

# The Belgian tax innovation box

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Olivier BERTIN  
Partner, DALDEWOLF  
Member of the Brussels bar  
Guest lecturer UCL and ULg

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## A. Historical background

- 2007 : introduction of the Belgian patent box
  - Exemption of 80 % of patent (and SPC) income
  - Actual and notional income qualify
- 2015 : BEPS
- June 30, 2016 : Belgium repeals the patent box (+ grandfathering clause)

## B. The new regime

### *1. In a nutshell*

- 85 % exemption of net income from qualifying IP assets
- for Belgian resident companies and Belgian establishment of foreign companies

## B. The new regime

### *2. The new statute and entry into force*

- Law of February 9, 2017 ...
- ... In force as of July 1, 2016

## B. The new regime

### 3. *The qualifying IP assets :*

- Patents
- Supplementary protection certificates
- Plant breeder's rights
- Orphan drugs
- Copyright protected software
- Data and marketing exclusivity granted by authorities

## B. The new regime

### *4. The qualifying income :*

#### Broad scope :

- Royalties
- « Embedded royalties » (notional income)
- Damages
- Capital gains

## B. The new regime

### 4. *The qualifying income*

The gross IP income must be :

1) decreased with :

- the current-year R & D expenditures and
- The prior year expenditures (historical costs) (only if incurred in FY ending after 30 June 2016)

And

2) Multiplied by the « nexus ratio » ...



## B. The new regime

### 4. *The qualifying income*

Net income X Own R&D expenditures + outsourced to unrelated parties  
Overall expenditures (i.e. including outsourced to related parties and acquisitions of IP rights from third parties)

## B. The new regime

### 4. *The qualifying income*

- Numerator expenses do not include :  
acquisition cost, building cost, interest, other indirect cost

## B. The new regime

### 4. *The qualifying income*

- Numerator may be uplifted by 30 % (softening for companies outsourcing to related parties or acquiring IP rights) (but max. is 100 %)
- Exceptionnally, other formula possible through advance tax ruling

## B. The new regime

### 4. *The qualifying income*

- rate of deduction: 85 %

### 5. *What if taxable profits are insufficient ?*

- The excess deduction may be carried forward

## B. The new regime

6. *IP rights still subject to protection*

- Qualify (provisionally) for exemption

## B. The new regime

### *7. Effect of the disposal of the IP rights*

- Income previously derived + capital gains enjoy the 85 % deduction ...
- But only if sale proceeds are reinvested in other qualifying R& D expenditures within 5 years

## B. The new regime

### 8. Example

Gross IP income		400.000
Qualifying cost = overall expenditures		<u>- 100.000</u>
Net income		300.000
Nexus calculation 100.00/100.00		
Nexus percentage	100 %	
Innovation income		300.000
Innovation deduction 85 %		<u>- 255.000</u>
Taxable income		45.000
Corporate tax 33,99 %	15.296	
Effective corporate tax rate	5,1 %	

## B. The new regime

### *9. Miscellaneous*

- The new regime has been communicated to OECD for peer review
- State aid (?)
- There are other tax advantages for R&D in Belgium ...



## Thank you for your attention

Olivier BERTIN

[obe@daldewolf.com](mailto:obe@daldewolf.com)

**DALDEWOLF**

Avenue Louise 81

1050 Bruxelles

Tél. : + 32 2 627 10 10

Fax : + 32 2 627 10 50

[www.daldewolf.com](http://www.daldewolf.com)