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European developments regarding patent/innovation box

On 11 December 2014, the Ecofin Council published a report in which the UK and German governments joint proposal was discussed on new (stricter) rules for preferential intellectual property (IP) regimes. This proposal is based on the Modified Nexus Approach proposed by the OECD, which requires substantial economic activities to be undertaken in the jurisdiction in which the preferential IP regime exists, by requiring tax benefits to be connected directly to R&D.

It seems that the Dutch innovation box was also subject of this discussion. Apparently, the so-called WBSO certificate as entry ticket for the Dutch innovation box has been challenged since it was proposed to limit the IP regimes only for patents. However, as this report has not been made publicly available, we cannot verify this.

In a written statement to the General Secretariat of the Ecofin Council, the Dutch State Secretary of Finance has stressed the importance of the WBSO certificate as an entry ticket to the Dutch innovation box. Since especially small and medium sized companies apply for the innovation box on the basis of a WBSO certificate, they would be excluded from the proposed pure patent boxes.

The WBSO regulation aims at stimulating entrepreneurs to increase their investments in research. In this way the Dutch government wants to contribute to more innovative power and a greater competitiveness of Dutch companies. In case the WBSO certificate has been granted, it is evident that the company has sufficient nexus with the Netherlands.

We will keep you informed about further developments.