Tax Newsletter

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Innovation tax deduction: "also interesting for you?"

- Thanks to the innovation tax deduction (ITD), each BelCo – regardless its size – is fiscally encouraged to commercialize qualifying IP.
- ITD = fair market value net royalty income * nexus fraction * 85%
- Qualifying IP includes patents and software protected by an author's right, regardless its geographical scope. ITD can even be claimed during the IP application request period. Moreover, it can be combined with both the technology deduction for corporate tax purposes and the personal income tax regime for income derived from author's rights.
- BelCo should either be (co-)owner, usufruct holder or licensee of the IP. The latter should not even be activated on BelCo's balance-sheet.
- If BelCo granted a license for the use of the IP, it will receive 'explicit' royalty income. Conversely, if BelCo uses the IP for own commercial purposes, its turnover includes 'implicit' royalty income. The Ruling Commission has offered methodologies to identify such implicit royalty. Specifically, if the IP is supporting BelCo's core business, the cost-plus method is often used whilst, if the IP is a key value driver, the residual profit method is recommended.
- In order to determine net royalty income, gross royalty income is reduced by current-year R&D expenditure. When the ITD is claimed for the first time, possibly historical R&D expenditure should also be deducted, either one-off either spread over 7 years. A prorate part of the other current-year operating expenses will also reduce net royalty income.
- The nexus fraction reflects how BelCo's R&D expenditures evolve over time. Note that both BelCo's own R&D activities and R&D activities outsourced to 3rd parties increase the nexus fraction. Conversely, both R&D activities outsourced within the group and IP acquisition expenditure reduce the nexus fraction. Be careful: if a BelCo shareholder renders R&D services to BelCo through his own company, this gives rise to intra-group R&D expenditure.
- If the ITD exceeds BelCo's taxable basis, the excess can be carried-forward without limitation. BelCo may even opt to convert the ITD into a tax credit which will thus be deducted from BelCo's corporate tax liability. This can be interesting for 'large groups' being exposed to Pillar 2 legislation. Also for a small and medium-sized company, this tax credit is always computed as follows: ITD * 25%.
- If BelCo realizes a capital gain on IP being activated on its B/S, the capital gain can benefit from the ITD if the sales price is invested into R&D expenditure within 5 years.
- Advice 2018/01 of the Commission for Accounting Standards comments on the accounting treatment. Do not forget to add Enclosure 275 INNO to your Belgian corporate tax return.