



RSM InterTax Tax Insights June 2016

The impact of BEPS on the patent income deduction – new measures are being drafted

We refer to previous correspondence by RSM related to the OECD Base Erosion and Profit Shifting (BEPS) program and the impact thereof on internal Belgian legislation.

Background

In the framework of the BEPS program, the Belgian patent income deduction regime was examined. In this respect it has been decided that, similar to 15 other similar foreign regimes, the patent income deduction regime does not fulfill the conditions laid down in the BEPS program.

As from July 1, 2016, no new deductions for patent income will be allowed under the terms and conditions of the current regime. However, it is the intention of the government to provide for a new regime in line with the terms and conditions of the BEPS program as soon as possible, replacing the patent income deduction regime currently in place.

The alternative arrangement put in place would be called 'Deduction for innovation income'.

1. Transitional provision

The draft bill provides for a transitional provision, allowing the application of the patent income deduction in Belgian corporate income tax and non-resident tax for the following patents:

1. Patents for which the patent income deduction has been applied in the past;
2. Eligible patents acquired or applied before July 1, 2016, or, in the case of acquired patents or license fees for which the patented products or processes have been further improved, if they have been acquired before July 1, 2016.


The transitional provision remains applicable until June 30, 2021.

In order to apply this transitional provision relating to a particular patent, the company may not yet have applied the deduction for innovation income, which replaces the patent income deduction, on that specific patent in any of the previous tax periods.

In other words, the choice to apply the deduction for innovation income for a particular patent is irrevocable and excludes a company to apply the transitional provision of article 543 BITC92.

To avoid that within a group of companies, patents are shifted with the goal to apply the transitional provision on patents for which no patent income deduction or similar foreign regime can be applied, through a related company, the transitional provision will not be

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allowed on patents directly or indirectly acquired as from January 1, 2016 that are not eligible for the patent income deduction or an analog measure according to foreign law in the hands of the transferring company.

In order to have a smooth exchange of information with regard to this transitional provision, it will be asked to confirm the application of this article in the corporate income and non-resident tax return.

2. Entry into force

The new measurement and the transitional provision will enter into force on July 1, 2016.

This is the ultimate date as from when the patent income deduction regime needs to be closed for “new” patents. Future acquired patents which have been filed on July 1, 2016 or later and improved patents for which the patents or licenses have been acquired on July 1, 2016 or later, will not be able to benefit from the current patent income deduction regime.

The transitional provision provides for a choice between the current patent income deduction or the new deduction for innovation income regime for certain patents. It is important that this choice is made after a thorough analysis of the possible results of the patent involved. RSM can help you in this respect to make the right decision, based on this analysis.

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