

R&D tax alert

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25 April 2013

Upcoming changes to the patent income deduction and to the Withholding Tax Exemption for researchers

On 19 April 2013, the Government submitted the draft bill containing tax and financial measures to the House of Representatives (**Kamer | Chambre**). This bill provides for changes with respect to the patent income deduction and the withholding tax exemption for qualified researchers.

Withholding tax exemption for research and development projects or programs

The percentage for partial tax exemption on wages of qualifying researchers for research and development projects or programs will be increased from 75% to 80%. The increased exemption will be applicable to all categories under the new article 275/3 ITC and will be valid as of the first day of the month following the law's publication in the Belgian Official Journal; it will be applicable on the withholding tax that can be claimed from that date.

Additional clarification and formalities have also been introduced:

Definition of research and development projects or programs

A definition of research and development projects or programs has been added, stating 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 or use.
- **Industrial research:** the acquisition of new knowledge and skills in order to develop or to substantially improve new products, procedures or services. The manufacturing of parts for complex systems needed for industrial research and especially for the validation of technologies are included. Prototypes are excluded.
- **Experimental development:** the acquiring, combining, modelling and use of existing scientific, technical, business or other relevant knowledge and skills for the development of new, modified or improved products, procedures or services.

Upfront reporting obligation

An upfront reporting obligation of research and development projects or programs with the *Programmatorische Federale Overheidsdienst Wetenschapsbeleid / Service Public de Programmation de la Politique Scientifique Fédérale* is required (except for universities and scientific institutions). The following information should be included:

- Identification of the withholding tax debtor
- Description of the project or program proving that it will fall within the scope of the new definition of R&D
- The project or program's expected start and end date

The reporting obligation will be effective as of 1 January 2014. The R&D projects / programs existing prior to the new law's entry into force have to be compliant with this new obligation as of 1 January 2015.

Validation of projects and/or programs

The draft law foresees the possibility for companies and tax authorities to request a binding advice from *Programmatorische Federale Overheidsdienst Wetenschapsbeleid / Service Public de Programmation de la Politique Scientifique Fédérale*.

The modalities of this request will be laid down in a Royal decree.

Young Innovative Companies

The definition of Young Innovative Companies is now referring to the full article 15 of the Company Code instead of article 15, 1st paragraph of the Company Code specifically.

Patent Income Deduction

SME's will be able to claim the patent income deduction on patents they own even if the patent has not been developed or improved in an R&D centre.

This will enter into force from tax year 2014.

Contact

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