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)

IP Box tax rates

<table>
<thead>
<tr>
<th>Country</th>
<th>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>
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<tr>
<td>Nidwalden, CH</td>
<td>8.8%</td>
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<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)

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)
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

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

### Experiences / impression (1)

- Innovation box 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.”

Annemiek Kale
Tax director Danone

ZIFO congres 2 July 2014
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.”

The Dutch IP and R&D facilities in practice: findings and recommendations

Jan Gooijer
2 July 2014
“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

R&D LOCATION

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’

**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

**WBSO**

- Generally no problem in application
- Coordination of Contract R&D

**RDA**

- Perceived to be difficult
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

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)
“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.”