De toekomst van IP-regimes in Nederland en Europa
2 juli 2014

Welkom door de dagvoorzitter
Jaap Bellingwout
hoogleraar VU / KPMG Meijburg & Co
Opening
Hans de Boer
Voorzitter VNO-NCW

Tax Incentives:
• Inkomsten? (Innovatiebox)
• Kosten? (WBSO en RDA)

Christoph Spengel  Professor University of Mannheim, Centre for Economic Research
Jasper Wesseling  plv. DG Bedrijfsleven en Innovatie, Ministerie v. Economische Zaken
Michiel van Iersel  VP Corporate Tax Affairs ASML
Jaap Bellingwout  (panelvoorzitter) Hoogleraar VU / KPMG Meijburg & CO
Income-based or Cost-based Tax Incentives?

‘The future of IP-regimes in the Netherlands and Europe’
VU University Amsterdam
July 2, 2014

Prof. Dr. Christoph Spengel
University of Mannheim and
Centre for European Economic Research

Should innovation be stimulated by means of tax incentives?

- Political perspective
  - Lisbon Strategy / Horizon 2020 of the European Union: increase R&D expenditures to 3% of GDP
  - Recommendation of the European Commission to introduce R&D tax incentives

- Economic perspective
  - Market failure in the light of positive spill-overs associated with R&D activity serve as rationale for public support of R&D
  - Public support by means of direct funding of R&D projects (sole funding method in Germany) has very selective effects on both the R&D projects and the type of companies
  - Tax incentives for R&D have a broader scope and are considered to be associated with less distortions compared to direct R&D support
  - A survey of empirical studies suggests that private R&D investments increase by 1% if R&D costs are reduced by 1% and that R&D investments increase by 0.82% for each monetary unit spent in R&D tax incentives
Tax incentives for R&D across Europe and the USA

No R&D tax incentives
- Bulgaria, Estonia, Germany, Slovak Republic, Sweden

R&D tax incentives

- Tax rate
  - Belgium, Cyprus, France, Hungary, Luxembourg, Malta, Netherlands, Portugal, Spain, United Kingdom
  - Austria, Belgium, Croatia, Czech Republic, Finland, France, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Romania, Slovenia, Spain, United Kingdom
  - 100-300%

- Tax base
  - Austria, Belgium, Denmark, France, Hungary, Ireland, Italy, Malta, Portugal, Spain, United Kingdom, USA
  - Volume-based: 8-35%
  - Incremental: 20-50%

Should R&D tax incentives differentiate between SMEs and MNEs?

- Tax base/tax credit
  - No differentiation between SME and MNE
    - Austria, Croatia, Czech Republic, Denmark, Finland, Greece, Ireland, Italy, Latvia, Lithuania, Netherlands, Poland, Romania, Slovenia, Slovak Republic, Spain, USA
  - Differentiation between SME and MNE
    - Belgium, Croatia, France, Hungary, Malta, Poland, Portugal, United Kingdom

- Tax rate
  - No differentiation between SME and MNE
    - Belgium, Croatia, France, Hungary, Malta, Poland, Portugal, United Kingdom
  - Differentiation between SME and MNE
    - France, Luxembourg
How should tax incentives for R&D be designed? - Input- versus output-based tax incentives

- Market failure/ spill-over argument first and foremost applies to input-based tax incentives
- R&D tax credits turn out to be the most convincing and most effective input-based incentive; no distinction between SME and MNE
- It seems like that R&D tax credits have a positive impact on the GDP growth rate and that therefore the loss in tax revenue from a R&D tax credit is overcompensated by tax revenues from additional investments
- Doubtful, whether income-based tax incentives (IP Box regimes) are effective in incentivising R&D investment
- IP Box regimes are based on a different set of arguments: retaining IP and IP income
- Combining input- and output based R&D tax incentives might be based on economic considerations (i.e. in the Netherlands)
Innovation Policy in The Netherlands

Ambition (2020):
• To be among the top 5 of knowledge economies globally
• 2.5% of GDP allocated to R&D

E.g. by:
• Increasing private R&D expenditure

The Netherlands: an EU intellectual assets leader
Budget mostly targeted at generic instruments and SMEs

- 90% of the innovation policy budget is targeted at generic instruments, including tax incentives (WBSO, RDA and Innovation Box)
- 62% of budget spent on SMEs
- 97% of WBSO and RDA user companies SME

Budget development tax incentives over time

Budget WBSO and RDA (million euros)

Budget Innovation Box: 625 million annually (estimate)
WBSO and RDA are well-known and widely used

- 80 – 90% of R&D companies in the Netherlands makes use of WBSO and / or RDA
- Number of users still slightly growing each year

Evaluations: WBSO has a positive effect on private R&D expenditure

- On average, each euro of WBSO tax reduction was accompanied by 1.77 of private R&D in the period 2006 – 2010 (EIM, 2012).
- WBSO has indirect positive effects on innovation (e.g. share of turnover due to new developed products, improvements in labour productivity).
- RDA and Innovation Box will be evaluated in the upcoming years.
Fiscal R&D incentives from an economical point of view

Michiel van Iersel
VP Tax Affairs

ASML builds machines for making chips
Like an old-fashioned photo enlarger, lithography forms the image of chip patterns on a wafer
ASML is R&D intensive

ASML is R&D intensive

ASML is R&D intensive
Proposition/stelling 1
“R&D tax incentives are based on the grounds of market failure. Positive spill-overs in the area of R&D, i.e. higher public returns on R&D compared to private returns, are a strong argument to subsidise R&D activities from the input side.”

Proposition/stelling 2
“R&D tax credits are the most convincing and most effective input-based incentive; here, no distinction should be made between SME (i.e. companies which operate only domestically) and MNE (i.e. companies which belong to multinational group).”

Proposition/stelling 3
“The WBSO, RDA and Innovation Box are effective and efficient instruments to promote R&D in the Netherlands.”

Proposition/stelling 4
“The Netherlands has found a good balance between generic fiscal schemes and more specific grants and credit schemes.”
Proposition/stelling 5

“Tax incentives should be in the form of tax credits, creditable against wages tax, VAT, Corporate Income Tax, Afvalbeheersbijdrage verpakkingen, at the choice of the entrepreneur”

EU and OECD aspects of IP-regimes

By Vinod Kalloe
Head of International Tax Policy
KPMG Meijburg & Co
ZIFO congres
Vrije Universiteit Amsterdam
2 July 2014, Amsterdam
### Timeline

- **2000 – 2010** From EU Lisbon Strategy to Europe 2020
- **2006** – EC Communication on R&D tax incentives
- **2007** – EU Code of Conduct approvals
- **2008** – EU State aid approval Patent box Spain
- **2013** – German concerns….  

### Timeline continued

- **2013** – EU concerns on patent regimes UK and Cyprus
- **2013** – EU Code of Conduct review all patent regimes
- **2013** – OECD BEPS action point 5: harmful tax practices
- **2014** – EC State aid investigations
- **2014** – Results EU, EC and OECD?
2006 EC Communication on R&D tax incentives COM(2006)728

Aim: EU R&D investment 3% of GDP by 2010 (2% from private sector)

Tools: (amongst others) tax incentives

EU compatibility required: fundamental freedoms / state aid

No territorial restrictions allowed

No restrictions on potential beneficiaries

Design recommendations:

Corporate tax (super) deductions / accelerated depreciation

Corporate tax credits / tax refunds

Wage tax reductions for R&D staff

Focus on R&D expense side. IP income regimes?

- Approval: France - royalty regime 2003
- Approval: Hungary - royalty regime 2005

No need for assessment:
- Netherlands 2007
- Belgium 2008
- Spain 2008
- Luxembourg 2008

2008: EC State aid approval for Spanish patent box: no aid (N480/2007)

Qualifying IP: self-developed technological IP: patents, secret formulae or processes, designs or models, plans, or information concerning industrial, commercial or scientific experience.

Not qualifying: income from acquired IP, income from trade marks, copyright of literary, artistic or scientific work including cinematograph films, image rights, software, lease of industrial, commercial or scientific equipment

Taxable base: 50% exemption on gross income, Development costs fully deductible from the general taxable income at the regular rate.

Effective tax rate: 15%

Cap: eligible income at six times development costs
2008: EC State aid approval for Spanish patent box: no aid (N480/2007)

- Derogation from the ordinary corporate taxation rules
- Open to any undertaking
- Irrespective of size, legal structure or sector
- The fact that not every undertaking decides to self-develop a qualifying intangible asset merely reflects economic reality
- Some undertakings may profit from the measure more than others but this does not necessarily make the measure selective

2007 - 2014 EU Code of Conduct Group vs Switzerland

- EC State aid decision C(2007)411
- Holding, management, mixed companies
- Pressure leading to Swiss proposals to amend / abolish regimes (including principal structures and finance branch rules)
- Corporate Tax Reform III 2015:
  - Introducing a license box with advantageous tax rates applicable to royalties and other intellectual property
2013 – German concerns in the EU Council

Wolfgang Schäuble
German Minister of Finance

“IP regimes lead to unfair competition for foreign investment”

“That’s no European spirit. You could get the idea they are doing it just to attract companies.”

2013 - 2014: EU - EC - OECD actions

EU Council
Code of Conduct Group
- CY, UK, BE (amendment)
- EC: potentially harmful – Group: no consensus
- ‘IP regimes reduce tax on highly mobile activity without incentivizing significant additional R&D&I activity’
- Review all and report to ECOFIN December 2014

European Commission
State aid
- ‘the Commission has received indications that special tax regimes seem to mainly benefit highly mobile businesses and do not trigger significant additional research and development activity’
- Review all

OECD
Forum on harmful tax practices
- BEPS action point 5
- ‘Supporting investment in knowledge capital 2013’ questioning the effectiveness of IP regimes. May attract mobile income to a jurisdiction rather than substantial R&D activities.
- Review all and report to G-20 September 2014
Patent regimes under review 2014

EU and EC:

ES 2008  
FR 1971  
BE 2008  
PT 2014,  
CY 2012

HU 2003  
NL 2007 (2010)  
LU 2008  
UK 2013  
MT 2010

OECD:

CH Nidwalden 2011

2013-2014 EC State aid review

<table>
<thead>
<tr>
<th>Criteria and concern</th>
<th>Review de jure and facto</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criteria art. 107 TFEU</td>
<td>Review de jure:</td>
</tr>
<tr>
<td>1. Advantage</td>
<td>Review de facto:</td>
</tr>
<tr>
<td>2. Selective</td>
<td>✓ name companies</td>
</tr>
<tr>
<td>3. State resource</td>
<td>✓ sectors</td>
</tr>
<tr>
<td>4. Distort competition</td>
<td>✓ content of ruling</td>
</tr>
<tr>
<td>✓ Patent box Spain precedent (N480/2007)</td>
<td>✓ underlying documents including facts on activities, functions and risk</td>
</tr>
<tr>
<td>✓ EU Procedural Regulation LU information injunction</td>
<td>✓ qualifying income and benefit</td>
</tr>
</tbody>
</table>
## 2013-2014 EU Code of Conduct review

<table>
<thead>
<tr>
<th>Criteria Council Code of Conduct 1997</th>
<th>Review de jure and de facto</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Ringfencing I</td>
<td>• focus on substance: following OECD FHTP</td>
</tr>
<tr>
<td>2. Ringfencing II</td>
<td>• focus on ringfencing: foreign versus domestic beneficiaries</td>
</tr>
<tr>
<td>3. Substance</td>
<td>• effective tax rate not relevant</td>
</tr>
<tr>
<td>4. Profit allocation</td>
<td></td>
</tr>
<tr>
<td>5. Transparency</td>
<td></td>
</tr>
</tbody>
</table>

## 2013-2014 OECD FHTP – BEPS 5 review

<table>
<thead>
<tr>
<th>Guiding criteria</th>
<th>Review on substance</th>
</tr>
</thead>
<tbody>
<tr>
<td>In current TP approach: profit allocation in the box on the basis of</td>
<td></td>
</tr>
<tr>
<td>1. No or low effective tax rate</td>
<td>• important functions</td>
</tr>
<tr>
<td>2. Ringfencing</td>
<td>• legal ownership and</td>
</tr>
<tr>
<td>3. Lack of transparency</td>
<td>• economic risk</td>
</tr>
<tr>
<td>4. Lack of effective exchange of information</td>
<td>Does this mean: substance or significant development and active management?</td>
</tr>
<tr>
<td>BEPS action point 5: ...improving transparency,</td>
<td></td>
</tr>
<tr>
<td>• including compulsory spontaneous exchange on rulings related to preferential regimes, and on</td>
<td></td>
</tr>
<tr>
<td>• requiring substantial activity for any preferential regime.</td>
<td></td>
</tr>
</tbody>
</table>
Elements of the reviewed IP regimes

<table>
<thead>
<tr>
<th>Qualifying IP</th>
<th>Safe?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• self-developed patented IP</td>
</tr>
<tr>
<td></td>
<td>• self developed non-patented know how (technological IP)</td>
</tr>
<tr>
<td></td>
<td>• acquired IP + further development</td>
</tr>
<tr>
<td>Concerns EU and OECD?</td>
<td>• acquired IP without further development</td>
</tr>
<tr>
<td></td>
<td>• IP from related party outsourcing</td>
</tr>
<tr>
<td></td>
<td>• any copyright of literary, artistic or scientific work including cinematograph films,</td>
</tr>
<tr>
<td></td>
<td>• any trade mark, brandname, logo</td>
</tr>
<tr>
<td></td>
<td>• software and internet domain names</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Eligible income</th>
<th>Safe?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• direct royalty</td>
</tr>
<tr>
<td></td>
<td>• embedded royalty</td>
</tr>
<tr>
<td></td>
<td>• capital gains</td>
</tr>
<tr>
<td>Concerns EU and OECD?</td>
<td>• transfer pricing approach</td>
</tr>
<tr>
<td></td>
<td>• formula-based approach</td>
</tr>
<tr>
<td>Solution?</td>
<td>• limit eligible income to eligible development cost ratio?</td>
</tr>
<tr>
<td></td>
<td>• safeharbours?</td>
</tr>
</tbody>
</table>
### Elements of the reviewed IP regimes – safe?

<table>
<thead>
<tr>
<th>Category</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax incentive</td>
<td>• tax base exemption for eligible income up to 50% - 80% - 100%</td>
</tr>
<tr>
<td>Effective tax rate</td>
<td>• 15% - 10% - 5% - 2.5% - 0%</td>
</tr>
<tr>
<td>Cap</td>
<td>• none</td>
</tr>
<tr>
<td></td>
<td>• x-times development costs</td>
</tr>
<tr>
<td>R&amp;D expenses</td>
<td>• 100% deductible</td>
</tr>
<tr>
<td></td>
<td>• recapture development costs</td>
</tr>
<tr>
<td>Ruling practice</td>
<td>• advance certainty on qualifying IP and eligible income</td>
</tr>
<tr>
<td></td>
<td>• ranging from 3 to 10 year period</td>
</tr>
<tr>
<td></td>
<td>• Concern EU and OECD: lack of transparency?</td>
</tr>
<tr>
<td></td>
<td>• spontaneous exchange of information? OECD and EU?</td>
</tr>
</tbody>
</table>

### Conclusions?

- OECD FHTP and EU Code of Conduct (political procedure)?
- EC State aid investigations (legal procedure)?
- Existing beneficiaries?
- BEPS 4 and unilateral defensive measures e.g. Austria?
Pauze tot 15:30

INTERMEZZO
3D PRINTING

Alexander Hermanns
Directeur Technologie & Innovatie
Indicia - Genicap
3D Printing Academy Nederland
3D PRINTING ACADEMY
Van aanbod- naar vraaggedreven productie.....

Markt omvang

250 mrd + + +

7 mrd + + +

3.5 mrd

2013 2018 202
Als er nog tijd is... de ontwikkeling staat niet op zichzelf:
4x Raspberry Pi + Arduino DUE = uDOO

WE ARE MAKERS
MONEY FROM THE CROWD

Crowdfunding activity in the world

$1.5B raised worldwide

-90% reported growth in 2012

JOBS Act overview

- Introduced
  April 2012: Signed by Obama
  January 2013: Goes into effect

- Can raise up to $1M of stock a year to unlimited investors.

- Rules for investment:
  - $100K max $2000/year
  - $1M max 10% of income

Canadian Top Funding

- Pebble Watch
  $10M
  870K
- Alpha Watch
  $320K

Three Crowdfunding Models

- Donation + Reward
- Lending
- Equity
Waar staat Nederland ten opzichte van andere landen?

Christoph Spengel  Professor University of Mannheim, Centre for Economic Research
Martin de Graaf  Tax admin. of the Netherlands: Liaison for foreign Investors
Annemiek Kale  Tax director Danone Baby and Medical Nutrition
Jan Gooijer  Docent onderzoeker VU
Frank Pötgens  (panelvoorzitter) – Hoogleraar VU / De Brauw Blackstone Westbroek
Where do the Netherlands stand in comparison to other countries?

‘The future of IP-regimes in the Netherlands and Europe’
VU University Amsterdam
July 2, 2014

Prof. Dr. Christoph Spengel
University of Mannheim and
Centre for European Economic Research

Survey of IP Box regimes in place in Europe

- Currently, 12 European countries have an IP Box in place
- IP Box tax rates vary from 0% (Malta) to 16.76% (France)

<table>
<thead>
<tr>
<th>Country</th>
<th>IP Box Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>MT</td>
<td>0%</td>
</tr>
<tr>
<td>CY</td>
<td>2.5%</td>
</tr>
<tr>
<td>LI</td>
<td>2.5%</td>
</tr>
<tr>
<td>NL</td>
<td>5%</td>
</tr>
<tr>
<td>LU*</td>
<td>5.84%</td>
</tr>
<tr>
<td>BE*</td>
<td>6.8%</td>
</tr>
<tr>
<td>Nidwalden, CH</td>
<td>8.8%</td>
</tr>
<tr>
<td>HU</td>
<td>9.5%</td>
</tr>
<tr>
<td>GB</td>
<td>10%</td>
</tr>
<tr>
<td>ES</td>
<td>12%</td>
</tr>
<tr>
<td>PT*</td>
<td>15%</td>
</tr>
<tr>
<td>FR*</td>
<td>16.76%</td>
</tr>
</tbody>
</table>

* Including surcharges
Survey of IP Box regimes in place in Europe

- Scope of qualifying intellectual property
  - Types of intellectual property
  - Self-developed versus acquired IP, treatment of contract R&D

- Scope of qualifying income
  - Royalties
  - Capital gains from the sale of IP
  - Income from the sale of patented products and notional royalties from internal use

- IP Box tax base
  - Treatment of current IP expenses (e.g. financing expenses)
  - Treatment of R&D expenses incurred in the past - recapture/ capitalisation

Where do the Netherlands stand in comparison to other IP Box countries in terms of the effective tax burden?

Ranking of the effective average tax rate (EATR)
(equity-financed investment in a self-developed patent)

[Bar chart showing the comparison of EATR for different countries, with the Netherlands highlighted.

Legend:
- General tax system
- Statutory IP Box tax rate
- IP Box regime]
How do IP Box regimes compare to R&D tax incentives?

Ranking of the effective average tax rate (EATR) (equity-financed investment in a self-developed patent)

Patents granted to IP Box countries by the European Patent Office (EPO)
Should the Netherlands amend their IP Box regime?

- We observe no considerable impact of the introduction of IP Box Regimes on the number of patents.
- The EATR may turn negative if R&D expenditures are not recaptured (see Belgium, France, Hungary, and Spain). A negative EATR signals that R&D investment is heavily subsidised.
- The recapture of R&D expenses as required in the Netherlands is sensible in terms of the systematics of the tax regime and in economic terms.
- The Innovation Box’s scope of qualifying of IP (types of IP and treatment of acquired IP) is comparably narrow.
- The exclusion of acquired IP is sensible if the focus is on incentivising R&D.
- The Innovation Box is characterised by a comparably close geographical link to the Netherlands as the second ‘entry ticket’ to the regime, the R&D certificate, requires a certain degree of domestic R&D activity.

Proposition/Stelling 1

“In combination with the R&D certificate the Dutch Innovation Box requires a close geographical link to the Netherlands and it is therefore also likely to promote domestic R&D activity. Therefore, there is no need to change the concept in general.”
Proposition/Stelling 2

“The Dutch Innovation Box is both systematic (with regard to the recapture of R&D expenses) and competitive (with regard to the effective tax burden) to promote successful R&D activities.”
Summary / content

• Experience with regard to foreign investors considering the Netherlands

• From the perspective of the Dutch Tax Administration / Contactpoint for Foreign Investors in particular (“APBI”: new and additional large investments)

• Starting point: awareness that tax is just a factor in location choices

Summary of key features Dutch tax system

- Corporate income tax rate 25% (0 - € 200,000 rate 20%)
- Participation exemption (100% dividend & capital gains)
- Fiscal unity
- Loss carry over (1 yr carry back 9 yrs carry forward)
- No capital tax, no withholding tax on royalties / interest
- Well targeted CFC legislation
- Innovation box with tax rate 5%
- 90 tax treaties (reduces incoming WHT and outgoing dividend WHT)
- Advantageous deferral of VAT
- Wagetax reduction for R&D activities
- 30% cost deduction for qualifying foreign employees
- Cooperative practice (horizontal monitoring APA & ATR)
Experiences / impression (1)

- Innovationbox is taken into consideration in (nearly) every case

- Nevertheless it is definitely not applicable in every case because of for instance:
  - no relevant R&D (no patents, WBSO)
  - no relevant R&D substance
  - intangibles developed before entry into NL
  - solely routine R&D on behalf of other group companies

Experiences / impression (2)

- Attractiveness with limitations due to:
  - only part of profit in box
  - phase in
  - importance to continue (visible) innovation
  - positive but not extreme effect on ‘effective tax rate’

- On the other hand:
  Combination of (a) innovationbox, (b) WBSO and (c) ‘expat’-rules, where appropriate, clearly has strength
Experiences / impression (3)

• Overall impression of the innovation box:
  - Not decisive for situations where tax is the main motivation
  - Strong focus on substantial R&D
  - One of the significant and relevant factors in both new location choices and in considering whether to ‘upgrade’ NL activities
  - Especially in combination with other regulations
  - Box is necessary to stay on ‘shortlist’

Proposition/Stelling 3

“The Dutch innovationbox is necessary to remain on ‘the shortlist' for new investments of foreign multinationals.”
Where do we stand (NL)

- Innovation box
- WBSO
- RDA
- 30% rulings
What about the rest of the world?

- UK
- China
- Singapore

What is important for businesses

- Solid and clear rules
- Beneficial enough
- Stable legislation
- Confirmed benefit
Where does that leave us?

- Innovation box alone is not enough
- Combination with WBSO and RDA is OK
- Businesses want benefits above the EBIT line
- Easy access to tax authorities is a strong asset

Proposition/Stelling 4

“The current debate on tax avoidance by MNC's has a negative impact on the investment in innovation in the Netherlands.

In order to attract businesses, like the Singapore EDB, the Netherlands should have a one stop shop for innovation.”
“Without the Innovation Box we would have left the Netherlands”

> Interviews:
  > MNC’s (Dutch and foreign) / SMC’s / Tax and Subsidy Consultants

> “Do the Innovation Box, WBSO and RDA encourage R&D activities in the Netherlands?”
  > R&D Location
  > R&D Budget
  > Application
Innovation Box

> MNC’s (Dutch R&D):
  > Key for maintaining R&D in the Netherlands
  > Important driver for further R&D investments in the Netherlands
  > (Only) add on

> MNC’s (non-Dutch R&D, input from tax consultants)
  > R&D measure (only) one of the decisive elements
  > Use of innovation box limited:
    > Absence of sufficiently clear legislation and administrative guidance
    > No preferential treatment of acquired IP

R&D LOCATION

WBSO / RDA

> Not specifically mentioned
> Ranking the Netherlands on the international short list.
**R&D BUDGET**

Innovation Box
> No (direct) link between I-Box profits and R&D expenses

WBSO
> Crucial for some SMC’s/start ups
> Direct link between WBSO and R&D expenses (for both SMC’s and MNC’s)

RDA
> ‘Icing on the cake’

---

**APPLICATION**

Innovation Box
> Cooperative approach tax authorities (in advance)
> Call for further (legislative/administrative) guidance
  > Innovative company: yes/no?
  > R&D as value driver: yes/no?
  > % of EBIT?
  > Innovation in production process
> Contract R&D / Cost sharing: no link between economic ownership IP and WBSO-activities
APPLICATION

WBSO
> Generally no problem in application
> Coordination of Contract R&D

RDA
> Perceived to be difficult

SUGGESTIONS FOR IMPROVEMENT

Innovation Box
> Create clear and solid legislative and administrative guidance in accordance with established practice
> Contract R&D and cost-sharing: I-Box should apply if a patent or R&D declaration is available, regardless to whom
> Create a credit system to link I-Box benefits and R&D budget
> Income from existing IP could be included, provided IP will be further developed and limited to 50% of the total I-Box income
SUGGESTIONS FOR IMPROVEMENT

WBSO
> Align approach contract R&D with tax authorities

RDA
> Solve current indistinctness
> Create cash instrument (credit / WBSO)
> Apply to investment in existing IP (declining percentage)

PROPOSITION/STELLING 5

“As a quid pro quo, companies should be legally bound to add to their R&D budget at least 50% of the previous year I-box benefits.”
De invloed van transfer pricing op tax incentives voor innovatie

Marlies de Ruiter  Head of Tax Treaty, Transfer Pricing, Financial transactions Div OECD
Ewald Cratsborn  Director Corporate Fiscal Affairs DSM
Ronald van den Brekel  Tax Partner Transfer Pricing EY
Edwin Visser (panelvoorzitter) – Directeur Directe Belastingen en plv. DG Fiscale Zaken Ministerie van Financiën

BASE EROSION AND PROFIT SHIFTING

Marlies de Ruiter
The BEPS Project

Links innovation box and 2014 deliverables?

- Revision Chapter VI on intangibles
- Revision Chapter I on corporate synergies

--> Examples

- TP documentation and country-by-country reporting
- Treaty abuse
- Harmful tax practices

- Revision Chapter VI on intangibles
- Revision Chapter I on corporate synergies

--> Examples

- TP documentation and country-by-country reporting
- Treaty abuse
- Harmful tax practices
Links with 2015 deliverables?

- Risk and re-characterisation (TP)
- CCA’s and intangibles with highly uncertain value at the time of the transaction (TP)
- Funding (including provision of capital) and interest deductibility (TP and Action 4)
- Profit methods (TP)
- Base eroding payments (TP)
- Artificial avoidance PE status
- CFC rules
Innovation is in our genes

Business model

- Produktie
- Principaal
- Contract R&D
- Verkoop

WBSO, RDA
What the BEPS are we talking about?

June 26, 2014
Internationaal

OESEO “Intangibles”
   ▶ Juridisch vs. Functioneel
   ▶ Rol van financiering

OESEO “Harmful tax competition”

Unilaterale “BEPS” acties
Nederland

Nederlands verrekenprijsbeleid
► Contract research
► CCA’s
► 2013: Beloning hoofdkantoorfuncties

Nederlandse innovatiebox
► Relatie verrekenprijzen
► Patenten / WBSO

Aanbeveling voor verbetering

1. Economisch eigendom patenten
2. Regisserende en coördinerende functie
3. Uitbreiding WBSO

Voordelen
► Afstemming met ontwikkelingen verrekenprijzen
► In lijn met doel innovatiebox en wetsgeschiedenis
► Verbetering vestigingsklimaat, concurrentie andere landen
Stelling 1

“De BEPS transfer pricing maatregelen die tot doel hebben de winsttoerekening in lijn te brengen met de waardecreatie zullen de consequentie hebben dat innovatie- en patentboxen in landen met een aantrekkelijke R&D sector meer banen zullen genereren dan nu het geval is.”

Stelling 2

“De toepassing van de innovatiebox dient te worden uitgebreid zodat ook opbrengsten uit immateriële activa waarvan louter de aansturing plaatsvindt in Nederland effectief onder het verlaagde tarief komen.”
Stelling 3

“Mocht de Nederlandse innovatiebox door de BEPS initiatieven etc. op termijn niet meer effectief blijken te zijn, dan zou de budgettaire ruimte voor de box moeten worden omgezet in hogere WBSO betalingen, teneinde de positie van Nederland als innovatieland bij uitstek te behouden.”

Afsluiting

Eric Wiebes
Staatssecretaris van Financiën
Dankwoord

Borrel