – for example, when a patent enters the public domain, or a license reaches its expiry date – making the reduction in value foreseeable where legal protection is time-limited.⁶²

2.5. Treatment of transactions with bundled IP/PR

2.5.1. *Treatment of transfers of patented, etc. inventory combined with rights to resell*

When patented inventory is transferred along with resale rights, the transaction may involve both the sale of goods and licensing of IP. The sale and the licensing should be treated separately in order to determine if they meet the conditions of the IP Box regime. Under the IP Box regime, only the portion of income directly attributable to eligible IP (i.e., the patent) may qualify for the exemption.⁶³

Luxembourg law does not prescribe any statutory formula for unbundling the IP/PR component of a transaction involving patented (or otherwise protected) inventory combined with resale rights. Instead, the consideration must be allocated on a fair, reasonable and objectively supportable basis, using verifiable criteria, so that the portion attributable to the eligible IP can be correctly identified for IP Box purposes.

In practice, taxpayers begin with the contractual terms, and where these do not provide a sufficiently reliable allocation, they rely on valuation and transfer pricing techniques – for example, contractual splits, comparable uncontrolled price analysis, or discounted cash-flow approaches – to quantify the consideration attributable to the underlying eligible IP.

Where the parties are related, the allocation becomes a matter of transfer pricing compliance. Luxembourg's arm's length framework requires an accurate delineation of the bundled transaction and an arm's length allocation of value between the tangible inventory and the embedded or licensed IP rights.

2.5.2. *Treatment of transfers of software or similar IP when combined with the provision of related services*

If software is transferred along with related services, the transfer and the services should be treated separately in accordance with the approach outlined in the preceding section.

⁶¹ ITL, art. 28, (1)

⁶² A. STEICHEN, *Précis de droit fiscal de l'entreprise*, 2024, pp. 394-397.

⁶³ ITL, art. 50ter, (1), 7, b.

2.5.3. *Treatment of transfers of rights to use NIL rights when combined with the provision of related services*

As NIL rights are not covered under the IP Box regime, they are subject to general Luxembourg tax rules. Moreover, trade names, domain names and customer lists are specifically excluded from the scope of application of the IP Box regime.⁶⁴

Part three: Domestic law principles for the taxation of cross-border transactions

This analysis is based solely on Luxembourg domestic law. Luxembourg's extensive network of double tax treaties may override these provisions, particularly regarding the allocation of taxing rights and the treatment of royalties and gains.

3.1. Source of income from payments in IP/PR transfer transactions

The general framework of Luxembourg domestic law on the taxation of cross-border transactions revolves around two theoretical models of international taxation:^{65 66 67}

- Source-based taxation: Income is taxed in the jurisdiction where it originates.
- Residence-based taxation: Income is taxed in the jurisdiction where the taxpayer is resident.

These models reflect the two fundamental approaches to allocating taxing rights internationally. Source-based taxation focuses on some type of nexus with the jurisdiction, while residence-based taxation emphasises taxpayer's personal or institutional attachment to the jurisdiction.

Luxembourg domestic tax law does not provide any special treatment when determining the allocation of income derived from IP or PR transactions, whether royalties or gains on sales. Furthermore, it does not distinguish between contingent and non-contingent income within these transactions.

International tax literature and the OECD recognise contingent income as payments dependent on future events, such as royalties based on usage or performance. On the other hand, non-contingent income is regarded as fixed or determinable at the outset, such as lump-sum payments for IP transfers.^{68 69}

⁶⁴ Circular ITL n° 50ter/1 dated 28 June 2019, p.6.

⁶⁵ IMF, *Taxing Cross-Border Income: The International Taxation System and Its Reform* (Chapter 3), IMF eLibrary, 2021.

⁶⁶ IMF, *Taxing Cross-Border Income: The International Taxation System and Its Reform* (Chapter 11), IMF eLibrary, 2021.

⁶⁷ The "Report on Double Taxation", submitted to the Financial Committee of the League of Nations in 1923, defines not only the fundamental structure of the current international tax system but also its key concepts. Adopted by all of the major capital exporting economies, including now the United States, the United Kingdom, and Japan.

⁶⁸ OECD Model Tax Convention Commentary, art. 12.

⁶⁹ Guglielmo Maisto (ed.), *Taxation of Intellectual Property under Domestic Law, EU Law and Tax Treaties*, IBFD, 2018.

Two key provisions of the ITL⁷⁰ govern the allocation of taxable income:

- Article 2(1)-(2)⁷¹ and 159(1)-(2)⁷² ITL which establishes taxation on a residence basis for worldwide income.
- Article 156.1-.8 ITL which establishes taxation on the source basis for non-residents. Luxembourg taxes income considered Luxembourg source, based on specific nexus rules.

Luxembourg's approach of allocating taxable income from IP/PR transactions is exclusively based on source-based taxation through relevant nexus and residence, rather than alternative allocation methods.⁷³

3.2. Nexus for taxation of income from cross-border IP/PR transfer transactions

Luxembourg does not provide an exhaustive classification in terms of income of every possible IP-related payment. Article 10 LIR lists the income categories in Luxembourg.⁷⁴

Royalty payments are classified by article 98(1).3 ITL as income from the rental of property; nevertheless, article 98(5) provides that if a royalty falls within any of the income categories set out in article 10.1-.3 ITL⁷⁵, it shall be taxed under the corresponding category.

For IP-related payments that are not royalties, there is neither explicit nor implicit classification under Luxembourg domestic tax law. As a general matter and subject to the specific facts and contractual terms, such payments can be ordinarily classified as:

- Business income, articles 14 and 15 ITL
- Agricultural income, article 61-63 ITL
- Income from liberal professions, articles 91 and 92 ITL

Without prejudice to case-specific analysis, the classifications above apply in the ordinary course.

3.2.1. *Nexus rules applicable to payments to resident taxpayers and permanent establishments of non-resident taxpayers in the cases of (i) royalty income and (ii) gain on sale income*

There is no specific nexus for IP/PR payments to resident taxpayers and permanent establishments of non-resident taxpayers under Luxembourg domestic tax law:

⁷⁰ Luxembourg Income Tax Law dated 4 December 1967, as amended.

⁷¹ ITL, art. 2, individuals are considered resident if they have a tax domicile or habitual abode in Luxembourg, with habitual abode generally requiring physical presence exceeding six consecutive months.

⁷² ITL, art. 159, legal entities are considered resident if their registered office or place of central administration is located in Luxembourg.

⁷³ IMF, Taxing Cross-Border Income: The International Taxation System and Its Reform (Chapter 11), IMF eLibrary, 2021.

⁷⁴ ITL, art. 162, rules for determining the category of income apply in the same way to Personal Income Tax as to Corporate Income Tax.

⁷⁵ Business income (.1), agricultural income (.2) and income from liberal profession (.3).

- Articles 2(1)-(2)⁷⁶ and 159(1)-(2)⁷⁷ ITL: Establishes taxation on a residence basis for worldwide income.
- Article 156.1(a) ITL⁷⁸: Business income attributable⁷⁹ directly or indirectly to a Luxembourg permanent establishment (PE)⁸⁰ or permanent representative, except where the permanent representative is a wholesaler, a commission agent or an independent sales representative.

Although certain IP/PR payments qualify as income from the rental of property, article 98(5) ITL provides that where income listed in article 98(1).3 ITL falls within the scope of business income, it is taxed in that category. Therefore, royalties attributable to a Luxembourg PE are treated as business income of that PE and can be in the scope of article 156(1) ITL.

3.2.2. *Nexus rules applicable to payments to other non-resident taxpayers (i.e., not permanent establishments of non-resident taxpayers) in the cases of (i) royalty income, including applicable withholding tax rates and (ii) gain on sale income, including applicable withholding tax rates*

There is no specific source nexus for IP/PR payments to non-resident taxpayers without a permanent establishment under Luxembourg domestic tax law. Therefore, the analysis must rely on the general source rules applicable to the different income categories into which an IP/PR payment may fall:

- Article 156.1(b) ITL: Business income earned through activities requiring prior authorisation under the itinerant professions law.
- Article 156.1(c) ITL: Business income earned through activities performed by professional artists or athletes in Luxembourg.
- Article 156.2 ITL: Agricultural income linked to an agricultural or forestry business located in Luxembourg.
- Article 156.3 ITL: Income earned through the exercise of liberal professions when the activity is or has been carried out or enhanced⁸¹ in Luxembourg.

⁷⁶ ITL, art. 2, individuals are considered resident if they have a tax domicile or habitual abode in Luxembourg, with habitual abode generally requiring physical presence exceeding six consecutive months.

⁷⁷ ITL, art. 159, legal entities are considered resident if their registered office or place of central administration is located in Luxembourg.

⁷⁸ For a historical review of the taxation of royalties in Luxembourg for non-residents, please refer to J. Schaffner, *Droit fiscal international*, 3rd edition, p.478 and seq., Larcier Promoculture, 2013.

⁷⁹ The domestic rules do not provide detailed guidance on how profits are allocated to a PE. In practice, Luxembourg follows the principles set out in art. 7 of the OECD Model Tax Convention, as incorporated in many double tax treaties. This means the PE is treated as a separate and independent enterprise, and profits are attributed based on the functions performed, assets used, and risks assumed by the PE. Consequently, income from IP/PR transactions will only be taxable in Luxembourg if it is effectively connected with the activities of the PE.

⁸⁰ The definition of PE is aligned with the OECD Model Tax Convention and further clarified in §16 of the *Steueranpassungsgesetz*.

⁸¹ The enhancement concept ("*mise en valeur*" in French) is further clarified in the Administrative Circular letter 156/1 ITL dated 17 December 1992, and cannot apply in case of a double tax treaty. See also IFA cahiers, LXXXIIa, *The taxation of income derived from the supply of technology, Luxembourg*, A. Huberty and Guy F. Lange, 1997, pp. 541 and 542.

Other nexus provisions under article 156.4-8 ITL apply to categories such as labour income, current assets or miscellaneous income, but none explicitly are relevant to IP/PR transactions.

Regarding the application of Withholding Tax (“WHT”) on IP/PR payments to non-residents under Luxembourg domestic tax law, there are two main considerations:

- Article 152(1)-(2) ITL addresses WHT on certain Luxembourg source income earned by non-residents:
 - Income derived from the exercise of an independent literary or artistic activity, when such activity is or has been carried out or enhanced in Luxembourg; and
 - Income derived from the exercise of a professional sports activity, when such activity is or has been carried out in Luxembourg.
- Luxembourg domestic tax law does not impose WHT on royalties or technical service fees. There are no further provisions in the ITL regarding WHT on IP/PR payments to non-residents.

3.3. Special rules that characterise or otherwise treat cross-border transactions differently than purely domestic transactions

As explained in the previous section, the attribution of taxable income to Luxembourg under domestic tax law is governed by the principles of residence and source. Luxembourg does not apply alternative attribution models such as destination-based taxation, user-location allocation, or market jurisdiction sourcing, which have been discussed in academic literature as potential approaches for taxing income from digital or intangible assets.^{82 83}

It is important to note that while the IP Box regime under article 50ter ITL⁸⁴ and Circular ITL n° 50ter/1⁸⁵ does not govern the attribution of income to Luxembourg, it does introduce specific rules for the preferential treatment of income that has already been attributed to Luxembourg under the general principles. The regime applies a modified nexus approach, which limits access to the 80% exemption based on the location of qualifying R&D expenditures, thereby applying a criterion oriented towards economic substance and genuine value creation, effectively preventing artificial structures from benefiting from the regime. *(Please note that Luxembourg’s IP Box Regime is further developed in Part two).*

In addition to the IP Box, several general provisions under Luxembourg domestic law may affect the treatment of cross-border IP/PR transactions, even though they do not specifically target IP:

- WHT rules under articles 146 et seq ITL. (Please note that Luxembourg’s domestic WHT regime is further developed in Part three, 3.2.2)
- Transfer pricing under articles 56 and 56bis ITL. These provisions codify the arm’s length principle for related-party transactions and explicitly refer to the OECD Transfer Pricing

⁸² IMF, *Taxing Cross-Border Income: The International Taxation System and Its Reform* (Chapter 10), IMF eLibrary, 2021.

⁸³ OECD, *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two)*, Inclusive Framework on BEPS, OECD Publishing, Paris, 2021.

⁸⁴ ITL, art. 50ter.

⁸⁵ Luxembourg Ministry of Finance, Circular LIR n° 50ter/1 on the Application of art. 50ter LIR, Administration des contributions directes, 28 June 2019.

Guidelines. These rules apply equally to domestic and cross-border transactions but are particularly relevant for intangibles in international structures.

- Anti-hybrid rules under articles 168ter and 168quater ITL. These provisions govern deduction/no-inclusion and double deduction outcomes in cross-border arrangements, including reverse hybrid mismatches. IP transactions may be affected when structured through hybrid entities.
- Interest limitation rule under article 168bis ITL. This provision caps the deductibility of exceeding borrowing costs at 30% of EBITDA or EUR 3 million. This rule is relevant for debt-financed IP acquisitions or development.
- Controlled Foreign Company rules under article 164ter ITL. This provision attributes income of controlled foreign companies to Luxembourg taxpayers where arrangements are non-genuine. IP holding structures in low-tax jurisdictions may be targeted.
- General Anti-Abuse Rule under §6 Steueranpassungsgesetz. This provision allows recharacterisation of arrangements whose main purpose is to obtain a tax advantage contrary to the object of the law.
- Exit tax under article 38 ITL and article 172 ITL. These provisions apply to transfers of assets or residence out of Luxembourg, including intangible assets. The tax is calculated on the unrealised gain at fair market value, with a five-year payment deferral available for transfers to EU/EEA states that have a mutual assistance agreement for tax recovery.

In terms of classification or differentiated tax treatment of IP/PR cross-border transactions, Luxembourg essentially relies on international standards incorporated into domestic law. Another relevant point is Luxembourg's extensive network of tax treaties, which may introduce specific provisions for IP/PR transactions depending on the jurisdiction.⁸⁶ *(Please note that Luxembourg's extensive Tax Treaties regime and its specific provisions in regard of transactions of IP/PR are further developed in Part four).*

Part four: Application of IP/PR-related treaty provisions to royalties

4.1. Treaties covering royalty income

All tax treaties concluded by Luxembourg cover royalties. As already highlighted in a previous IFA report,⁸⁷ Luxembourg, however, sometimes agrees to give to the Source State the right to withhold taxes on the royalties and Luxembourg, as Residence State, would then eliminate double taxation through the credit method.

⁸⁶ As of February 2026, Luxembourg has concluded tax treaties with a total of 96 jurisdictions. Please refer to the Government of Luxembourg's Inland Revenue (ACD) page *Conventions internationales en vigueur et en négociation (International Affairs)*. Note that five countries are involved in negotiations to establish or update their tax treaties with Luxembourg. The official website was last updated on 19 December 2025.

⁸⁷ IFA cahiers, LXXXIIa, *The taxation of income derived from the supply of technology, Luxembourg*, A. Huberty and Guy F. Lange, 1997, p. 539.

4.2. Wording of treaty provisions covering royalty income

The language of the treaties concluded by Luxembourg usually follows article 12 OECD MTC in its current or previous versions, even if this may not be obvious based on the table below (Table 1). Treaties signed by Luxembourg recognise the principle of taxation of royalties in the State of residence of the beneficial owner receiving the royalty payments. However, Luxembourg has accepted to preserve the right for the Source State to withhold taxes on royalties on most of its double tax treaties. Therefore, the wording of the first paragraph is usually technically closer to that of the UN MTC on this aspect, as no WHT should be levied according to the OECD MTC.⁸⁸

Please also note that most tax treaties do incorporate a wording close to paragraph 5 of article 12 of the UN MTC regarding the source State to be considered in case the royalty payment is effectively connected to a permanent establishment.

The treaty policy of Luxembourg and the double tax treaties concluded do not show any specific reference to the US MTC.

⁸⁸ J. Schaffner, *Droit Fiscal international*, 3rd edition, 2014, p.487, Larcier Promoculture, 2013, recognising that double tax treaties signed by Luxembourg are melting OECD and UN MTC.

Table 1: Overview of Luxembourg tax treaties

Contracting Country with Luxembourg	Royalties covered ?	OECD MTC art. 12 Paragraph 1 (right to tax)	OECD MTC art. 12 Paragraph 2 (definition)	OECD MTC art. 12 Paragraph 3 (PE exception)	OECD MTC art. 12 Paragraph 4 (special relationship)	Paragraph 5 UN MTC included ?	UN MTC on technical services included ?	Comment
Albania	Yes (art. 12)	UN MTC	UN MTC	1977 version	Current version	Yes	No	
Andorra	Yes (art. 12)	Current version	Current version	Current version	Current version	Yes	No	
Argentina	Yes (art. 12)	UN MTC	UN MTC	1977 version	Current version	Yes	No	
Armenia	Yes (art. 12)	UN MTC	UN MTC	Current version	Current version	Yes	No	
Austria	Yes (art. 9)	UN MTC	1963 version	1963 version	1963 version	No	No	
Azerbaijan	Yes (art. 12)	Current version	Current version	1977 version	Current version	Yes	No	
Bahrain	Yes (art. 12)	Current version	Current version	Current version	Current version	No	No	
Barbados	Yes (art. 12)	Current version	UN MTC	1977 version	Current version	No	No	
Belgium	Yes (art. 12)	Current version	Specific wording	Current version	1963 version	Yes	No	State privilege
Botswana	Yes (art. 12)	UN MTC	UN MTC	Current version	Current version	Yes	Yes	
Brazil	Yes (art. 12)	UN MTC	UN MTC	Current version	1963 version	No	No	
Brunei Darussalam	Yes (art. 12)	UN MTC	UN MTC	1977 version	Current version	Yes	Yes	State privilege
Bulgaria	Yes (art. 12)	UN MTC	Current version	1977 version	Current version	Yes	Yes*	
Cabo Verde	Yes (art. 12)	UN MTC	UN MTC	1977 version	Current version	Yes	No	
Canada	Yes (art. 12)	UN MTC	UN MTC	1977 version	Current version	Yes	No	
China, People's Rep of	Yes (art. 12)	UN MTC	UN MTC	1977 version	Current version	Yes	No	State privilege
Colombia	Yes (art. 12)	UN MTC	1963 version	1977 version	Current version	Yes	Yes	

Contracting Country with Luxembourg	Royalties covered ?	OECD MTC art. 12 Paragraph 1 (right to tax)	OECD MTC art. 12 Paragraph 2 (definition)	OECD MTC art. 12 Paragraph 3 (PE exception)	OECD MTC art. 12 Paragraph 4 (special relationship)	Paragraph 5 UN MTC included ?	UN MTC on technical services included ?	Comment
Croatia	Yes (art. 12)	UN MTC	Current version	1977 version	Current version	Yes	No	
Cyprus	Yes (art. 12)	Current version	Current version	Current version	Current version	No	No	
Czech Republic	Yes (art. 12)	UN MTC	UN MTC	Current version	Current version	Yes	No	
Denmark	Yes (art. 12)	Current version	1963 version	1977 version	Current version	No	No	
Estonia	Yes (art. 12)	Current version	Current version	Current version	Current version	Yes	No	
Ethiopia	Yes (art. 12)	UN MTC	UN MTC	1977 version	Current version	Yes	Yes	
Finland	Yes (art. 12)	Current version	Specific definition	1977 version	Current version	Yes	No	State privilege
France	Yes (art. 12)	UN MTC	Current version	Current version	Current version	Yes	No	
Georgia	Yes (art. 12)	Current version	Current version	1977 version	Current version	No	No	
Germany	Yes (art. 12)	UN MTC	Current version	Current version	Current version	Yes	No	
Ghana	Yes (art. 12)	UN MTC	UN MTC	1977 version	Current version	Yes	Yes	
Greece	Yes (art. 12)	UN MTC	UN MTC	1977 version	Current version	Yes	No	
Guernsey	Yes (art. 12)	Current version	Current version	Current version	Current version	No	No	
Hong-Kong	Yes (art. 12)	UN MTC	UN MTC	Current version	Current version	Yes	No	
Hungary	Yes (art. 12)	Current version	Current version	Current version	Current version	No	No	
Iceland	Yes (art. 12)	Current version	Current version	1977 version	Current version	No	No	
India	Yes (art. 12)	UN MTC	UN MTC	1977 version	Current version	Yes	Yes	
Indonesia	Yes (art. 12)	UN MTC	Specific wording	UN MTC version	Current version	Yes	Yes	

Contracting Country with Luxembourg	Royalties covered ?	OECD MTC art. 12 Paragraph 1 (right to tax)	OECD MTC art. 12 Paragraph 2 (definition)	OECD MTC art. 12 Paragraph 3 (PE exception)	OECD MTC art. 12 Paragraph 4 (special relationship)	Paragraph 5 UN MTC included ?	UN MTC on technical services included ?	Comment
Ireland	Yes (art. 12)	Current version	UN MTC	Current version	1963 version	No	No	
Isle of Man	Yes (art. 12)	Current version	Current version	Current version	Current version	Yes	No	
Israel	Yes (art. 12)	UN MTC	Current version	Current version	Current version	Yes	No	
Italy	Yes (art. 12)	UN MTC	UN MTC	Current version	Current version	Yes	No	State privilege
Japan	Yes (art. 12)	UN MTC	Specific wording	1977 version	Current version	Yes	No	State privilege
Jersey	Yes (art. 12)	Current version	Current version	Current version	Current version	No	No	
Kazakhstan	Yes (art. 12)	UN MTC	UN MTC	Current version	Current version	Yes	No	
Kosovo	Yes (art. 12)	Current version	Current version	Current version	Current version	No	No	
Kuwait	Yes (art. 12)	UN MTC	Current version	Current version	Current version	Yes	No	
Laos	Yes (art. 12)	UN MTC	Current version	1977 version	Current version	Yes	No	Broadcasting addition
Latvia	Yes (art. 12)	UN MTC	UN MTC	1977 version	Current version	Yes	No	
Liechtenstein	Yes (art. 12)	Current version	Current version	Current version	Current version	No	No	
Lithuania	Yes (art. 12)	UN MTC	UN MTC	1977 version	Current version	Yes	No	
Malaysia	Yes (art. 12)	UN MTC	UN MTC	1977 version	Current version	Yes	Yes	
Malta	Yes (art. 12)	UN MTC	Specific wording	1977 version	Current version	Yes	No	State privilege
Mauritius	Yes (art. 12)	Current version	Current version	1977 version	Current version	No	No	
Mexico	Yes (art. 12)	UN MTC	Specific wording	1977 version	Current version	Yes	No	Gains included
Moldova	Yes (art. 12)	UN MTC	UN MTC	Current version	Current version	Yes	No	

Contracting Country with Luxembourg	Royalties covered ?	OECD MTC art. 12 Paragraph 1 (right to tax)	OECD MTC art. 12 Paragraph 2 (definition)	OECD MTC art. 12 Paragraph 3 (PE exception)	OECD MTC art. 12 Paragraph 4 (special relationship)	Paragraph 5 UN MTC included ?	UN MTC on technical services included ?	Comment
Monaco	Yes (art. 12)	Current version	Current version	Current version	Current version	No	No	
Montenegro	Yes (art. 12)	UN MTC	Current version	Current version	Current version	Yes	No	Broadcasting addition
Morocco	Yes (art. 12)	UN MTC	1963 version	Current version	Current version	No	No	
Netherlands (The)	Yes (art. 12)	1963 wording	1963 version	Current version	1963 version	No	No	Specific re. waiver of right to tax
North Macedonia	Yes (art. 12)	UN MTC	Current version	Current version	Current version	Yes	No	Broadcasting addition + State privilege
Norway	Yes (art. 12)	1963 version	UN MTC	1977 version	1963 version	No	No	
Oman	Yes (art. 12)	UN MTC	UN MTC	1977 version	Current version	Yes	No	
Panama	Yes (art. 12)	UN MTC	UN MTC	Current version	Current version	Yes	No	
Poland	Yes (art. 12)	UN MTC	Current version	1977 version	Current version		No	Broadcasting addition + State privilege
Portugal	Yes (art. 12)	UN MTC	UN MTC	1977 version	Current version	Yes	Yes*	State privilege
Qatar	Yes (art. 12)	UN MTC	Current version	1977 version	Current version	Yes	No	Broadcasting addition
Romania	Yes (art. 12)	UN MTC	UN MTC	1977 version	Current version	Yes	No	State privilege
Russia	Yes (art. 12)	Current version	1963 version	1977 version	Current version	No	No	
Rwanda	Yes (art. 12)	UN MTC	UN MTC	Current version	Current version	Yes	Yes	
San Marino	Yes (art. 12)	Current version	Current version	Current version	Current version	No	No	Broadcasting addition
Saudi Arabia	Yes (art. 12)	UN MTC	UN MTC	Current version	Current version	Yes	No	

Contracting Country with Luxembourg	Royalties covered ?	OECD MTC art. 12 Paragraph 1 (right to tax)	OECD MTC art. 12 Paragraph 2 (definition)	OECD MTC art. 12 Paragraph 3 (PE exception)	OECD MTC art. 12 Paragraph 4 (special relationship)	Paragraph 5 UN MTC included ?	UN MTC on technical services included ?	Comment
Senegal	Yes (art. 12)	UN MTC	UN MTC	1977 version	Current version	Yes	No	Anti-abuse provision
Serbia	Yes (art. 12)	UN MTC	UN MTC	1977 version	Current version	Yes	No	
Seychelles	Yes (art. 12)	UN MTC	UN MTC	Current version	Current version	Yes	No	
Singapore	Yes (art. 12)	UN MTC	Current version	1977 version	Current version	Yes	No	Broadcasting addition
Slovakia	Yes (art. 12)	UN MTC	UN MTC	1977 version	Current version	Yes	No	State privilege
Slovenia	Yes (art. 12)	UN MTC	Current version	1977 version	Current version	Yes	No	
South Africa	Yes (art. 12)	1963 version	Current version	1977 version	Current version	No	No	Broadcasting addition
(South) Korea, Rep of	Yes (art. 12)	UN MTC	1963 version	1977 version	Current version	Yes	No	State privilege
Spain	Yes (art. 12)	UN MTC	Specific definition	1977 version	Current version	Yes	No	State privilege
Sri Lanka	Yes (art. 12)	UN MTC	Current version	1977 version	Current version	Yes	No	Broadcasting addition
Sweden	Yes (art. 12)	Current version	Current version	1977 version	Current version	No	No	Broadcasting addition
Switzerland	Yes (art. 12)	Current version	Current version	1977 version	Current version	No	No	
Tajikistan	Yes (art. 12)	UN MTC	Current version	1977 version	Current version	Yes	No	Broadcasting addition
Thailand	Yes (art. 12)	UN MTC	UN MTC	UN MTC	Current version	Yes	No	Gain included
Trinidad & Tobago	Yes (art. 12)	UN MTC	UN MTC	UN MTC	Current version	Yes	No	Specific exclusions
Tunisia	Yes (art. 12)	UN MTC	Specific wording	1977 version	Current version	Yes	No	State privilege
Turkey	Yes (art. 12)	UN MTC	Current version	1977 version	Current version	Yes	No	Broadcasting addition

Contracting Country with Luxembourg	Royalties covered ?	OECD MTC art. 12 Paragraph 1 (right to tax)	OECD MTC art. 12 Paragraph 2 (definition)	OECD MTC art. 12 Paragraph 3 (PE exception)	OECD MTC art. 12 Paragraph 4 (special relationship)	Paragraph 5 UN MTC included ?	UN MTC on technical services included ?	Comment
Ukraine	Yes (art. 12)	UN MTC	Current version	1977 version	Current version	Yes	No	Broadcasting addition
UAE	Yes (art. 12)	Current version	Current version	Current version	Current version	No	No	
United Kingdom	Yes (art. 12)	Current version	Current version	Current version	Current version	No	No	
USA	Yes (art. 13)	Current version	Specific wording	1977 version	Current version	No	No	Gain included
Uruguay	Yes (art. 12)	UN MTC	Specific wording	Current version	Current version	Yes	No	
Uzbekistan	Yes (art. 12)	UN MTC	Current version	1977 version	Current version	Yes	No	Broadcasting addition + State privilege
Vietnam	Yes (art. 12)	UN MTC	UN MTC	1977 version	Current version	Yes	No	State privilege

**Wording on technical fees included directly in the provisions of the article dealing with royalties and not as a separate provision of the double tax treaty.*

4.3. Scope of royalty articles

The material scope of the treaty provisions related to royalties in Luxembourg is usually a mere copy of either the OECD MTC article 12, second paragraph or the one of the UN MTC. A few treaties, as listed in the above Table 1, also include in their wording specific reference to radio and television broadcasting without necessarily fully adhering to the UN MTC definition.

Some treaties (Belgium, Finland, Indonesia, Malta, Mexico, Spain, Tunisia, Uruguay, the US) do have a specific definition. The double tax treaty with Trinidad & Tobago is close to the UN MTC Model with some specific exclusions.

Potential gains linked to the transfer of rights to use certain intangibles are also clearly covered by some double tax treaties (Mexico, Thailand and the US).

Otherwise, Luxembourg would generally follow the OECD MTC, as no reservations or observations have been made. The case laws are also limited in Luxembourg in that respect, and administrative guidance is only provided regarding the potential application of the IP box regime (on income and gains) as aforementioned.

4.4. Nexus for source taxation of royalty income

The double tax treaties concluded generally follow the OECD MTC as previously mentioned, with the exception that most of them give, however, the right to withhold taxes to the Source State. Those in line with the OECD MTC (see above Table 1) would then lay down the principle of exclusive taxation of royalties in the State of the beneficial owner's residence, with the only exception to this principle in cases dealt with in paragraph 3 of the OECD MTC. When the beneficial owner of the royalties carries on business in the Source State in which royalties arise through a permanent establishment,⁸⁹ the Source State will have the right to tax them pursuant to article 7 OECD MTC.

Most of the double tax treaties concluded by Luxembourg also include a section close to paragraph 5 article 12 UN MTC, which reads as follows:

“Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated”.

It basically means that the Source State of the royalties' payment is the State of Residence of the payer, except when the payer has a permanent establishment in a Contracting State to which such royalties' payment is linked. In such a case, the Source State will be the State in which the permanent establishment is located.

Finally, out of the tax treaties including a section close to paragraph 5 UN MTC, a few of them also include a wording that sources the royalty payment to the contracting

⁸⁹ And the extent to which the royalties paid, are effectively connected with such permanent establishment.

State when the payor is the State or a subdivision of it. These treaties are listed in Table 1 (Belgium, Brunei Darussalam, the People's Republic of China, Finland, Italy, Japan, Malta, North Macedonia, Uzbekistan, Poland, Portugal, Romania, Slovakia, Spain, the Republic of Korea, Tunisia, and Vietnam).

4.5. Withholding taxation of royalties

No tax could be withheld on royalties or fees for technical services based on Luxembourg domestic law. There is, however, one exception regarding non-residents receiving Luxembourg source income from certain literary, artistic and sports activities which could be subject to 10% WHT in specific circumstances.⁹⁰

Luxembourg has, however, accepted in most of the cases to foresee the possibility for the Source State to withhold taxes on royalties. The table below (Table 2) gives an overview of potential applicable rates according to double tax treaties in force.

Table 2: Overview of withholding tax rate on royalties

Contracting Country with Luxembourg	Luxembourg domestic rate	Treaty rate
Albania	0%	5%
Andorra	0%	0%
Argentina	0%	3/5/10/15%
Armenia	0%	5%
Austria	0%	0/10%
Azerbaijan	0%	5/10%
Bahrain	0%	0%
Barbados	0%	0%
Belgium	0%	0%
Botswana	0%	7.50%
Brazil	0%	15/25%
Brunei Darussalam	0%	10%
Bulgaria	0%	5%
Cabo Verde	0%	10%

⁹⁰ ITL, art. 152 Title 1 and art. 156. The activity needs to have been carried out in Luxembourg or enhanced in Luxembourg. The enhancement concept ("*mise en valeur*" in French) is further clarified in the Administrative Circular letter 156/1 ITL dated 17 December 1992 and cannot apply in the case of a double tax treaty. See also IFA cahiers, LXXXIIa, *The taxation of income derived from the supply of technology, Luxembourg*, A. Huberty and Guy F. Lange, 1997, pp. 541 and 542.

LUXEMBOURG

Contracting Country with Luxembourg	Luxembourg domestic rate	Treaty rate
Canada	0%	0/10%
China, People's Rep. of	0%	10%
Colombia	0%	10%
Croatia	0%	5%
Cyprus	0%	0%
Czech Republic	0%	0/10%
Denmark	0%	0%
Estonia	0%	0%
Ethiopia	0%	5%
Finland	0%	0/5%
France	0%	5%
Georgia	0%	0%
Germany	0%	5%
Ghana	0%	8%
Greece	0%	5/7%
Guernsey	0%	0%
Hong Kong	0%	3%
Hungary	0%	0%
Iceland	0%	0%
India	0%	10%
Indonesia	0%	12.50%
Ireland	0%	0%
Isle of Man	0%	0%
Israel	0%	5%
Italy	0%	10%
Japan	0%	10%
Jersey	0%	0%
Kazakhstan	0%	10%
Kosovo	0%	0%
Kuwait	0%	5%

Contracting Country with Luxembourg	Luxembourg domestic rate	Treaty rate
Laos	0%	5%
Latvia	0%	5/10%
Liechtenstein	0%	0%
Lithuania	0%	0%
Malaysia	0%	8%
Malta	0%	10%
Mauritius	0%	0%
Mexico	0%	10%
Moldova	0%	5%
Monaco	0%	0%
Montenegro	0%	5/10%
Morocco	0%	10%
Netherlands (The)	0%	0%
North Macedonia	0%	5%
Norway	0%	0%
Oman	0%	8%
Panama	0%	5%
Poland	0%	5%
Portugal	0%	10%
Qatar	0%	5%
Romania	0%	10%
Russia	0%	0%
Rwanda	0%	10%
San Marino	0%	0%
Saudi Arabia	0%	5/7%
Senegal	0%	6/10%
Serbia	0%	5/10%
Seychelles	0%	5%
Singapore	0%	7%
Slovakia	0%	0/10%

Contracting Country with Luxembourg	Luxembourg domestic rate	Treaty rate
Slovenia	0%	5%
South Africa	0%	0%
(South) Korea, Rep. of	0%	5/10%
Spain	0%	10%
Sri Lanka	0%	10%
Sweden	0%	0%
Switzerland	0%	0%
Tajikistan	0%	10%
Thailand	0%	15%
Trinidad & Tobago	0%	10%
Tunisia	0%	12%
Türkiye	0%	10%
Ukraine	0%	5/10%
UAE	0%	0%
United Kingdom	0%	0%
USA	0%	0%
Uruguay	0%	5/10%
Uzbekistan	0%	5%
Vietnam	0%	10%

Please note that certain double tax treaties link the withholding tax rate (not in Luxembourg but in the foreign country) to the shareholding link between the debtor and the beneficiary of the royalty payment (e.g. Brazil, Austria).⁹¹

4.6. Technical assistance and technical services

There are no specific provisions or court decisions regarding technical assistance and technical services relating to the transfer of IP/PR. Please note that the treaties concluded by Luxembourg with Bulgaria and Portugal include technical fees in the article relating to royalties. Other treaties concluded by Luxembourg have separate articles dealing with technical fees (see Table 1).

⁹¹ J. Schaffner, Droit Fiscal international, 3rd edition, 2014, pp.495 and 496, Larcier Promoculture, 2013.

Luxembourg would generally follow the OECD MTC and related commentaries to distinguish royalties from the provision of services.⁹²

4.7. Royalties and service fees

Luxembourg would generally follow the OECD MTC and related commentaries to distinguish royalties from the provision of services.⁹³ See the above developments described in 2.1.4.

4.8. Licenses and sales of goods

Please note that a few double tax treaties may cover as royalties the total or partial forbearance in respect of the use or supply of any IP property or right or sale of certain IP rights, such as the double tax treaty with Spain, Malta and Indonesia, for instance.⁹⁴ See for more information the developments described above.

Part five: Limitations on the deduction of payments for IP/PR transfers paid to non-residents

As a matter of principle, to the extent that payment for IP/PR transfers paid to non-residents is incurred in the course of the normal course of the activity and not in direct economic link with a tax-exempt income/asset,⁹⁵ it should be tax deductible for CIT and MBT purposes in Luxembourg (see also our comments in 2.1.2).

The same rule should apply whether the IP/PR transfers are paid to related or non-related beneficiaries and treaty-protected or non-treaty country recipients. It should, however be noted that in case of related party transaction, such transfers should respect the transfer pricing provisions and the arm's length principle. Otherwise, the possibility to deduct from a tax perspective could be impacted in terms of amount (e.g. in case of transfer pricing adjustment) or if the transaction is recharacterised into deemed dividend distribution,⁹⁶ for instance.

Since 2021, similarly to the rules applying to interest payment, royalty payment owed (actual payments or accruals) to non-resident beneficiaries are deemed not tax deductible if the following conditions are met:⁹⁷

- The beneficial owner of the royalties is a corporate entity;⁹⁸

⁹² See for instance para. 11.4 OECD MTC Commentary on art. 12.

⁹³ See for instance para. 11.4 OECD MTC Commentary on art. 12.

⁹⁴ J. Schaffner, *Droit Fiscal international*, 3rd edition, 2014, p.498, Larcier Promoculture, 2013.

⁹⁵ ITL, art. 45.

⁹⁶ ITL, art. 164 (3). Deemed dividend distribution would exist when a related party received an undue advantage given its relationship link with the payer. In such a case, the payment would not be tax deductible and potentially subject to WHT.

⁹⁷ ITL, art. 168 (5).

⁹⁸ Within the meaning of art. 159 ITL.

- The beneficiary is a related enterprise pursuant to article 56 ITL;⁹⁹
- The beneficiary of the interest or royalties is established in a jurisdiction or territory that is on Annex I of the EU List;
- The term “royalties” as used in the new provision means consideration of any kind owed for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films, any patent, trademark, design or model, plan, secret formula or process, and for information concerning industrial, commercial or scientific experience.

However, the deemed non-tax deductibility could be switched off if the taxpayer can prove that the transaction that gave rise to the royalties owed is used for valid economic reasons which reflect economic reality.

Part six: Case studies

6.1. Exclusive license to manufacture and sell patented products globally

The main question which will drive the tax treatment will be to determine whether such exclusive license is a transfer of an element of property or could still be considered as falling within the scope of royalties. In line with paragraph 8.2 OECD MTC Commentary on article 12, if such a transaction based on specific facts is seen as an alienation, article 7 (Business profits) or 13 (Capital gain) of the OECD MTC are likely to apply rather than article 12 regarding royalties. The fact that the license is exclusive should not be sufficient per se to justify an alienation.¹⁰⁰

6.2. License of accounting software to be customised and used in licensee's business accounting systems

This situation deals with the discussion on software covered by paragraph 12 and seq. of the OECD MTC Commentaries on article 12.¹⁰¹ The fact that the license is only granted for the client to properly operate the software and even install it in its own system is not sufficient for this to represent a royalty payment. It will be more a question of business profits (article 7 OECD MTC). However, the fact of acquiring partial rights in the copyright (without the transferor fully alienating the copyright rights) may be classified as royalties to the extent it is a consideration for the use or the right to use. If some services are also embedded in the same contract, the methods set out in paragraph 11.6 of the OECD MTC Commentary on article 12 would also be relevant for contracts dealing with software. This may lead to

⁹⁹ The concept of “related enterprise” covers any enterprise participating, directly or indirectly, in the management, control or capital of another enterprise, or situations where the same persons participate, directly or indirectly, in the management, control or capital of two enterprises.

¹⁰⁰ Para. 8.5 OECD MTC Commentary on art. 12.

¹⁰¹ It is a particularly difficult discussion as shown in J. Schaffner, *Droit Fiscal international*, 3rd edition, 2014, p.502, Larcier Promoculture, 2013.

the need to potentially break down the contract based on the information contained in the contract or by means of a reasonable apportionment.

6.3. License of trademark to use on manufactured products distributed around the world

License to use the trademark should normally typically qualify as royalties. Nevertheless, it would need to be ensured that such payment is in fact not linked to obtaining any exclusive right to sell/distribute goods which would fall under the business profit definition (article 7 OECD MTC).¹⁰²

6.4. License of right to use pro athlete's NIL on products sold globally

Likely the same analysis as above – please also refer to our comments under 2.5.3.

6.5. License of cloud computing capacity for data storage and analysis with licensee ability to download analysis on its own servers

Payment linked to the license of cloud computing capacity for data storage should not be considered as a royalty payment, given the lack of use or right to use of any element listed in paragraph 2 of article 12 OECD MTC and should be considered as business income. Similarly, the possibility of downloading should not affect the analysis of the character of the payment.¹⁰³ If additional services are provided, specific analysis should be performed as previously mentioned for mixed contracts.

¹⁰² Para. 10.1 OECD MTC Commentary on art. 12. See also J. Schaffner, *Droit Fiscal international*, 3rd edition, 2014, p.500, Larcier Promoculture, 2013.

¹⁰³ Para. 17.2 OECD MTC Commentary on art. 12.

Sources

- §16 of the Steueranpassungsgesetz, available at: <https://legilux.public.lu>
- Act on the promotion of research, development and innovation, 17 May 2017, available at: <https://legilux.public.lu/eli/etat/leg/rmin/2017/06/22/a599/jo>
- Arendt & Medernach, “New Luxembourg IP Box regime adopted”, Tax update, 4 April 2018, available at: https://www.arendt.com/wp-content/uploads/2024/04/2018.04.04_nf_tax-ip_box.pdf
- Article 7 of the OECD Model Tax Convention, available at: <https://www.oecd.org/en/topics/tax-treaties.html>
- Benelux Convention on Intellectual Property, 25 February 2005, available at: <https://www.boip.int/uploads/inline/BOIP%20BCIP%20EN.pdf>
- Circular ITL n° 50ter/1 dated 28 June 2019, available at: <https://impotsdirects.public.lu/dam-assets/fr/legislation/legi19/LIR50teridu28juin2019.pdf>
- Circular ITL, 156/1 ITL dated 17 December 1992, available at: <https://legilux.public.lu/eli/etat/leg/circulaire-lir-n-156-1-du-17-decembre-1992.pdf>
- Cour d’appel, Arrêt N° 119/24 IV-COM, 2 July 2024, available at: <https://legilux.public.lu/eli/etat/leg/memorial/1987/a18>
- D. COLIN, Précis de droit comptable, Promoculture Larcier, 2023, p. 191.
- DSM Avocats à la Cour, A. PHAM, “Taxation overview, IP Tax regime and ATADs in Luxembourg”, 24 January 2024, available at: <https://www.dsm.legal/wp-content/uploads/2024/01/Taxation-overview-IP-Tax-regime-and-ATADs-in-Luxembourg-Alex-PHAM-DSM-Avocats-à-la-Cour-IBCL-conference-january-2024.pdf>
- Guglielmo Maisto (ed.), Taxation of Intellectual Property under Domestic Law, EU Law and Tax Treaties, IBFD, 2018, available at: <https://www.ibfd.org>
- IFA cahiers, LXXXIIa, The taxation of income derived from the supply of technology, Luxembourg, A. Huberty and Guy F. Lange, 1997, available at: <https://www.ibfd.org>
- IMF, Taxing Cross-Border Income, IMF eLibrary, 2021, available at: <https://www.imf.org/-/media/Files/Publications/fiscal-monitor/2022/April/English/ch2.ashx>
- J. Schaffner, Droit Fiscal international, 3rd edition, 2014, p.495 and 496, Larcier Promoculture, 2013, available at: Droit fiscal international - Jean Schaffner - 3e édition | Lgdj.fr
- Law of 11 August 1982 on the Protection of Privacy, available at: <https://legilux.public.lu/eli/etat/leg/loi/1982/08/11/n1/jo>
- Law of 18 April 2001 on Copyright, Related Rights and Databases, Article 16, available at: <https://legilux.public.lu/eli/etat/leg/loi/2001/04/18/n2/consolide/20200407>
- Law of 18 April 2001 on Copyright, Related Rights and Databases, as amended, available at: <https://legilux.public.lu/eli/etat/leg/loi/2001/04/18/n2/consolide/20200407>
- Law of 20 July 1992 on Patents, as amended, available at: <https://legilux.public.lu/eli/etat/leg/loi/1992/07/20/n1/jo>
- Law of 22 May 2009 on the Transposition of Directive 2004/48/EC, available at: <https://www.wipo.int/wipolex/en/legislation/details/21489>
- Law of 26 June 2019 on the Protection of Undisclosed Know-How and Business Information (Trade Secrets), available at: <https://www.wipo.int/wipolex/en/legislation/details/21478>
- League of Nations, “Report on Double Taxation”, available at: <https://legalinstruments.oecd.org/public/doc/483/483.en.pdf>

- Luxembourg Income Tax Law dated 4 December 1967, as amended, available at: <https://impotsdirects.public.lu/dam-assets/fr/legislation/LIR/LIR2025.pdf>
- Ministry of the Economy, “Appendix 1 – Fees table for patents”, available at: <https://mec.gouvernement.lu/dam-assets/publications/guide-manuel/minist-economie/brevets-invention-guide-deposant-annexes/2018-update/Annexes-EN.pdf>
- Ministry of the Economy, “List of applicable legislation on Intellectual Property”, available at: <https://mec.gouvernement.lu/en/domaines-activites/propriete-intellectuelle/legislation.html>
- Ministry of the Economy, How to file a patent in Luxembourg – An applicant’s guide, 2024, available at: <https://mec.gouvernement.lu/en/publications/guide-manuel/minist-economie/brevets-invention-guide-deposant.html>
- O. HOOR, “Transformation of the Luxembourg tax environment towards the post-BEPS era”, BSP, 15 April 2021, available at: <https://www.bsp.lu/lu/publications/newsletters-newsflashes/key-changes-luxembourg-tax-landscape-2025>
- O. Laidebeur, P. Kihn, B. David, T. Bovier, *La propriété intellectuelle au Luxembourg*, Promoculture Larcier, 2018, pp. 77 and seq., available at: <https://www.amazon.com/La-propriete-intellectuelle-au-Luxembourg/dp/2879981840> - see also the English version dated 2019, 2nd edition.
- OECD, Model Tax Convention Commentary, Article 12, available at: <https://www.oecd.org/en/topics/tax-treaties.html>
- OECD, Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two), OECD Publishing, Paris, 2021, available at: <https://www.oecd.org>
- Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark, available at: <https://eur-lex.europa.eu/eli/reg/2017/1001/oj/eng>
- Valuation Act of 16 October 1934, as amended, §60ter, available at: <https://legilux.public.lu/eli/etat/leg/loi/1934/10/16/n2/jo/fr>



International Fiscal Association



9 789083 468228