



**THOMPSON
HINE**

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**INTERNATIONAL TAX AND
INTELLECTUAL PROPERTY
UPDATE**

Tax Incentives for R&D in Belgium

This bulletin summarizes the Patent Income Deduction (PID), a tax incentive aimed at encouraging companies to locate and expand R&D activities in Belgium. This bulletin may be of interest to those in the pharmaceutical, chemical or technological sectors who are looking for opportunities to invest.

Belgium has taken several measures to promote investments in Belgium and to create a favorable environment for R&D activities. For the 2008 tax year, a new incentive for patents has been introduced that leads to a maximum effective tax rate of 6.8 percent on patent income. The newly adopted PID results in the lowest effective European tax rate (e.g., the Dutch regime imposes a 10 percent rate) on income derived from the licensing of patents or the use of patented products, and makes Belgium a highly favored location for foreign investment.

The PID allows Belgian companies, as well as Belgian branches of foreign companies, to deduct 80 percent of royalties received under patents resulting from R&D activities from their Belgian taxable basis. The new tax incentive is intended to encourage R&D activities related to the development or improvement of patents.

Following is an overview of the main characteristics of the PID.

ELIGIBLE TAXPAYERS

The PID is available to all corporate taxpayers in Belgium; in essence, all Belgian resident companies and Belgian permanent establishments of non-resident companies.

QUALIFYING PATENTS

The PID only covers granted patents and extended patent certificates; it does not cover other intellectual property rights including pending patent applications. The company must hold a patent right; the PID does not apply prior to the grant of the patent and is no longer available upon expiration of the patent. The patent can be either:

- **Self-developed** – the patent is totally or partially developed in the company's research centre(s) in Belgium or abroad, such that the developing company holds an ownership right in the patent; or
- **Acquired and further developed** – the company either acquires the patent from or is granted a license to the patent by a third party, provided the company further develops the patent in the company's research centre(s) in Belgium or abroad. However, it is not required that the further development results in an additional patent.



QUALIFYING INCOME

The patent can be licensed to one or more third parties, or it can be used in the manufacturing process by or on behalf of the company.

- If the patent is licensed, the income consists of license payments, such as royalties, milestone payments, up-front fees, etc. When the parties are related, the royalties must respond to an arm's-length principle in order to avoid abuse. To the extent that the remuneration also relates to non-patent intellectual property, only the portion that relates to patents qualifies for the PID.
- If the patent is used in the manufacturing process by or on behalf of the company, it is important to determine how much of the turnover income can qualify for the PID. This will typically be calculated as that portion of the derived income that the company would have received if it had licensed the patent to an unrelated third party in an arm's-length transaction.

Also important to note is that, contrary to the Dutch PID, the Belgian PID is not capped.

OTHER TAX INCENTIVES

The PID can be claimed in addition to other already existing tax incentives, such as notional interest deduction (NID), investment deduction or R&D tax credit, partial payroll withholding tax exemptions and the US-Belgian double taxation treaty. The combination of the PID with other tax incentives can even bring the effective tax rate lower than 6.8 percent.

FOR MORE INFORMATION

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