

Belgium R&D Tax Incentives

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R&D Tax Incentives in Belgium: Executive summary

Subject	Type	Description	Eligibility		
			R&D center owning the IP rights (acting in its own name on its own behalf, owning the developed IP)	Contract R&D center (acting on behalf of another party)	R&D Cost-sharing arrangements (partially owning the developed IP)
Corporate Tax Incentives	R&D Investment Deduction or Tax Credit	13,5% one-shot / 20,5% spread investment deduction for new R&D Center investments in addition to normal tax depreciation	✓	✓	✓
	Patent Income Deduction	80% tax exemption of patent income for patents and supplementary protection certificates developed or further improved by a Belgian company or branch via a R&D center	✓	✗	✓
	Notional Interest Deduction	Notional interest deduction for equity (Belgian GAAP share capital and retained earnings) invested in the Belgian company or branch (FY 31/12/2012: 3% or 3,5% for SME)	✓	✓	✓
	Other tax benefits	<ul style="list-style-type: none"> - Advance Tax Ruling - Foreign Tax Credit on royalty income - Dividend withholding tax exemption - Exemption from capital duty 	✓	<ul style="list-style-type: none"> ✓ ✗ ✓ ✓ 	✓
Employment-related Incentives	Payroll Wage Tax Reduction	75% payroll withholding tax remittance exemption for qualifying researchers	✓	✓	✓
	Expatriate tax Status	Special tax treatment for foreign executives and researchers temporarily assigned to Belgium (non-resident tax status, business travel exclusion, tax-free allowances)	✓	✓	✓
	Home country social security	Possibility for foreign individuals temporarily assigned to Belgium to remain under the home country social security system by virtue of the EC Regulation (883/2004 and 987/2009)	✓	✓	✓

R&D Investment Deduction or R&D Tax Credit	
1 Tax incentive	<ol style="list-style-type: none"> 1. One-shot R&D investment deduction 2. or Spread R&D investment deduction 3. or R&D tax credit
2 Qualifying R&D investments	<p><i>Investments in R&D of new products and forward-looking technologies that are environment friendly</i></p> <ul style="list-style-type: none"> - Tangible fixed assets used in in-house R&D activities; - Acquired intangible fixed assets used in in-house R&D; - In-house developed intangible fixed assets (depreciation over 3 or 5 years for tax purposes).
3 Conditions	<ul style="list-style-type: none"> - New assets (self developed or acquired from a third party) which will be used in Belgium; - Intangible assets may not have been used in Belgium before; - Tangible assets may not have been used worldwide before; - Amortizable over a period of at least 3 years; - By means of an internal R&D center that qualifies as a "branch of activity"; - For specific innovative investments such as the development / improvement of new production techniques, or under specific circumstances, no R&D center is required.
4 Formalities to be fulfilled	<p>A certificate confirming the innovative and environmental friendly character of the development is to be issued by the competent authorities (within 3 months following the end of each financial year). Compliance with all environmental permits will be reviewed upon request of such certificate.</p>
5 Calculation of the tax benefit	<ol style="list-style-type: none"> 1. One-shot R&D tax deduction: acquisition value of the asset x 13,50% x 33,99% CTR 2. or Spread R&D tax deduction: annual amortization x 20,50% x 33,99% CTR 3. or R&D tax credit: corresponds to the one-shot R&D investment deduction
6 Limitations	<ul style="list-style-type: none"> - No maximum level of benefit / no company size limitation; - Unlimitedly reportable to future fiscal years (no carry back); - Not refundable (only the R&D tax credit when it has not been deducted for five subsequent fiscal years).

Patent Income Deduction (PID)

1 Tax incentive

An additional tax deduction of **80%** of the qualifying gross patent income

2 Qualifying patents and patent income

- Patents or supplementary protection certificates owned by a Belgian company or establishment as a result of its own patent-development activities (partly or fully) in an R&D center in Belgium or abroad;
- Patents or supplementary protection certificates acquired by a Belgian company or establishment from a related or unrelated party – in full ownership, joint ownership, usufruct, or via license agreement - provided it has further improved (“added value”) the patented products or processes in the company’s R&D center in Belgium or abroad;
- Includes both patent license income (royalties, upfront fees, milestone payments) and patent remuneration embedded in the sales price of goods or services;
- Not eligible: - copyrights, know-how, designs, trade or marketing intangibles
 (⇔ inherently connected know-how due to the improvement of the patent);
 - capital gains upon transfer of the patent;
 - contribution income in Cost Sharing Arrangements (as only the proper patent income is eligible).

3 Conditions

- (Co-)owner, licensee, or usufruct holder of the patents (⇔ contract R&D service providers);
- Belgian companies and Belgian permanent establishments;
- R&D center = “branch of activity” or “line of business” (art. 46, §1, 1, 2° BITC);
- Relevant substance to perform and supervise research and development activities, but may use subcontractors, related or unrelated, in its development of the patents or extended patent certificates;
- R&D center can be located outside Belgium (but belonging to the Belgian legal entity);
- Partial outsourcing of the R&D research is possible under certain conditions.

4 Formalities to be fulfilled

- **Only minor compliance formalities;**
- It is possible and often recommended to apply for an advance tax ruling

5 Calculation of the tax benefit

- Qualifying gross patent income x 80% x 34% CTR → **Effective tax rate of max. 6,8%**;
- If the license agreement also covers non-eligible IP rights, only the portion that relates to the patents grants PID;
- Deductible purchase and depreciation costs of acquired patents from third parties have to be deducted from the PID basis (in order to avoid double counting and abuse);
- **Foreign Tax Credit** available in Belgium for foreign withholding tax on patent royalty income

6 Limitations

- At arm’s length patent income level;
- Excess PID is definitely lost (no carry forward / back);
- Applied prior to the Notional Interest Deduction and the deduction of carry forward losses

Notional Interest Deduction

1 Tax incentive

The Notional Interest Deduction permits Belgian tax-resident companies and Belgian branches of non-resident companies to claim a tax deduction for their cost of capital. It enables R&D or IP holding companies to further reduce their effective tax rate on R&D income.

2 Qualifying capital

For a Belgian branch the notional interest deduction is applicable on its 'own branch equity'. The working capital should therefore be permanently allocated in the Belgian branch (not permanently financed out of the foreign head office, thus no mere current account).

3 Conditions

Available regardless of a company or branch's activity, size, multinational character, nature of source of income, thereby assuring compliance with the European Union's "State Aid" rules.

4 Formalities to be fulfilled

No advance ruling is required

5 Calculation of the tax benefit

Share capital + share premium + retained earnings (as determined for Belgian GAAP purposes)

- Specific adjustments in order to avoid double counting and abuse (e.g. fiscal net value of investments in shares, qualifying as financial fixed assets, foreign branch equity, etc.)

= Notional interest capital x 3% (3,5% for SME) (*) x 33,99% CTR

Return on equity	3,0%	5,0%	8,0%	12,0%
Notional Interest Deduction (FY 31 / 12 / 2010)	-3,0%	-3,0%	-3,0%	-3,0%
Taxable return on equity	0,0%	2,0%	5,0%	9,0%
Nominal tax rate (rounded)	34,0%	34,0%	34,0%	34,0%
Belgian ETR (excluding PID or other tax benefits)	0,0%	13,6%	21,3%	25,5%

(*) 3% cap enacted on December 28, 2011

6 Limitations

- Carry-forward **abolished** for "new" Excess NID (*)
- **Available** Excess NID remains **reportable** for 7 future fiscal years (no carry back), but maximum deduction of 60% taxable base before NID stock, except on first million EUR taxable base (*)
- Applied prior to the deduction of carry forward losses and R&D investment allowance.

(*) Exact application modalities however still to be confirmed and might be subject to changes upon the entry into force

Other Corporate Tax Benefits

1 Advance Tax Ruling

The ruling practice allows taxpayers to obtain advance legal certainty on their tax positions.

Several advance tax rulings have been issued regarding R&D e.g.:

- Arm's Length Transfer Pricing (e.g. Cost-Plus rulings for contract R&D services, arm's length patent remuneration embedded in goods or services sales price);
- Confirmation of eligibility for the R&D investment deduction;
- Confirmation of eligibility for the Patent Income Deduction;
- Confirmation of eligibility for the employment-related tax incentives.

2 Foreign Tax Credit

- In order to avoid double taxation on foreign-source royalty income;
- Conditions: actual WHT charge abroad + royalty income subject to taxation in Belgium;
- 15/85 of the net frontier amount of the royalty (even if the WHT is less than 15%) regardless of the actual WHT in the source country;
- The flat-rate FTC can therefore be tax-beneficial in the hands of a Belgian recipient of the royalty (without tax losses) where the FTC claimed in Belgium exceeds the actual WHT levied in the source state.

3 Exemption from dividend withholding tax

For corporate shareholders in treaty countries (cfr. EU Parent-Subsidiary Directive) who hold a participation of at least 10% in the Belgian company during an uninterrupted period of 12 months, dividends can be distributed free from Belgian withholding tax.

4 Exemption from capital duty

A Belgian R&D company can be set up at a limited cost, as capital contributions upon both, incorporation and capital increase (e.g. contribution of IP) are free from any capital duty.

5 Spread taxation of capital gains

Capital gains on qualifying fixed assets can be subject to a deferred and spread taxation, provided that the proceeds of the transfer are fully reinvested in qualifying depreciable assets within a certain period of time (generally 3 years; 5 years for reinvestments in real estate).

The taxation of the net capital gain will then be spread over the depreciation period of the reinvestment asset (if certain conditions are met).

6 Non tax related

The three regions in Belgium (Flanders, Wallonia and Brussels) provide for specific regional grants to subsidize individual R&D projects.

Payroll Wage Tax Reduction

1 Tax incentive

75% payroll withholding tax remittance exemption for qualifying researchers

2 Qualifying researchers

- Employed in an R&D program
- Holding qualifying educational degrees (wide field of application)

3 Conditions

- No additional conditions besides the eligible qualifying researchers
- No condition of reinvestment in other qualifying R&D projects

4 Formalities to be fulfilled

- **Only minor compliance formalities**
- The employer should have documents available (at the moment of the filing of the withholding tax return) substantiating:
 - The effective employment of the researchers within an R&D program;
 - The fact that the employees belong to the scientific personnel and hold qualifying educational degrees;
- No application procedure is foreseen

4 Calculation of the tax benefit

75% x payroll wage withholding tax for qualifying researchers

Example:

Annual net wages for qualifying researchers	50.000	100,0%
Payroll wage tax to be withheld	18.200	36,4%
75% payroll wage tax reduction	-13.650	-27,3%
Total gross wage tax expense	54.550	109,1%

Special expatriate tax status for researchers



1 Tax incentive	Belgium has an attractive special tax regime for foreign executives and researchers temporarily working in Belgium. It offers significant tax benefits and decreases the cost of employing foreign executives and researchers. The benefits can be combined with the partial withholding tax relief.
2 Qualifying researchers	The individual should be a foreign national. The employee should be an executive or researcher requiring special knowledge, responsibilities or expertise.
3 Conditions	<ul style="list-style-type: none">▪ The employing company should be either a Belgian company or branch that is part of an international group, or should be a scientific research center.▪ The employment in Belgium should have a temporary nature. The individual should demonstrate that he or she has maintained personal and economic ties abroad.▪ The individual has been assigned to Belgium by a foreign group company or has been recruited directly from abroad.
4 Formalities to be fulfilled	An application for the expatriate regime should be filed with the Belgian tax authorities, within six months starting from the first day of the month following the month of the start of the employment or secondment in Belgium.
5 Tax benefit	<ol style="list-style-type: none">1. The individual is deemed to be a non-resident for Belgian income tax purposes. His/her personal income of non-Belgian source (interest, dividends, real estate income) is not taxable in Belgium.2. Certain expatriate allowances or expense reimbursements are tax-exempt:<ul style="list-style-type: none">- Non-recurring expenses (such as moving costs, settling-in costs) are not subject to Belgian income tax, without any ceiling, provided certain conditions are fulfilled;- Recurring allowances or expenses paid during the employment (such as cost of living differential, housing differential, tax equalization payments, annual home leave) are in principle tax exempt;- School fees paid or reimbursed by the company are not considered as taxable income (without any ceiling).3. Remuneration relating to the days worked outside of Belgium is not taxable in Belgium (“travel exclusion”).4. Expatriate allowances or expense reimbursements are not subject to Belgian employer and employee social security contributions (specific conditions apply).5. a foreign individual, who works for a company with an establishment in the home country and who is temporarily seconded to Belgium can remain, together with his family, subject to the home country social security system if specific conditions are fulfilled (EC Directive (883/2004)).
6 Limitations	The tax-exempt allowances are subject to a ceiling of EUR 11.250 or EUR 29.750. The higher ceiling of EUR 29.750 is applicable for activities of a controlling or coordinating nature or for scientific research.