

TAX UPDATE

Relevant Belgium tax ruling as regards Patent Income Deduction (PID)

The Belgium Government is putting a lot of effort into innovative initiatives to **maintain and increase the attractiveness of Belgium as a preferred R&D centre location for both local and global players**. The Belgium Patent Income Deduction (PID) is a highly appreciated recent example thereof. On 12 May 2009 the Belgium ruling commission has issued a very interesting upfront tax ruling decision addressing some practical matters to be eligible for PID.

What is PID?

PID aims at boosting patent development and ownership through Belgium based companies and branches. Specifically, companies engaged in patent development benefit from a 80% deduction against taxable patent income. This means **effective taxation of the patent income of maximum 6,8%** (or 20% * 33,99% Belgium corporate tax).

Key features of PID are as follows:

- Only applicable to at arm's length income derived from patents and supplementary protection certificates;
- Patent registration can be in Belgium or abroad;
- Need for R&D centre in Belgium or abroad (even beyond EU);
- Both acquired and self-developed patents qualify (but possibly different PID basis - see below);
- Patent income can be stand-alone license fee or be embedded in global fee for supply of products/services;
- Upfront tax ruling comfort is optional;
- Minor Belgium corporate tax compliance formality.

Note that PID can be combined with the below non-exhaustive **other Belgium (R&D related) tax relief**. Such may result in a **0% effective tax rate**.

- Notional interest deduction if eligible net equity financing;
- R&D increased investment deduction;
- R&D foreign tax credit;
- R&D HR tax incentives, etc.

Example of PID impact on effective tax rate

To illustrate the structural tax benefits of PID, please consider the below example. We are distinguishing between self-developed patents and acquired patents as only in the latter case some corrections to the PID basis are required, i.e.:

- License fees *paid* by the Belgium company or branch;
- Tax-deductible accounting amortizations.

In any event, all **genuine R&D related expenses remain tax-deductible**.

Excess PID - e.g. 1.300 (or 4.800 – 3.500) in the below “self-developed patent” example -, if any, can however not be carried-back or carried-forward and thus **forfeits**.

	Self-developed patent	Acquired patent
Patent income	6.000	6.000
Operating expenses	(500)	(500)
Amortizations	<u>(2.000)</u>	<u>(2.000)</u>
Profit-before-tax	3.500	3.500
PID	<u>(4.800) (*)</u>	<u>(3.200) (**)</u>
Taxable basis	0	300
33,99% corporate tax (***)	<u>(0)</u>	<u>(100)</u>
Net cash income	5.500	5.400
Effective tax rate	0%	1,7%

(*) : $6.000 * 80\%$

(**): $(6.000 - 2.000) * 80\%$

(***) impact of other Belgium tax relief excluded

Key conclusions from 2009 ruling decision

On 12 May 2009 the Belgium ruling commission confirmed the following relevant learning points as regards the specific case submitted to the ruling commission:

- The fact that the legal ownership of the patent at hand was spread over various parties does not preclude the Belgium corporation - in its capacity as **co-owner** – from benefitting from PID;
- PID is only available for income derived from jurisdictions where the **patent request is already actually approved**;
- Fee income compensating a **transfer of (mere) “technical information” is not eligible for PID**;
- Only patents that are **commercialized as of 1 January 2007** are eligible for PID;
- Summarized, to identify income eligible for PID the **“relative R&D staff contribution” method** can be applied during the life-time (i.e. 6 years) of the patent. Such relative R&D staff prorate is determined in function of both the actual time-spent and expertise of the R&D staff involved;
- The **R&D centre** at hand qualifies for PID relief since it was demonstrated that it has the **required skills and resources** to operate autonomously.

Important remark: This newsletter is for information purposes only and cannot be considered as formal Baker Tilly Belgium advice relating to a specific fact pattern

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