CORPORATE, COMMERCIAL & IP

Belgium Repeals Patent Box, Introduces Larger Innovation Box

By Olivier Bertin

Belgium was one of the countries offering a tax advantage for income derived by companies, directly or indirectly, from patents. Said regime, granting an 80% exemption of the gross income, has been repealed as of 30 June 2016. It is now replaced by a larger "innovation income deduction", organised in a statute of February 2017, but (retrospectively) applicable as of 1 July 2016.

In the new regime, the exemption has been increased to 85% of the net income (see below) and more items are now likely to produce qualifying income. In addition to patents and supplementary protection certificates, plant-variety rights, orphan medicinal products, copyright-protected software, and exclusivity of data granted by public authorities may now qualify. Like before, a company that does not grant licenses on those items, but uses them for its actual production of goods and services is eligible for the deduction.

Capital gains on the disposal of the qualifying items may also enjoy the 85% exemption. However, the company must reinvest within five years from the disposal the sale proceeds into other qualifying R&D expenses. Failing to do so, the company will be taxed on the amounts previously exempted.

There are other positive evolutions from the previous regime. For instance, the exempted income may be carried forward if the company concerned does not have enough taxable profit. It is also possible for a company to enjoy the exemption when the request for protecting the intellectual property right is still pending. In said scenario, the exemption is provisional and the advantage becomes definitive if the company achieves protection. On the negative side, there is a correction (taxable income) for the year during which the protection is denied.

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Thus, the 85% exemption only applies to net income. Therefore, R&D expenses incurred by the company must first be deducted from the gross innovation income. In addition, if there are R&D expenses subcontracted to related companies or if the company acquired the qualifying items from third parties, the exempted income is reduced (but not cancelled).

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