



## R&D tax alert Belgium

### The IID is finally here! Is your business ready?

Previous R&D tax alerts ([12 July](#), [29 August](#), [20 October](#) and [5 December 2016](#)) announced that a new innovation income deduction would be introduced. The regime is now a reality after IID legislation has been published in the Official Journal on 20 February 2017. The adopted version of the law can be accessed by clicking ([Dutch](#) | [French](#)).

The relevant topics regarding the new legislation are summarised below.

#### Qualifying IP rights

The following IP rights for the application of the IID are:

- Patents
- Supplementary Protection Certificates (SPC's)
- Plant Variety Rights (1)
- Orphan Drug (1),(2)
- Data or market exclusivity granted by a public body (3)
- Computer programs protected by copyright; upgraded software included (4):

(1) Filed as of 1 July 2016 or acquired after 30 June 2016

(2) Limited to the first 10 years of registration in the European Register of orphan drugs

(3) Granted after 30 June 2016

- (4) R&D project or program as mentioned in article 275<sup>3</sup> ITC and no income generated before 1 July 2016

The changes (compared to what was covered by the previous alerts) are the following:

- A limitation has been added for IP rights related to data or market exclusivity granted by a public body (see above);
- Conditions have been added for computer programs protected by copyright. There should be a link with a R&D project or program as stated in article 275<sup>3</sup> ITC. Companies have the possibility to request a binding advice to Belspo to obtain the confirmation that the computer program (new or updated) qualifies as intellectual property. Only income generated after 1 July 2016 related to copyrighted software (new or updated) is eligible for the IID regime. This implies that it is the moment of income generation rather than commercialisation which should be taken into account.

## Qualifying IP income

The following income streams may qualify for the application of the IID:

- Revenues from licenses
- IP income embedded in sales product or services
- IP income embedded in production processes
- Compensation for damages of IP right infringements
- Capital gains (if certain conditions are met)

There are no amendments to the previous alerts' coverage in this regard.

## Net income approach

The IID regime only applies to the net amount of qualifying IP income that exclusively relates to a qualifying IP right, i.e.:

- Gross qualifying IP income related to the qualifying IP right of the taxable period, less
- Overall expenditure (see below for definition) taken as an expense and borne in the taxable period

For the first fiscal year during which the new IID regime is applied for the first time, not only the expenses linked with this fiscal year need to be taken into account, but also the historic expenses of the previous fiscal years that ended after 30 June 2016.

The historic expenses can be deducted all at once or spread across a maximum of 7 fiscal years.

## Modified nexus fraction

The amount of net qualifying IP income should subsequently be multiplied with the following "modified nexus fraction", which is also to be determined separately for each qualifying IP right (or type or group of products or services):

Qualifying expenditure (A+B+C)

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Overall expenditure (A+B+C+D+E)

Qualifying expenditure is, as a general rule, defined as consisting of the following expenses:

- Expenses made by the taxpayer (A)
- Expenses made by the taxpayer in the context of outsourcing to an unrelated party (B)
- Expenses made by the taxpayer in the context of outsourcing to a related party, insofar as said related party outsources the R&D, and invoices its outsourcing cost to the taxpayer (C) without mark-up

Qualifying expenditures must directly relate to a qualifying IP right, and does not include e.g. interest payments and costs related to real property.

Overall expenditure, as a rule, comprises the same expenses as qualifying expenditure, with the addition of:

- Expenses made by the taxpayer for acquiring the qualifying IP right (D); this expense is therefore not included in item A mentioned above;
- Expenses made by the taxpayer in the context of outsourcing to a related party (E), with the exception of expenses listed under item C.

For the purposes of the “modified nexus fraction”, qualifying and overall expenditures are in principle calculated on a cumulative basis. Qualifying expenditures may be uplifted by 30%, but the amount of overall expenditure constitutes the maximum.

## IID rate

The amount resulting after calculating net income and applying the “modified nexus fraction” (see previous alerts) will be eligible for a *85% deduction on net innovation income* (compared to 80% on gross patent/SPC income under the old PID regime).

## Entry into force

The new IID regime will apply (retroactively) from 1 July 2016.

## Next steps

Companies are encouraged to verify their position and IP strategy to access this new regime or to determine which system is or will become more beneficial, i.e. either the PID regime under the grandfathering condition, IID or a combination of both regimes.

## Contacts

If you have any questions concerning the items in this alert, please contact your usual tax consultant at our Deloitte office in Belgium or:

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