

Tax News Bulletin

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Dutch Government starts public consultation on proposed amendments to the “innovation box”

On 19 May 2016, the Dutch Government started a public consultation on the proposed amendments to the innovation box, following from the OECD’s BEPS action final reports.

Introduction

The innovation box is a set of regulations in the Corporate Income Tax Act (CITA), that allow taxpayers to effectively pay 5% corporate income tax (instead of the ordinary 25% rate) on profit that is directly attributable to qualifying innovation.

Following the OECD’s BEPS action plan 5 (Countering Harmful Tax Practices More Efficiently), member states are required to implement changes to their IP-tax regimes concerning the access to those regimes, and economic substance (nexus).

The draft amendments open for consultation are the Dutch Government’s response to the OECD’s BEPS action 5. This means that the innovation box will be restricted in accordance with BEPS action 5. Nevertheless, the innovation box continues to be an attractive tax incentive for innovative entrepreneurs.

The proposed amendments

1. R&D-declaration (“WBSO certificate”) becomes the *basic* entry ticket.

Taxpayers who currently qualify for innovation box on the basis of a patent or breeders’ right only, will need to obtain an R&D-declaration as well.

2. Difference between small and large taxpayers

A new distinction is made between small taxpayers and large taxpayers. A small taxpayer is a taxpayer who, over a five year period, has a profit from qualifying intangible property (IP) of less than €37.5 million and total (group) sales of less than €250 million. A large taxpayer is a taxpayer who is not a small taxpayer under the aforementioned criteria.

3. Additional entry-ticket needed

Small taxpayers can qualify for innovation box on the basis of an R&D certificate only. A large taxpayer will need one of the following entry-tickets, in addition to an R&D certificate:

- A patent;
- A breeders' right
- Registered pharma right or
- Software.

An exclusive license to use any of the abovementioned IP will also qualify as an additional entry ticket.

4. The Modified Nexus Approach (MNA) applies

The MNA intends to deny innovation box benefits to the extent that taxpayers lack substance. To measure substance, the MNA looks at where R&D expenditure is incurred. This results in the following formula:

$$\frac{\text{Qualifying R\&D expenditure} \times 1,3}{\text{Total R\&D expenditure}} \times \text{profit from qualifying IP}$$

Qualifying R&D expenditure is equal to total R&D expenditure minus R&D expenditure relating to R&D activities that have been outsourced to associated entities. The 30% uplift for qualifying R&D expenditure (1,3 in the formula) is intended to ensure that innovative companies which outsource only a limited part of R&D activities to group companies are not confronted with a lower innovation box result.

5. Administrative requirements

In addition to standard administrative requirements for taxpayers, taxpayers that qualify for innovation box will be required to keep in file documentation from which it can be derived:

- That the taxpayer owns one or more qualifying IP
- What amount of profit the taxpayer generates with this IP
- What is the most appropriate method for determining the profit from IP, and
- What is the size of the expenditure for developing qualifying IP, broken down by expenditure for R&D within the group and other expenditure.

6. Transitional law

For the following situations the current innovation box regulations will continue to apply until 1 July 2021:

- If the qualifying IP is developed before 1 July 2016 and the tax payer applies for innovation box, at the latest, in the corporate tax return in which 1 July 2016 falls
- For large taxpayers, the current entry tickets will remain valid until 1 July 2021.

7. Entry into force

The proposed amendments will enter into force per 1 January 2017.

For more information the proposed amendments to the innovation box, please contact Wiecher Munting (wiecher.munting@ohp.nl) or Jeroen van der Wal (jeroen.vanderwal@ohp.nl).