R&D Incentives in Belgium

Belgian R&D Incentives

Introduction

Since the introduction of the notional interest deduction and the patent income deduction in 2007, Belgium has been a prime location for companies involved in R&D activities and in the exploitation of patents. Belgium offers a full range of tax incentives enabling companies to structure their R&D activities, as well as the valorization of the intellectual property resulting from R&D activities, in a tax efficient way. This comprehensive R&D regime consists of tax deductions on qualifying IP income, deductions on R&D investments and (refundable) tax credits, cash savings on payroll cost of researchers and full tax exemption of R&D subsidies. Ml 0 Dc`ps_pw 0./5* rfc N_pjg_kclr f_q _nnpmtcb _ lcu r_v pcegkc dmp P$B a_jjcb %Bcbsargml dmp Gllmt_rgml Glamkc%, Rfc lcu pcegkc f_q _ `pm_bcp _nnjga_rgml rf_l n_rclr glamkc* u fgjc kccrgle rfc aml acplq md rfc MCAB _lb CS _q j_gb bmul gl rfc qm+a_jjcb mmbgdged ncvsq annpm_af,

Overview of R&D incentives

Headline rate	For qualifying patent income, a reduced corporate income tax rate of maximum 6.8% applies (20% of income taxable at the nominal corporate income tax rate of 33.99%). Costs for research can be deducted immediately as business cost, while for development costs (including salary costs) one has the option to record an intangible fixed asset that can be depreciated over a period of at least 3 years. An additional deduction from taxable income or a tax credit is available on top of the normal depreciation cost for R&D related assets. For R&D investments made in the 2017 assessment year, the rate of the deduction is a one-off 13.5% of the investment value or 20.5% of the annual depreciation on the assets. The alternative R&D tax credit (calculated as the investment deduction multiplied with the nominal corporate income tax rate) is cash refundable if not utilized after 4 years. As of 1 July 2016, a deduction for innovation income will be available, which broadens the scope of qualifying intellectual property rights (IPR) beyond patents and reduces the corporate taxation level on the net qualifying income to 5% (15% of the income at 33.99%).

Belgian R&D Incentives

Definition of R&D

The definition of R&D is in line with the OECD Frascati Manual and defines R&D as:

- Fundamental research: the experimental or theoretical activities directed towards greater knowledge or understanding of the fundamental aspects of phenomena and of observable facts without specific applications for processes or products in mind.
- Industrial research: systematic research aimed at the discovery of new knowledge and skills for the development of new products, processes or services, or to significantly improve existing products, processes or services. It comprises the creation of components of complex systems necessary for industrial research; notably for the validation of general technologies with the exception of prototypes.
- Experimental development: the acquiring, combining, shaping and using of existing scientific, technical, business and other knowledge and skills for plans, schemes or designs for new, altered or improved products, processes or services. This also comprises the conceptual formulation and design of new products, processes or services and capturing information thereof. These activities may also comprise producing drafts, drawings, plans and other documentation provided that they are not intended for commercial use.

R&D tax relief
Patent income deduction

Patent Income Deduction — grandfathered until 30 June 2021

Corporate taxpayers are entitled to an 80% deduction of patent income from their taxable base. The deduction results in an effective tax rate of maximum 6.8%. IP development and overall operational expenses remain fully tax deductible, so combined with notional interest deduction and/or finance expenses, the effective tax rate will be even lower.

All companies subject to corporate income tax in Belgium may also benefit from the patent income deduction.

The deduction is applicable to the income derived from:

- the licensing of patents (or extended patent certificates) by the company
- the use of patents (or extended patent certificates) in the production process of patented products/delivering of patented services by the company itself or on its behalf.

In order to avoid double deduction, the deductible qualifying patent income is subject to certain limitations when the company acquired the patent. The following elements must be deducted from the deductible patent income:

- compensation due to other parties for these patents if it is deducted from the Belgian taxable income (this compensation does not include the contribution due by the company in the costs of R&D borne by other parties
- depreciation of acquired patents to the extent that they were deducted from the Belgian taxable income.

The law of 30 June 2016 abolished the current regime as from 1 July 2016 since the regime was not in line with the 'modified nexus approach'. However, a grandfathering period for qualifying patent income to benefit from the old regime until 30 June 2021 is available provided a.o. that the patent in question has been acquired or applied for before 1 July 2016.

Belgian R&D Incentives

R&D tax relief
Deduction for innovation income

New regime in line with the modified nexus approach

According to the 'modified nexus approach', there should be sufficient substance and an essential link between the R&D expenses, the qualifying IPR and the related income in order for a taxpayer to benefit from a Patent Box type of tax regime. To meet these requirements, the Belgian government has created a new income tax regime called the 'deduction for innovation income' which replaces the patent income deduction while improving the fiscal stimuli for R&D activities.

The headlines of the deduction for innovation income include:

1. Broadening of qualifying IPR:

   Not only patents and extended patent certificates qualify, but also copyrighted software developed by the taxpayer in a research project, breeders' rights , orphan drugs and certain data and market exclusivity rights based on European directives or other international legislation in the field of medicine and food regulation.

2. Broadening of types of qualifying income:

   The qualifying income will include royalties and license fees, IPR income embedded in the sales price of goods and services, process innovation based on the IPR (reflecting what a third-party would be willing to pay to have access to the IPR), as well as capital gains (the latter subject to reinvestment in qualifying R&D within 5 years).

3. Increase of the deduction percentage from 80% to 85%.

4. Determination of the net amount of qualifying income:

   A specific requirement of the modified nexus approach is that the beneficial tax regime is applied on the net IPR income and subject to a specific formula to weigh the taxpayer's own contribution to the creation of the IPR.

   The following formula has been introduced to determine the income that can benefit from the preferential regime:

   qualifying R&D costs/total R&D costs x total net income from intellectual property

   For the qualifying costs, the costs of outsourcing to related parties are excluded, contrary to the cost of outsourcing to unrelated parties who qualify as 'qualified costs'. A lift-up of 30% of the qualifying expenses for R&D outsourced to group companies is however foreseen.

5. Other features of the deduction for innovation income:

   Unused deduction can be carried forward. The taxpayer can also claim the benefits of the regime while the patent is still pending approval (subject to recapture if the patent application is denied later). In case the new deduction for innovation income applies, one cannot benefit from the grandfathering period for the income of that particular patent.

The Belgian Parliament has approved the draft law on 2 February 2017. The law will be published in the Belgian Official Gazette shortly. However, the new regime is scheduled to be applicable with retrospective effect as from 1 July 2016.

Belgian R&D Incentives

R&D tax relief (cont.)
Increased investment deduction or tax credit for R&D

A percentage of the acquisition or investment value of certain assets that have been acquired or developed during the taxable period and are related to R&D is tax deductible. This deduction comes in addition to the normal tax deduction for the depreciation of these assets, leading to an overall depreciation which is higher than 100% of the assets' value.

Qualifying fixed assets:

- patents
- fixed assets (including capitalize salary costs) that aim to promote the R&D of new products and advanced technologies that have no effect on the environment, or that aim to minimize the negative effect on the environment.

The increased investment deduction can be applied as a one-off deduction. In that case, the deduction equals 13.5% of the acquisition or investment value (assessment year 2017).

The deduction can also be spread over the depreciation period of the fixed asset (this option is not available for patents). In that case, each year the investment deduction will be equal to 20.5% of the depreciation amount (for fixed assets acquired or established during assessment year 2017).

Carry-forward to later assessment years

When the deduction cannot be fully set off against the profits of the taxable period, the proportion of the investment deduction that has not been used can be carried forward without any time limit and can be set off against the profits of the subsequent taxable periods.

Option for an R&D tax credit

Companies have the possibility to opt for the application of a tax credit instead of the increased investment deduction.

In the case of insufficient tax against which to set off the tax credit, the credit can be carried forward to the following 4 assessment years. At the end of these 4 assessment years, the balance of the unused tax credit is cash refundable.

Wage withholding tax exemption

Companies employing scientific researchers benefit from a partial exemption from payment of withholding tax on their wages. They must transfer to the tax authorities only 20% of the withholding tax due on the wages of these researchers while the latter may still credit the full amount of the professional withholding tax that would normally be due. The measure has thus no impact on the tax situation of the researchers but results in considerable cash savings for the employer and is recognized as turnover on the balance sheet in Belgium Generally Accepted Accounting Principles (GAAP).

Qualifying companies include:

- companies that pay wages to researchers engaged in research projects conducted pursuant to partnership agreements with universities/colleges in the European Economic Area or with a recognized scientific institution
- 'Young Innovative Companies' that pay wages to scientific personnel
- companies that pay wages to researchers that are engaged in R&D programs and who have a masters or doctor's degree in applied sciences, exact sciences, medicine, veterinary medicine, pharmaceutical sciences; a degree in civil engineering, or an equivalent degree in a scientific field or a combination of scientific fields.

R&D subsidies

Premiums and capital or interest subsidies on tangible and intangible assets granted by regional institutions within the framework of support to R&D are fully exempt from corporate tax.

Belgian R&D Incentives

Other grants and incentives Notional interest deduction	The risk capital deduction, also known as the notional interest deduction, allows companies to substantially reduce their effective corporate income tax rate in Belgium. Companies are allowed to deduct a deemed interest calculated on their adjusted equity from their taxable base. The rate of this notional interest deduction is determined each year and is linked to the 10-year government bonds. It is capped at 1.131% for assessment year 2017 (and 1.531% for SMEs).
Ruling practice	Belgium has an efficient, transparent and business-oriented advance ruling practice which provides investors the necessary legal certainty on how the tax law will be applied to their specific situation or to specific transactions. Furthermore, when deploying IP-intensive R&D activities in Belgium, the appropriate business model and related tax and transfer pricing issues may be discussed in detail with the Belgian ruling authorities upfront.

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