Parliament has approved deduction for innovation income

Parliament has approved a draft law introducing a deduction for innovation income. The law will be published in the Belgian Official Gazette shortly.

The new regime will replace the patent income deduction which has been abolished earlier (but with a grandfathering period until 30 June 2021) as it was not in line with the OECD 'modified nexus approach. It will enter into force retroactively as from 1 July 2016.

The main features of the new regime are:

- The deduction equals 85% of **net income** from qualifying intellectual property (IP);
- The deduction applies to income from patents or supplementary protection certificates, breeders' rights, orphan drugs, data and market exclusivity and copyrighted software. Capital gains on such IP also qualify if reinvested;
- The net income is determined based on the 'modified nexus approach'. According to the 'modified nexus approach', there should be sufficient substance and an essential link between the expenses, the IP and the related IP income. This is expressed in the following formula:

[qualifying R&D costs * 1,3 /total R&D costs] x total IP income = qualifying IP income

The costs of outsourcing to related parties are not treated as "qualifying costs", contrary to the cost of outsourcing to unrelated parties;

- Introduction of a 'tracking system' whereby taxpayers must closely monitor the expenses, IP and income;
- The unused deduction can be carried forward;
- The taxpayer can already claim the deduction through an exempt reserve while the patent request is pending.

Should you require further assistance in this matter, please contact your local KPMG tax adviser.

Kind regards,

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