

Keyword Belgium: reform of the tax deduction for income from patents (patent box)

The Belgian official gazette *Moniteur Belge* of August 11, 2016 recently published the law of August 3, 2016 concerning urgent fiscal measures. This law abolishes retroactively, with effect as from July 1, 2016, the provisions relating to the tax deduction for income from patents (Articles 205¹ to 205⁴, 236bis of the CIR/92).

Said system created in 2007 allowed companies to deduce 80% of the income from patents from their taxable result. Belgium is following the example of many EU countries; abolishing their "patent box" systems based on the OECD reports, in particular action 5 of the BEPS Action Plan (Base Erosion and Profit Shifting). Luxembourg already initiated a similar change at the end of 2015 (see in this connection our previous article <http://www.thg.be/PDF/012016.pdf>), since this system was also considered being a harmful tax practice.

The Belgian legislature provides for a five-year transitional period. This optional scheme, which is applicable until June 30, 2021, still allows companies to deduce 80% of the income from patents (and licenses), insofar as the patent (a) is obtained before July 1, 2016 and the deduction already applied, (b) is applied for before July 1, 2016 or (c) has been acquired before July 1, 2016 from a third party and the patented products or processes will be improved later on (see Article 543 of the CIR/92). The amending regulation also provides that the transitional provisions are not applicable to patents that have been acquired directly or indirectly from an associated company as of January 1, 2016.

According to well-informed sources, the Belgian as well as the Luxembourg legislature is working on a new program replacing retroactively the old "patent box" as from July 1, 2016. In Belgium, the new system called "deduction for innovation income" will coexist until June 30, 2021 with the transitional system.

The new tax benefits will mainly be construed based on OECD's "nexus approach". According to this approach, eligible income under the new tax benefit will be limited proportionally to the costs that the company has made internally with regard to the development of the intellectual property rights.

Under the new legislation, it would effectively be desirable if the Belgian legislature eliminates the weaknesses of the old system and expands the measure to other intellectual property rights. In fact, according to OECD's Action Plan, copyrights on software as well as plant variety rights can be considered, in addition to patents.

Furthermore, the repealed system was applicable to royalties and embedded royalties. Again, it would be desirable if the Belgian legislature would take the example of Luxembourg in order to integrate capital gains resulting from the sale of intellectual property rights into the deduction system.

Further questions? Interesting subject? Contact us.



Raymond Bindels

Conseil en propriété intellectuelle

Senior European and Benelux Trade mark and Design Attorney

raymond.bindels@thg-ip.solutions

thg IP Solutions Sàrl

61, Gruuss-Strooss, L-9991 Weiswampach

www.thg-ip.solutions

Member of  *group*