

RESEARCH AND DEVELOPMENT: BELGIAN (TAX) OPPORTUNITIES

Since the introduction of the notional interest deduction and the patent income deduction, Belgium increased its attractiveness as a prime location for companies involved in research and development activities and in the exploitation of patents. With its location in the heart of Europe, Belgium offers substantial advantages to potential investors such as its transport facilities and its excellent logistical infrastructure. Its highly qualified workforce makes it also an interesting location for the development of R&D activities. On top of these advantages, 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.

Patent income deduction

Corporate taxpayers are entitled to an 80% deduction of their patent income from their taxable base. The deduction results in an effective tax rate of maximum 6,8%.

QUALIFYING TAXPAYERS

All companies subject to (non-resident) corporate income tax in Belgium may benefit from the patent income deduction.

QUALIFYING PATENTS

The deduction applies to patents which have not been used before 1 January 2007 and which are:

- ▶ Owned by the company resulting from own R&D activities in research centers in Belgium or abroad; or
- ▶ Acquired by the company via purchase, contribution or under a license agreement provided the patents are further developed by the company (even if this further development has not led to additional patents).

Please note that SME's will be able to claim the patent income deduction even if the patent has not been developed or improved in a research center.

QUALIFYING PATENT INCOME

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 ("embedded patents").

DEDUCTIBLE AMOUNT

The deductible amount of qualifying patent income is determined differently depending on whether the company itself has developed the patent or not:

- ▶ **The company developed the patent**
The deductible income is calculated as 80% of the gross qualifying patent income.
- ▶ **The company acquired the patent**
Following elements must be deducted from the deductible patent income, especially aimed at avoiding double deduction:
 - Compensation due to other parties for these patents if it is deducted from the Belgian taxable income;
 - Depreciations of the patents to the extent that they were deducted from the Belgian taxable income.
- ▶ **Embedded patent income**
The qualifying amount needs to be determined based on methods which are in line with the OECD Transfer Pricing Guidelines and, if relevant, recommendations by the Belgian Ruling Commission. In practice, often a combination of methods is applied including "Comparable Uncontrolled Pricing"; "price/margin increase"; "residual income"; "cost reduction" and "Return on Investment" method.

CONTACTS

Van Stappen Dirk
Partner

T: +32 3 821 19 18
E: dvanstappen@kpmg.com

Warson Eric
Partner

T: +32 2 708 37 72
E: ericwarson@kpmg.com

Zwaenepoel Thomas
Partner

T: +32 2 708 38 61
E: tzwaenepoel@kpmg.com

Van Ende Koen
Director

T: +32 2 708 36 72
E: kvanende@kpmg.com

Goubert Jos
Director

T: +32 2 708 46 80
E: jgoubert@kpmg.com

de Groote Yves
Director

T: +32 3 821 19 74
E: ydegroote@kpmg.com

Van Wallegem Luc
Director

T: +32 2 708 42 56
E: lvanwallegem@kpmg.com

Delanoy Andres
Director

T: +32 9 241 88 20
E: adelanoy@kpmg.com

www.kpmg.com/be/tax

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Should the company be unable to deduct the allowable amount in a tax year, the excess deduction cannot be carried forward.

MODIFIED NEXUS APPROACH

Following the OECD BEPS discussions (especially on Action 5) and the agreement at the European Code of Conduct Group regarding patent box regimes, the Belgian legislator is committed to bring the regime in line with the newly accepted international standard. At the same time, further improvements to the regime within this standard may be anticipated. The modified regime should be applicable as of mid-2016 and will provide a grandfathering period for existing IP benefiting from the PID. More information on the exact changes and transitional measures are expected late 2015.

Partial exemption from payment of withholding tax on wages paid to scientific researchers

Companies that employ scientific researchers benefit from a partial exemption from payment of withholding tax on their wages. They must transfer only 20% of the withholding tax due on the wages of these researchers to the tax authorities (while they withhold the 100% that would normally be due). The measure has thus no impact of the tax situation of the researchers and generates a cash subsidy for the employer.

COMPANIES CONCERNED

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

DEFINITION OF RESEARCH AND DEVELOPMENT PROJECTS OR PROGRAMS

A definition of research and development has been included in the tax code (which corresponds with the international criteria already applied by the Belgian ruling commission), stipulating that these are projects or programs aimed at:

- ▶ **Fundamental research:**
experimental or theoretical activities aimed at gaining new knowledge on the fundamental aspects of occurrences and observable facts without the objective of a direct practical application.
- ▶ **Industrial research:**
acquiring new knowledge and skills in view of the development or improvement of products, procedures or services including the manufacturing of systems necessary for industrial research. The manufacturing of prototypes is excluded.
- ▶ **Experimental development:**
using existing knowledge and skills for the development of new or improved products, procedures or services which are not intended for commercial use, including the development of commercially usable prototypes in case the prototype itself is the end product (as it is too expensive to solely use it for demonstration purposes).

NOTIFICATION OF RESEARCH AND DEVELOPMENT PROJECTS OR PROGRAMS

As from 1 January 2014 it is required to notify R&D projects or programs with the Belgian Federal Science Policy Department before applying the exemption.

Deduction of research and development costs

Research and development costs can either be deducted immediately as business costs or be recorded as an intangible fixed asset and depreciated over a period of at least three years.

As already referred to above, the PID is calculated as 80% of the gross patent income i.e. before the deduction of R&D costs. The R&D costs incurred are tax deductible under the general rules and may thus further reduce the taxable base.

Increased investment deduction or tax credit for research and development

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

FIXED ASSETS CONCERNED

- ▶ Patents;
- ▶ Fixed assets that tend 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.

APPLICABLE RULES AND RATES

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 2016).

The deduction can also be spread over the depreciation period of the fixed asset (this option is not available for patents). In that case, the investment deduction will each year be equal to 20,5% of the depreciation amount (for fixed assets acquired or established during assessment year 2016).

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 A TAX CREDIT FOR RESEARCH AND DEVELOPMENT

Companies have the possibility to opt for the application of a tax credit instead of for

the increased investment deduction. This tax credit allows the taxpayer to show how the tax advantage directly reduces the operational R&D costs.

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

A company that opts for the tax credit makes an irrevocable choice and will always benefit from the tax credit instead of the increased investment deduction.

Tax exemption of regional 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 exempt from corporate tax (resident as well as non-resident corporate tax).

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. Companies, and Belgian establishments of foreign companies, are indeed allowed to deduct a deemed interest, calculated on their (adjusted) equity capital from their taxable base. The rate of the notional interest deduction is determined each year and is linked to the 10-year government bonds. It is set at 1,63% for assessment year 2016 (+ 0,5% for SME's).

Ruling practice

Belgium benefits from an efficient, transparent and flexible 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.