

## Patent income deduction disappears, innovation income deduction appears

The patent income deduction as it exists today disappears with a grandfathering period of five years. In the meantime the Government is working on a new, broader innovation income deduction.

### What is patent income deduction?

The patent income deduction was introduced in Belgium some ten years ago. The idea was to stimulate Belgian companies and Belgian branches of foreign companies to invest in technological innovation.

According to this measure companies can deduct 80% of their gross patent income from their profit for the taxable period. The actual tax rate on their patent income will consequently amount to 33,99% (corporate tax rate) of 20% (after patent income deduction). This means an actual tax rate of 6,80%.

Both license income and payments for patents included in the sales price of goods or services fall within the scope of the patent income deduction scheme.

### OECD objections

During the last years OECD has been involved with the BEPS-project (fight against tax base erosion and profit shifting to low tax countries). A part of this project is the fight against harmful tax practices. This means that profitable tax regimes can only be applied if there is sufficient local substance.

What does this mean exactly? Specifically for favourable tax regimes for intellectual property, such as the Belgian patent income deduction, this means that:

- the tax payer applying the deduction or obtaining the advantage should make the expenditure for research and development itself;
- the tax payer can not obtain an advantage if he received the intellectual property externally or has subcontracted the research and development to a linked company;
- only patents, copyright protected software, medicines and breeders' rights qualify, and brands are not in scope.

According to OECD, the Belgian regulation did not meet these criteria.

### Therefore abolition of the patent income deduction, with grandfathering scheme

Clearly Belgium had no other choice than to abolish the patent income deduction. Meanwhile this has been done. Certainly a company will not lose its patent income deduction immediately. A grandfathering period has been foreseen.

Having no longer right to patent income deduction: (i) patents applied for as from 1 July 2016 and (ii) improved patents and licenses acquired after 1 July 2016.

Still having right to patent income deduction until 30 June 2021: (i) patents applied for before 1 July 2016 and (ii) improved patents and licenses acquired before 1 July 2016.

Companies can enjoy from the scheme for a period of maximum five years.

In order to avoid abuse, the grandfathering scheme cannot be applied to patents which have been obtained as from 1 January 2016 from a linked company when these patents did not give right to patent income deduction or a similar regime with the transferring company (in case the transferor is a foreign company). This means that linked companies cannot shift with patents of affiliated companies which do not have right to patent income deduction to affiliated companies which do have right to such deduction.

### **New: innovation income deduction**

Since the patent income deduction is abolished, but the government still wants to promote innovation, a new regime is introduced: the innovation income deduction. This new regime should be ready by early 2017 with a retroactive application as from 1 July 2016.

The exact conditions are not known yet. It is possible that the regime will be extended to copyright protected software, that it will be increased up to 90% and that the deduction will become transferable.

### **Choose between grandfathering regime and new innovation income deduction**

Tax payers will have to make a choice between the application of the patent income deduction for the following five years under the grandfathering regime or the immediate application of the innovation income deduction. Who wants to apply the grandfathering regime, can during this period not use the new rules.

#### **COMPTAFID-Benelux NV SA Brussels**

Bld. Edmond Machtensl. 180/100  
B-1080 Brussels  
Tel: +32 (0)2 410 75 75  
[www.comptafid.be](http://www.comptafid.be)

#### **COMPTAFID-Benelux NV SA Antwerp**

Schijnparklaan 45  
B-2900 Antwerp (Schooten)  
Tel: +32 (0)3 658 89 02  
[www.comptafid.be](http://www.comptafid.be)

#### **COMPTAFID (Schweiz) AG Zürich**

Seefeldstrasse 19 – Postfach  
CH-8032 Zürich  
Tel.: +41 44 250 2929  
[www.comptafid.ch](http://www.comptafid.ch)