



Curaçao Innovation Box
Amendments to Curaçao tax legislation

Background

The Curaçao Government has been very committed to meeting the deadline set by the Organization for Economic Cooperation and Development ("OECD") for reforming local tax legislation to comply with the stipulated Base Erosion Profit Shifting ("BEPS") standards. For this purpose, several amendments have been introduced into the Curaçao Preferential Tax Regimes that were approved on June 28, 2018. This article elaborates on the introduction of the new tax regulation for Intellectual Property (IP), which will take effect on July 1, 2018.

The special regulation for IP income, the so-called innovation box, has been introduced to encourage innovative Research and Development ("R&D") activities in Curaçao by both local and international entrepreneurs.

Qualifying assets

Based on the new regulation, the innovation box may only be applied to income from intangible assets for which R&D activities are performed in Curaçao or for which a Curaçao tax resident has outsourced the R&D activities to an unrelated foreign company for the account, risk and benefit of the Curaçao tax resident (the so-called: "Nexus approach"). In general, taxpayers must keep records relating to the developed intangible assets for which the innovation box is applied.

Outline of the new innovation box rules:

- the intangible assets must relate to a patent (request), a breeder's right or other similar rights (request) that are protected against third parties (e.g. copyrighted software, medical products, utility model);
- a certified declaration from a designated competent authority is required for the intangible assets;
- brands, logos and similar assets are not considered as qualifying intangible assets for the innovation box. An exception applies to brands, logos and similar assets that are exclusively licensed to a resident of Curaçao by a Curaçao Investment Company;

- an exclusive license to use an intangible asset in a certain manner, for a certain period or in a specific geographical area is also considered as an intangible asset for the innovation box;
- in case the R&D work relates to the redevelopment of an intangible asset that has not been produced by the taxpayer, this only qualifies as an intangible asset for the purpose of the innovation box insofar as the R&D work has led to a new intangible asset.

The aforementioned conditions will not apply to companies that qualify as "small companies" for profit tax purposes. A simplified facility applies for this type of businesses and a certified statement for the intangible assets that have similar characteristics as, e.g., a patent or breeder's right, will suffice. For profit tax purposes "small companies" are companies with a total (group) net turnover not exceeding ANG 500,000,00.00 (turnover criterion) that earned an income from intangible assets of ANG 75,000,000.00 during a period of 5 years (income criterion) according to the (consolidated) financial statements of the current financial year and the 4 preceding financial years.

Profit tax rate

Income relating to the intangible assets which meets the requirements of the innovation box is subject to tax at a rate of 0%. But income derived from non-qualifying intangible assets is taxable at the usual Curaçao profit tax rate of 22% (2018). Please note that taxpayers should opt to have their income for the qualifying intangible assets taxed at the 0% profit tax rate when filing their profit tax returns.

Nexus approach

The nexus approach has been implemented as an additional substance criterion. This substance criterion aims to prevent companies without substantial economic presence in Curaçao, or without innovative activities being developed in Curaçao, from benefitting from the innovation box. This criterion has a mathematical approach.

The expenses directly related to the R&D work serve as a basis for application of the innovation box. The total qualifying income for the innovation box is determined

by multiplying the 'nexus fraction' by the income that a taxpayer derives from qualifying intangible assets.

This is presented in the following formula:

$$QI \text{ from QIA} = \frac{(130\% \times QE)}{OE - \text{threshold}} \times (\text{income from QIA})$$

Provided that:

$$QI \text{ from QIA} \leq \text{income from QIA}$$

With:

QI = Qualifying Income

QIA = Qualifying Intangible assets

QE = Qualifying Expenses

OE = Overall Expenses

The qualifying expenses are the overall expenses minus expenses related to outsourcing of the R&D work to a related company. The formula includes all qualifying expenses with a 30% uplift. The 30% uplift affects the outcome of the nexus fraction to the taxpayer's advantage. The background for this uplift is that there may be business motives for outsourcing R&D work within the group that should be taken into consideration.

The threshold in the formula is made up of the costs of production of the qualifying intangible asset for which the taxpayer has opted to apply the profit tax rate of 0% in that year, increased by the production costs relating to the intangible asset charged to the profit in previous years, and reduced by the production costs of the qualifying intangible assets that have already been deducted from the qualifying income from intangible assets in previous years.

Example for the Nexus approach:

"A taxpayer has developed an intangible asset for which it received an R&D statement and a patent. The overall expenses incurred in previous years for this development were ANG 1,560.00, of which ANG 800.00 relates to the R&D work carried out by the taxpayer, ANG 200.00 to outsourcing of R&D work to third parties, and ANG 560.00 to outsourcing to related companies.

The income from qualifying assets in the year amounts to ANG 1,200.00."

Outcome of the Nexus approach:

The overall expenses are ANG 1,560.00. The qualifying expenses are ANG 1,300.00, i.e., expenses relating to R&D work carried out by the taxpayer itself (ANG 800.00) and expenses relating to the outsourcing of R&D work to unrelated entities (ANG 200.00), multiplied by 1.3. The qualifying income is calculated as follows:

$$QE/OE \times (\text{income from QIA} - \text{threshold}) = (ANG 1,300.00 / ANG 1,560.00) \times ANG 1,200.00 = ANG 1,000.00$$

Conclusion of the Nexus approach:

ANG 1,000.00 of the total income of ANG 1,200.00 which the taxpayer earned from the intangible asset is taxable at the 0% tax rate under the innovation box. The remaining 200 is taxed against the normal tax rate of 22% (2018).

Please note the following in respect of the abovementioned threshold. The expenses incurred in the year in which the qualifying income exceeds the production and development costs and the expenses deducted in previous years will have to be taken into account as a threshold before determining the qualifying income of that year which is taxable at the lower tax rate of the innovation box.

The benefit from the innovation box will be reversed in case the request for a patent, breeder's right or other similar rights is denied. The reversal will become effective in the same financial year as the application.

Alternative for new qualifying intangible assets

An alternative to the Nexus approach is provided to taxpayers for newly developed qualifying intangible asset in respect of which they expect the resulting benefits to be relatively limited compared with the aggregate turnover. In that case taxpayers can opt to set the qualifying income from the asset based on a fictitious percentage of 25% of the total profit realized in the first three financial years in which the qualifying intangible asset has been developed. The regulation applies to a maximum of ANG 50,000 a year. In case the

developed qualifying intangible assets belong to a joint venture of a taxpayer with other taxpayers, the percentage of 25% will be applied in proportion to the rights the taxpayers have to the respective intangible asset.

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Please contact our office at the email addresses mentioned in this newsflash if you have any questions about the amendments or need additional information.

We would be pleased to assist you with your questions.

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