

## **Dutch Innovation Incentives**



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## Introduction

Over the past years the Dutch revenue has introduced several tax incentives for research and development (R&D). Below we will outline three important incentives:

1. Dutch Innovation box
2. Wage tax reduction (WBSO)
3. Innovative starters in a BV company

### 1. Dutch Innovation box

The innovation box results in taxation of income at an effective tax rate of 5%. This rate applies to all income derived from innovative activities for which a patent has been obtained or which results from research & development projects qualifying for the wage tax reduction as outlined under section 2, provided that certain conditions are met.

The 5% rate is achieved by the rule that only 5/25 (25% is the current Dutch corporate income tax rate) of the net proceeds generated will be taxable. This facility is interesting for companies that make a profit by receiving royalties from self developed assets. Based on a resolution issued by the State Secretary for Finance, the losses made with the self-developed intangible assets are fully deductible at the regular rate of 25%.

The main conditions for the innovation box are as follows:

- The intangible asset should be patented (large companies), or should result from research & development projects qualifying for the wage tax reduction as outlined under section 2.
- The patent must be self-developed in the Netherlands and not acquired from third parties.
- Further, the patent should significantly (i.e., at least 30%) contribute to the expected net proceeds from the intangible assets. This test, based on the facts and circumstances, needs to be applied only once, i.e., at the end of the year in which the intangible asset is placed in the Innovation box.

As of 2013, there is a rule for self developed IP used in own products or services of smaller companies: a fixed amount of 25% of the profits (max. € 25,000) is deemed to be profit from that intellectual property qualifying under the 5% regime. Maximum advantage is no more than € 5,000 corporate tax ((25%/-5%) x € 25,000). There is no threshold.

As of 2017 under the 'modified nexus approach' from the OECD access to Innovation box regime is limited:

1. basic entry ticket: R&D certificate for development of innovative intangible assets (WBSO, see under section 2) in the Netherlands for all companies;
2. second entry ticket required in addition for large companies: i.e. a patent, utility model, breeder's right/rights, orphan drug and supplementary protection certificate and self developed software.

Taxpayers are considered small (not large) if:

- the net group to which a taxpayer belongs has a total turnover of less than EUR 250 million over the current and previous 4 years; and
- the gross profits from innovative assets do not exceed EUR 37.5 million over the current and previous 4 years.

Furthermore under the modified nexus approach, as an additional substance requirement, contracted out R&D is excluded from the Innovation box regime. This substance approach is laid down in a formula to calculate the qualifying IP box income:  $R\&D\ costs * 1,3 / total\ costs \times IP\ income$ .

Generally all Innovation box rulings are nullified because of the new legislation 2017, however IP box rulings of smaller companies are under conditions grandfathered.



Finally, we note that foreign withholding tax levied on the royalties that the Dutch company receives, can be credited against the Dutch corporate income tax levied.

## **2. Wage Tax Reduction (WBSO)**

If a company conducts certain research and development (R&D) activities, a reduction of wage tax may be available for salaries paid to employees performing these activities. Such reduction also applies to wages paid in connection with feasibility studies directed at technical-scientific research or at the technical possibilities of own research and development. From 2009, the definition of R&D encompasses new products developed from existing components.

The wage tax reduction is in 32% of the first EUR 350,000 of the total salaries (excluding final levy wage) of such employees and 16% on any excess. For starting companies developing technological products the reduction is 40%.

Qualifying activities must be systematically organized in the Netherlands and must be directly and exclusively aimed at technical and scientific research on new technical tangible products or production processes. A prior feasibility study must be made (the reduction also applies to wages paid for this feasibility study). The R&D reduction may not be computed on the 30% tax-free allowance granted to foreign employees.

The reduction may be applied after obtaining an R&D certificate from the Ministry of Economic Affairs. The request for such a certificate must be filed at least 4 weeks prior to the beginning of the period in which the R&D activities will be initiated. A decision on the request generally must be taken within 3 calendar months. An R&D certificate may be requested for a period of at least 3 and at most 6 consecutive calendar months within a calendar year and for at most 3 periods per calendar year.

## **3. Innovative starters in a BV (substantial shareholder)**

Finally new tax incentives are introduced for innovative starters with 5% or more shares in a BV company with a R&D certificate:

- (i) minimum wage is acceptable in stead of minimum annual usual wage of EUR 45,000 (2017) or salary level of the best earning colleague and
- (ii) the wage tax due on granting of share option rights will be reduced from 2018. Subject to conditions, only 75% of the value of the share options will be taxed. The maximum wage tax reduction is EUR 50,000;

## **4. Conclusions**

There are three important incentives in order to increase innovation in the Netherlands.

- The innovation box gives the opportunity to apply a 5% corporate income tax rate at the level of the Dutch recipient;
- The wage withholding tax reduction results in reduced employment costs; and
- The new incentives for innovative starters in a BV company will support innovation in the Netherlands even further.

Please do not hesitate to contact us in case you wish to receive more detailed information about the above.