

Administrative Court decision on the IP regime:

Ownership and documentation requirements for eligible IP assets

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On 12 August 2026, the Luxembourg Administrative Court of Appeal (*Cour administrative*, 12 août 2026, n°53244C) (the “Administrative Court” or the “Court”) ruled on the application of the intellectual property (“IP”) tax regime provided for by Article 50ter of the Luxembourg Income Tax Law (“LITL”) to income derived from two IP assets covered by patent applications.



The Court overturned the judgment of the Luxembourg Administrative Tribunal (*Tribunal administratif*, 18 juin 2025, n°48315) (the “Administrative Tribunal” or the “Tribunal”) and held that the taxpayer was entitled to the 80% exemption under Article 50ter LITL in respect of both the capital gain derived from the transfer of a usufruct over a first invention (the “First IP Asset”) and the royalties received from the exploitation of a second patent (the “Second IP Asset”).

Summary of the case

The taxpayer was carrying out research and development (“R&D”) activities. The dispute concerned two separate IP assets developed by one of its employees and relating to the conversion of carbon dioxide into fertilizer using ammonia: the First IP Asset, over which the taxpayer transferred a usufruct, and the Second IP Asset, which the taxpayer licensed to an affiliated entity. The recipient of the usufruct and the licensee were the same company (the “Affiliated Entity”).

The IP assets

The patent application for the First IP Asset was filed by the Affiliated Entity in October 2017. In November 2018, the taxpayer and the Affiliated Entity entered into an agreement under which the taxpayer transferred the usufruct over the First IP Asset to the Affiliated Entity. The patent was ultimately granted in April 2019. The taxpayer realized a capital gain on the transfer of the usufruct.

The patent application for the Second IP Asset was filed by the taxpayer itself in April 2016, and the patent was granted in October 2017. Under a license agreement concluded in May 2016, the taxpayer granted the Affiliated Entity the right to use and exploit the Second IP Asset in exchange for royalties.

Errors in the 2018 tax return

Following the issuance of the 2018 tax assessments, the taxpayer filed an amended tax return in July 2021 to correct two errors in its original return:

- The taxpayer had omitted to claim the exemption provided for in Article 50ter LITL on the capital gain arising from the transfer of the usufruct over the First IP Asset.
- The royalties relating to the Second IP Asset had been reported under the former IP regime provided for in Article 50bis LITL, although the taxpayer considered that Article 50ter LITL should have applied.

The tax office declined to revise the tax assessments on the grounds that insufficient information had been provided.

A second amended return was filed in August 2021. However, the tax office informed the taxpayer that it would not be able to process that return and issue amended tax assessments before the expiry of the three-month deadline for filing a claim against the original assessments.

To preserve its rights, the taxpayer filed an administrative claim (*réclamation*) with the Director of the Luxembourg tax authorities. As the latter did not respond, the taxpayer brought the matter before the Tribunal.

Regarding the First IP Asset, the tax authorities broadly challenged the taxpayer's ownership of the IP rights. They relied primarily on the fact that the Affiliated Entity, rather than the taxpayer, had filed the patent application in October 2017, whereas the agreement transferring the usufruct to the Affiliated Entity was not concluded until November 2018. They inferred that the Affiliated Entity already held the relevant rights and considered that the taxpayer had not demonstrated genuine control over the asset. The taxpayer explained that this sequence was intended to secure patent protection ahead of the planned transfer and avoid unnecessary duplicate filings. The tax authorities also questioned the taxpayer's evidence of ownership because the transaction involved affiliated companies.

Regarding the Second IP Asset, the tax authorities argued that the taxpayer had failed to comply with the tracking and documentation requirements under Article 50ter LITL. In their view, the records had been prepared retrospectively and did not adequately demonstrate the extent to which the employee inventor's remuneration related to the development of the Second IP Asset. In June 2025, the Tribunal rejected the taxpayer's claims. In substance, the judges considered that the taxpayer had not established its ownership of the First IP Asset and had not complied with the documentation requirements of Article 50ter LITL in relation to the Second IP Asset. The taxpayer appealed.

Decision of the Court

The Court disagreed with the Administrative Tribunal's conclusions and ruled in favor of the taxpayer in respect of both assets, although on different grounds.

The First IP Asset

For the First IP Asset, the sole issue was ownership of the underlying IP rights. Although Article 50ter LITL does not expressly state that the taxpayer must own the relevant IP rights, the Court ruled that ownership is inherent in the regime. In principle, the taxpayer must own the IP rights created, developed, or improved through its own R&D activities, and the income must arise from the exercise of those rights.

However, the Court did not examine each of the parties' ownership arguments separately. Instead, it focused on the inconsistency between the position underlying the original tax assessments and the position subsequently defended by the tax authorities. The judges observed that the tax office had attributed the entire capital gain arising from the transfer of the usufruct to the taxpayer and had taxed it accordingly. By doing so, the Court held that the tax authorities had implicitly but necessarily treated the taxpayer as the owner of the First IP Asset.

The Court ruled that the principle of consistency prevented the tax authorities from subsequently denying that ownership solely to refuse the benefit of the IP regime. In particular, it observed that they had not explained why the capital gain should remain taxable at the level of the taxpayer if the latter did not own the underlying asset. The judges also noted that, when it issued the original tax assessments, the tax office already knew that the Affiliated Entity had filed the patent application. The judges therefore treated the taxpayer as the owner of the First IP Asset for the purposes of Article 50ter LITL and granted the 80% exemption on the adjusted net eligible income derived from the transfer of the usufruct.

The Second IP Asset

For the Second IP Asset, the Court examined whether the taxpayer had provided sufficient evidence to satisfy the tracking and documentation requirements under Article 50ter LITL. The judges relied on the patent identifying the employee as the inventor, the employee's pay slips and timesheets, his statement confirming the research period, and registers separating the income and expenditure relating to each IP asset. Taken together, those documents allowed the relevant income and expenditure to be identified by nature, amount and period. In addition, the Court found that the tax authorities had not demonstrated that the supporting documents had been prepared retrospectively. The pay slips appeared to have been issued when the salaries were paid, while nothing indicated that the timesheets had not been prepared during the relevant period.

Finally, the evidence showed that the employee had worked exclusively on the Second IP Asset between March 2015 and April 2016. The judges, therefore, accepted the employee's entire remuneration for that period as eligible expenditure without requiring any further apportionment. The Court consequently ruled that the taxpayer had satisfied the documentation requirements and granted the 80% exemption on the adjusted net eligible income derived from the royalties relating to the Second IP Asset.

Key takeaways

Given the limited Luxembourg case law interpreting Article 50ter LITL¹⁾, this decision is noteworthy because it addresses two practical issues: the ownership of eligible IP assets and the evidence supporting eligible income and expenditure. However, it provides clear guidance only on the latter. Regarding the documentation, the judgment illustrates the fact-sensitive and holistic approach taken by the judges when assessing the applicable requirements. Rather than relying on a single document or imposing a purely formal test, the Court considered a combination of supporting documents. The decisive question was whether the evidence, viewed as a whole, allowed the relevant R&D activities, income, and expenditure to be identified and traced reliably.

The taxpayer succeeded because it could produce a coherent set of supporting documents whose authenticity had not been challenged. We would therefore strongly recommend that taxpayers maintain asset-specific records as the relevant R&D activities are performed and the related expenditure is incurred. Those records should show who carried out the R&D activities, when those activities took place, which IP asset they concerned and how the related expenditure was determined.

Regarding the First IP Asset, despite the favorable outcome for the taxpayer, it is regrettable that the decision leaves a substantive question unresolved. The Court did not address the central issue of whether the taxpayer actually owned the First IP Asset under the relevant IP and tax law principles. In particular, it did not determine whether the filing by the Affiliated Entity prevented the taxpayer from being treated as the legal or economic owner of the underlying IP rights. Instead, the Court based its conclusion on the inconsistent tax treatment adopted by the tax authorities in this particular case.

Interestingly, this reasoning may, at first glance, appear to contrast with that in another decision of the Court (*Cour administrative*, 20 février 2024, 49388C)²⁾, in which a taxpayer was taxed on income derived from sub-licensing and transferring exploitation rights despite not being the economic owner of the underlying IP. The distinction may lie in the rights that generated the income. In case 49388C, the taxpayer held clearly identified contractual exploitation rights. In the present case, by contrast, the tax authorities disputed that the taxpayer held the usufruct whose transfer generated the taxable gain and did not propose any alternative characterization of that gain. The two decisions are therefore not necessarily contradictory, although the Court did not expressly address this distinction.

Finally, this decision highlights the importance of the principle of consistency as a safeguard for taxpayers against contradictory positions taken by the tax authorities. More generally, when the Luxembourg tax authorities rely on a particular characterization of an asset or transaction to impose tax, they should not subsequently adopt an inconsistent characterization afterward when determining whether a related exemption applies, unless they clearly explain the legal basis for the different treatment.

1) For another recent judgement concerning Article 50ter LITL, see Administrative Tribunal, 6 March 2026, n°50123.

2) Please refer to our article in this respect: E. Lebas and V. Plateau, “Tax controversy series – Administrative court of appeal decision on the economic appreciation concept”, AGEFI Luxembourg, December 2024 – Page 39.