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R&D tax alert
Belgium

Update on Innovation Income Deduction legislation replacing the PID regime

In order to activate the conclusions from the OECD's BEPS Action 5 report and similar discussions at EU level, Belgium has abolished the patent income deduction (PID) regime from 1 July 2016, subject to a conditional grandfathering rule which allows the old PID regime to be claimed until 30 June 2021 (see previous alert of 12 July 2016).

The Belgian government is preparing (pre-draft) legislation with a view to replace the previous PID regime with an "innovation income deduction" (IID) regime that is compliant with the "modified nexus approach" agreed upon within the OECD and EU Code of Conduct group. In the previous R&D tax alert of 29 August 2016, the new regime's headlines were outlined based on information available at that time.

Following further discussions within the government, the new IID regime has been further improved. The present alert outlines these changes to the IID regime based on the latest information and enhanced insights. The below outline may still be subject to possible changes until the pre-draft law's approval by the Council of Ministers and adoption by Parliament.

Qualifying IP income

Regarding qualifying IP income, the latest version of pre-draft legislation foresees that amounts obtained upon alienation of qualifying IP rights may, under certain conditions, also benefit from the IID regime going forward.

Net income approach: recapture mechanism

The IID regime will also include a "recapture" rule that would (subject to exceptions) require taxpayers to first consume all overall expenditure (allocable to a qualifying IP right) expensed in taxable periods ending after 30 June 2016, before being able to claim the IID. The taxpayer can irrevocably opt to spread this "recapture" over a maximum period of seven years; a correction will be applied in case the qualifying IP right will be alienated during said maximum period.

IID rate

The amount resulting after calculating net income and applying the "modified nexus fraction" would reportedly be eligible for a 95% deduction (compared to 80% under the old PID regime and 90% under the previous version of pre-draft IID legislation).

Entry into force

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

Taxpayers that are eligible to continue applying the PID regime until 30 June 2021, under the grandfathering rule, would need to choose irrevocably between claiming the PID or IID regime (for the period running until 30 June 2021). Hence, taxpayers that have opted to apply the PID regime under the grandfathering rule would not be able to "switch back" to the IID regime, and *vice versa*.

Next steps

The objective is to adopt the new legislation before year-end.

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:

- Renaud Hendricé, rhendricé@deloitte.com, +32 2 600 67 21
- François Gevers, fgevers@deloitte.com, +32 2 600 65 10
- Wim Eynatten, weynatten@deloitte.com, +32 2 600 67 59

For general inquiries, please contact:
bedeloittetax@deloitte.com, + 32 2 600 60 00

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http://www.deloitte.com/be/tax