

Innovation income: more about the new deduction

Earlier we informed that the patent income deduction was abolished and will fade away after a period of five years. Since investing in innovation remains important, the government has developed an alternative: the innovation income deduction. In this contribution we zoom in on this new deduction more in detail.

The innovation deduction

The innovation deduction is a deduction of 85% of income generated from certain intellectual property rights.

Which 'rights'?

The scope of the innovation deduction is larger than the one of the (abolished) patent income deduction.

Giving right to the deduction:

- patents;
- additional protection certificates;
- copyright protected computer programs;
- plant breeder's rights for crops applied for or obtained after 30 June 2016;
- medicines for rare diseases applied for or obtained after 30 June 2016;
- data or market exclusivity granted by the government for crop protection, medicines for human or animal use or medicines for rare diseases, for the first ten years, irrespective whether this exclusivity is granted based on European, local or international provisions.

The company willing to apply the deduction can be the owner, co-owner, usufructuary, license holder or rights owner of one of the above rights.

Which income?

The said rights can generate income for a company in different ways.

The company can : (i) give a license on a patent and receive royalties or a fixed fee or (ii) choose to exploit the ownership itself. In the second case the deduction goes for the 'implied royalties'. This is a fictitious compensation which the company would have received in case it would have given a license to the patent instead of exploiting it.

Under certain conditions damages (in case of infringement of the intellectual property rights) and sums qualify when received upon alienating these rights.

Which deduction?

The calculation of the innovation income deduction proceeds in different steps.

First the innovation income should be calculated for each intellectual property right separately. The net amount is concerned: expenditure can be deducted from the gross income. This expenditure contains (i) expenditure for research and development which directly relates to the intellectual property right and (ii) expenditure relating directly to the acquisition of the intellectual property right, excluding interest.

Then the net innovation income is multiplied with the so-called 'nexus-fraction'. The numerator of this nexus-fraction only contains the 'own' expenditure for research and development which the company has made, or which it has paid to non-associated companies. The denominator contains all expenses, being the own expenses but also payments made to associated companies and expenses for acquired intellectual property rights. In such way only income arising from patents for which the effective activities of research and development come from the company itself do qualify. Other income is filtered out.

In order not to impair companies further working on acquired property rights or which outsource the R&D activities to associated companies, the nominator of the fraction can be increased with 30% (the 'uplift').

In the end the following formula is obtained:

Innovation income x (130% of the 'own' expenses/own expenses + expenditure for acquired rights and outsourced research).

Example

A company has 25.000€ net innovation income. It has made the following expenses: (i) 40.000€ own investment in the development of a patent, (ii) 90.000€ for the acquisition of a patent. In the nominator 40.000€ is reported, but with the 'uplift' of 30% this becomes 52.000€. In the denominator all expenses are reported: 40.000€ + 90.000€ = 130.000€. So the formula becomes: 25.000 x (52.000/130.000) = 10.000€.

85% of this income can be deducted.

The part which, due to lack of profit, cannot be deducted during a certain year can be transferred to the following taxable periods.

Formalities

The company should fulfill a number of formalities.

It should keep documentation on the actual value of the intellectual property rights acquired from an associated company, the amount of innovation income only relating to a qualifying intellectual property right, the amount of the expenditure deducted from the innovation income which directly relates to the qualifying intellectual property right.

The company should add an annex to its corporate tax return for which the model is determined by the minister of Finance or his deputy.