



Introduction

As of this year Belgium's corporate tax rates have been decreased drastically from 33,99% to 29,58% and will even drop to 25% as of 2020.

However with the introduction in 2017 (retroactively as of July 1st, 2016) of the so called Innovation Income Deduction regime (IDD) Belgium has another even more important key asset in it's hands to attract foreign corporate investments. The new tax regime had to replace the previous Patent Income Deduction (PID) and was designed in line with the OECD and G20 recommendations in the BEPS action plan.

It allows Belgian companies and Belgian establishments of foreign companies to deduct 85% of the net income they derive from certain qualifying intellectual property income from their Belgian corporate tax base. By doing so the effective tax rate can in the future even drop to 3.75%.

So it's worth highlighting the main features of the regime.

Scope of the Regime – categories of IP

The IID constitutes a tax deduction for certain qualifying intellectual property income:

- Patents and supplementary protection certificates;
- Copyright protected software, provided that this software originates from an R&D program or project;
- Orphan drug designations, requested or acquired as of 1 July 2016 (for the first 10 years);
- Plant breeders rights requested or acquired as of 1 July 2016;

- Data and marketing exclusivity granted by the authorities, notably for crop protection and certain medicinal products;

Income from marketing related intangibles (trade names, trademarks, etc.) does not qualify for IID.

Scope of the Regime – qualifying IP income

The following income will be considered as derived from the earlier mentioned qualifying intellectual property, in so far as the remuneration is included in the Belgian taxable result of the Belgian company or branch:

- Revenue from licenses (i.e. license fees);
- IP income embedded in the sales price of own manufactured products for which a third party would be willing to pay a license (i.e. the "embedded" royalties)
- IP income derived from process innovation;
- Damages from IP infringement;
- Capital gains realized by selling of IP rights (subject to a re-investment condition).

The company applying for the deduction must be the full owner, co-owner, usufructuary, licensee or rights owner .

Calculation of the tax deduction

The IID is calculated on the net profit generated by the qualifying intellectual property rights. Opposite to the PID-regime, the Belgian Lawmaker opted for the net approach instead of the gross approach. It is necessary to first deduct professional R&D expenses before applying the deduction.

Modified Nexus Approach - introduction

To determine the net IP income that can benefit from the IID, the modified nexus approach has to be taken into account. This approach intends to ensure that a significant proportion of the actual R&D-activities must have been undertaken by the taxpayer itself or R&D work performed by unrelated parties.

Modified Nexus Approach - calculation

The IID is determined by multiplying the innovation income with the ratio (frame). The fraction represents the ratio between the own R&D activities and the acquired IP/outsourced R&D activities:

$\frac{\text{Qualifying expenditure + uplift}}{\text{Overall expenditure}} \times \text{Net innovation income} \times 85\% = \text{IID}$
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- The qualifying expenditure is the expenditure incurred by the company itself or the compensation for expenses of non-related companies in relation to outsourced R&D activities;
- Qualifying expenditure must be directly connected with the qualifying IP;
- The qualifying expenditure may be uplifted by 30%, with a maximum of the overall expenditure;
- The overall expenditure includes the qualifying expenditure increased with the acquisition costs related to qualifying intangible property and the expenditure for related-party outsourcing;

The IID equals then 85% of the qualifying profit.

For the first taxable period during which the IID will be applied, the overall expenditure incurred during (preceding) taxable periods ending after 30 June 2016 should be deducted from the innovation income. However, a company can opt to spread this recapture of prior-year expenses on a straight line basis during a maximum period of seven years.

Carry forward

It is currently allowed to carry forward the unused portion of the deduction to subsequent tax years. Under the former PID, carry-forward was prohibited. This implies that if a taxpayer has no income from IP assets in

a given year, the deduction can be carried forward to future tax years to reduce its tax base.

Temporary exemption

The IID-regime also provides for the possibility to apply for the deduction while the application (e.g. for a patent) is pending. The benefit under this regime is available as from the date the qualifying IP right has been applied for by way of a temporary exemption which results in a permanent exemption once the qualifying IP right has been granted.

Tracking of IP assets

The qualifying IP income and nexus ratio must in principle be determined for each IP asset separately. This means that the taxpayer wanting to benefit from the IID will need to identify the relevant income and expenditures per IP-asset. In case the taxpayer can prove that it is almost impossible to track income per IP asset, it is also possible to apply this tracking per type of product or service or even per group of products or services which result from the IP assets.

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