



Research and
development
incentives in
Belgium

The magic of thinking big

A landscape of tax incentives and direct subsidies is available for your company. Companies have more eligible activities than they think at first glance.

Various 'research and development' incentives are available in Belgium to encourage companies to continuously invest in innovation. In the event your organization is developing new products, processes, systems, services, materials or improving existing ones, a variety of incentives might be available to you.

When talking about research and development, people automatically refer to white lab coats and state-of-the-art research facilities. However, research and development is typically much broader than that. R&D also includes extending overall knowledge or capability in science or technology. Software development, design, engineering, even maintenance and upgrade activities might be eligible.

Today we are witnessing that countries are increasing and enhancing their research and development support resulting in numerous opportunities. Therefore, it becomes imperative as a business decision-maker to gain a good understanding of the different incentives available.

Situated in the heart of Europe, Belgium offers companies and investors an attractive and comprehensive regime for research and development activities and the management of intellectual property:

- ▶ The innovation deduction, which provides for a 85% corporate income tax exemption of qualifying intellectual property (IP) income;
- ▶ The R&D investment deduction and the equivalent R&D tax credit for qualifying investments in R&D and patents;
- ▶ The partial exemption of withholding tax at 80% for employing scientific researchers, engineers or other innovative personnel;
- ▶ Incentives to employers for employing highly qualified foreign employees;
- ▶ Beneficial tax regime for income received for the transfer of IP rights from employees to their employers;
- ▶ Direct subsidies related to R&D and innovative projects.

With a statutory income tax rate of 25% and 20% for the first 100K of taxable income for small and medium sized income, its broad and strong international treaty network and general favorable tax regime features, Belgium is ranked highly for foreign investments in general and R&D in particular.

This brochure summarizes the main features of the R&D and IP incentives.

1. Corporate tax incentives

1.1 Innovation deduction

The innovation deduction makes Belgium an attractive location for conducting R&D and IP activities. This tax incentive is intended to support investments in innovation through research and development, including the development of software. It benefits a broad variety of industries.

The innovation deduction is an incentive which provides for a deduction of 85% of the qualifying net IP income, effectively reducing the related maximum effective tax rate to 4,4 % (2019) / 3,8 % (as of 2020). The innovation deduction is applicable to Belgian companies as well as foreign companies having a permanent establishment in Belgium, irrespective of their size or industry.

The innovation deduction is applicable as of 1 July 2016 and replaces the patent income deduction (PID) which was abolished as of 1 July 2016 with a 5-year grandfathering period.

Combined with other appealing features, the innovation deduction ranks Belgium as a tier one jurisdiction for companies carrying out research and development activities resulting in intellectual property. Advance tax rulings can be requested in order to secure the tax treatment.

Qualifying intellectual property

The innovation deduction is applicable to qualifying IP income from:

- ▶ Patents and supplementary protection certificates not commercialized before 1 January 2007;
- ▶ Copyright protected software, resulting from a research and development (R&D) project or program, and to the extent it did not generate income before 1 July 2016;
- ▶ Orphan drug designations, requested or acquired as of 1 July 2016 (limited to the first 10 years);
- ▶ Plant breeders' rights requested or acquired as of 1 July 2016;
- ▶ Data and marketing exclusivity, notably for medicinal products granted as of 1 July 2016 (limited to the first 11 years).

The deduction applies to self-developed IP rights as well as IP rights acquired or licensed from related or unrelated third parties.

For IP assets that require a request procedure (e.g. patents and plant breeders' rights), taxpayers will be entitled to a conditional exemption which is equivalent to the innovation deduction pending the request. The amount of the exemption should be recorded on an unavailable reserve account. The exemption will become final as soon as the request is granted.

The innovation deduction can be applied irrespective in which country the qualifying IP is protected. The globally earned qualifying income can be taken into account provided that it is included in the taxable basis of the Belgian company or permanent establishment.

How does it work

The innovation deduction applies to income derived from at arm's length license fees, IP income included in the sales price of goods and services (so-called embedded royalties), indemnities for IP infringements (e.g. court, arbitration, settlement, insurance, etc.), remunerations received from the sale or disposal of qualifying IP (subject to conditions) and IP income derived from process innovation.

The innovation deduction applies to the net qualifying IP income, i.e. the gross qualifying IP income less current-year expenditures for the development of the IP asset that are deducted as expense for tax purposes. This includes expenditures for the acquisition of IP rights, expenditures in relation to the R&D conducted by the company, as well as R&D outsourced to related or unrelated parties.

Prior-year expenditures incurred and deducted in financial years ending after 30 June 2016 should also be deducted. However, taxpayers may choose to spread the recapture of these prior-year expenditures over a maximum period of seven years.

The innovation deduction is calculated taking into account the 'nexus ratio' in accordance with the guidelines set out by the Organisation for Economic Co-operation and Development (OECD). The nexus ratio ensures that the innovation deduction is only available to the extent that qualifying expenditures were incurred by the taxpayer. This is expressed in a fraction.

$$\frac{\text{Qualifying expenditures} \times 130\%}{\text{Overall expenditures}}$$

Qualifying expenditures are defined as expenditures for R&D that are incurred in the context of R&D conducted by the taxpayer or that result from outsourcing of R&D to unrelated parties. Expenditures from outsourcing to related parties and acquisition costs are excluded from the qualifying expenditures.

A 30% uplift applies to the qualifying expenditures in order not to penalize taxpayers excessively for acquiring IP or for related-party outsourcing. The denominator includes the qualifying expenditures, as well as expenditures for outsourcing to related parties and acquisition costs. The nexus ratio is capped at 100%.

The nexus ratio only serves as a rebuttable presumption. Subject to certain conditions, taxpayers can prove that due to exceptional circumstances the nexus ratio does not correctly reflect the share of their own R&D activities in the overall R&D activities. In order to deviate from the nexus ratio, taxpayers will be required to obtain an advance tax ruling.

This example illustrates the tax benefit of the innovation deduction¹:

	Financial year 1	Financial year 2	Financial year 3
Qualifying R&D expenditures	300	200	100
Non-qualifying R&D expenditures	100	100	0
Overall R&D expenditures	400	300	100
Qualifying IP income	100	900	1.000
Current-year expenditures	-100	-300	-100
Recapture of prior-year expenditures	0	-300	0
Net IP income (A)	0	300	900
Qualifying R&D expenditures x 130%		650	780
Total expenditures		700	800
Nexus ratio (B)		93%	98%
Innovation deduction (A x B x 85%)	0	237	746
Expenditures not yet deducted	300	0	0

The innovation deduction contains key features which make it very attractive, also in comparison with other European IP regimes.

Firstly, the scope of IP assets is defined in a very broad manner. Secondly, the innovation deduction applies to self-developed IP rights, IP rights acquired or licensed from (un)related parties and pending IP requests. Thirdly, the amount of innovation deduction that can be claimed is not capped and any unused innovation deduction can be carried forward indefinitely.

Additionally, the regime can be combined with other corporate tax incentives such as the investment deduction/tax credit for research and development and patents which may further reduce the net cost of performing R&D activities in Belgium.

¹ This example does not take into account the application of other tax incentives.

Finally, the regime is automatically applicable and does not require a special ruling or election (a special form should be added to the annual corporate income tax return). However, taxpayers may request tax rulings in order to obtain legal certainty regarding the conditions and the calculation of the innovation deduction.

When applying the innovation deduction, a taxpayer should keep specific supporting documentation available for the tax authorities.

Grandfathering period for the patent income deduction (PID)

The previous IP regime (PID) has been abolished as of 1 July 2016. A five-year grandfathering period is optionally available for patent income earned up to 30 June 2021 in respect of self-developed patents requested before 1 July 2016 and patents and patent licenses acquired before 1 July 2016.

In case the PID is applied during the grandfathering period, the innovation deduction cannot be claimed in relation to the relevant patent for the taxable periods ending prior to 1 July 2021 (and vice versa).

1.2 Investment deduction for research and development and patents

The investment deduction for eligible R&D activities and patents entitles a Belgian company or a Belgian permanent establishment of a foreign company to apply a deduction in addition to the annual depreciation expense of qualifying assets.

The investment deduction can be calculated either as a percentage of the acquisition value of the qualifying asset ("one time" deduction) or as a percentage of the annual depreciation amount in which case the investment deduction is spread over the depreciation period ("spread" deduction). These percentages vary annually. For tax years 2020² and 2021³, the one-time deduction amounts to 13.5% of the acquisition value of the asset, while the spread deduction amounts to 20.5% of the annual depreciation.

The investment deduction applies to:

- ▶ Tangible and intangible fixed assets used for research and development of new products and technologies that do not have a negative impact on the environment, including capitalized R&D expenses; and
- ▶ Patents ("one time" deduction only).

In case the increased investment deduction would exceed the taxable basis, the excess balance may be carried forward without any time restrictions and can be offset against any future taxable income within certain annually applicable maximum amounts.

1.3 Tax credit for research and development and patents

As an alternative to the investment deduction, companies can also opt for a tax credit which is deductible from the corporate income tax due. The tax credit is equal to the investment deduction multiplied by the corporate tax rate. Therefore, although the calculation is different, the advantage is equivalent. Excess tax credits are carried forward and can be used considering certain limitations. The remaining balance after five years is refunded, which results in a cash benefit.

1.4 Corporate income tax exemption for regional grants and subsidies for research and development

The different grants offered by the regions in Belgium to support and stimulate research and development projects can take the form of direct cash grants, recoverable advances or interest rebates. Although such grants are included in a company's taxable basis, they are in principle exempt from corporate income tax.

2. Employment related incentives

In order to promote Belgium as a 'knowledge economy', the government has taken a number of measures to greatly reduce the employer's tax burden over the past years. These incentives aim at reducing the total labor cost significantly.

2.1 Partial exemption of withholding tax for qualifying employees (researchers, scientific workers, engineers, developers, etc.)

Principle

Since 2006 a partial exemption of withholding tax is available for universities, scientific institutes, young innovative companies and commercial companies.

A partial withholding tax exemption of 80% is granted to the employer provided certain conditions are met. As a result, when applying for this partial withholding tax exemption, the employer is only required to transfer 20% of the withholding tax due to the tax authorities. The remaining 80% remains with the employer as a direct cash benefit.

As of 1 January 2018 this partial withholding exemption has been expanded towards researchers with Bachelor's degrees. The total withholding exemption for Bachelors is capped at 25% of the total

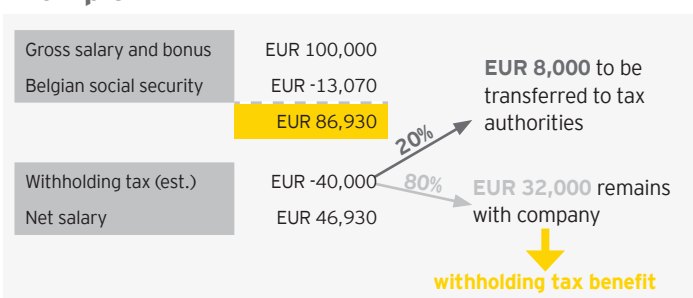
² Financial years ending per 31 December 2019 or 30 December 2020 at the latest.

³ Financial years ending per 31 December 2020 or 30 December 2021 at the latest.

withholding exemption applied for Masters and Doctors. This threshold is increased to 50% for companies that are qualified as small companies according to the Belgian Code of Company Law. The applicable percentage has increased to 80% as from 1 January 2020 (previously 40%).

Due to the revised income tax law, which is applicable as from income year 2014, the implementation of the withholding tax exemption will require preapproval from the Federal Science Department. New R&D projects and programs should be registered (notification procedure) as from 2014.

Example



Conditions for commercial companies

In the event two basic conditions are met, the employer can apply the partial exemption of withholding tax for their scientific employees, engineers, product or process developers, researchers, etc.

Firstly, the employee should have a PhD, Master's, academic Bachelor's degree in a scientific or engineering domain (e.g. sciences, applied sciences, exact sciences, medicine, pharmaceutical sciences, engineering, IT, architectures, product development) or should have a professional Bachelor's degree in biotechnics, health care, industrial sciences and technology, nautical sciences, science in business administration and business administration, with a focus on IT and innovation for the Flemish community and in paramedical and technical domains for the French community.

Secondly, the employee should be employed in a research and development program.

Broad definition

As from 1 January 2014, the definition of research and development is defined by law. The definition distinguishes the following three activities:

1. "Fundamental research" means experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomenal and observable facts, without any direct application or use when the search is conducted;

2. "Industrial research" means research or critical investigation aimed at the acquisition of new knowledge and skills for developing new products, processes or services or for bringing about a significant improvement in existing products, processes or services. It includes the creation of components to complex systems, which is necessary for the industrial research and notably for generic technology validation, with the exclusion of prototypes;

3. "Experimental development" means acquiring, combining, shaping and using existing scientific, technological, business and other relevant knowledge and skills for the purpose of producing plans and arrangements or designs for new, altered or improved products, processes or services. These may also include, for instance, other activities aimed at the conceptual definition, planning and documentation of new products, processes or services. Those activities may include producing drafts, drawings, plans and other documentation, provided that they are not intended for commercial use.

The development of commercially usable prototypes and pilot projects is also included where the prototype is necessary to the final commercial product and is too expensive to be used only for demonstration and validation purposes.

The experimental production and testing of products, processes and services is also eligible, provided that they cannot be used directly or after being transformed in industrial applications or for commercial purposes.

Experimental development does not include routine or periodic changes made to products, production lines, manufacturing processes, existing services and other operations in progress, even if such changes may represent improvements.

These definitions are slightly different from the practical interpretation which has been applied previously. In addition, the law confirms that the exemption of withholding tax can be applied to "research" or "development" activities and that it is not necessary that both definitions are met for an activity to qualify.

The projects or programs qualified as "research or development" activities are only eligible for the partial exemption if they are registered with the Belgian Federal Science Department. The following details are required for registration:

1. The identification documentation of the company or employer;
2. A description of the project or program, which should confirm the "fundamental", "industrial" or "experimental" elements of the activities;
3. The start date and the anticipated completion date of the project or program.

Registration is mandatory from 1 January 2014.

Ruling

A company or employer may request upfront approval from the Belgian Federal Science Department on whether the basic conditions are met for the research projects or programs, although this is not compulsory. The two basic conditions are:

1. The employees carrying out the project should have a qualifying degree;
2. The definitions for research and development are met.

In the event that a request for approval is rejected, the company is required to immediately repay the amount of withholding taxes that has been exempted.

Retroactive implementation

If the above conditions are met, one can opt for a retroactive implementation of the withholding tax exemption up to five years, starting from the current year (e.g., a tax claim over income year 2016 can be filed until 31 December 2020). A tax claim should be filed together with a corrective withholding tax return. For the current income year, the exemption may be claimed directly through monthly withholding tax returns.

2.2 Tax-free allowances for foreign executives and researchers

Companies employing foreign executives and researchers who temporarily work in Belgium may benefit from a special tax regime. A person who is classified as a foreign executive or researcher is considered to be a non-resident in Belgium from a tax point of view and, consequently, is taxed only on his or her income relating to professional activities carried out in Belgium. Moreover, certain expense allowances (called expatriate allowances) that relate to the temporary nature of the employment in Belgium are fully exempt. The standard maximum amount of this type of allowance is €11,250 per year, but for researchers the exemption can be increased to a maximum of €29,750 per year.

The increased exemption applies to “scientific research centers and laboratories, Belgian or foreign institutions (public or private) or autonomous departments of Belgian or foreign companies or of Belgian establishments of foreign companies whose activity consists solely of scientific or technical research in any field.” It is automatically applicable when the expat regime is granted.

In addition to these non-taxable allowances, the other major advantage of the special tax regime is that the expatriate is not taxable on that part of his or her remuneration that relates to his or her professional activity outside Belgium. The breakdown between the salary earned in Belgium and the salary earned outside of Belgium is usually (though not necessarily) calculated by comparing the number of days of professional activity spent in Belgium (“nominator”) with the total number of working days for the whole year or for a shorter time period (“denominator”).

2.3 Income received for the transfer of IP rights from employees to employers - Beneficial tax regime

Under this regime, income related to the cession and concession of intellectual property (IP) and related rights can be considered as movable income (up to €62,090 for income year 2020) and will be subject to tax differently than regular professional income. The income from IP will be taxable at a rate of 15% with a 50% lump sum cost deduction up to €16,560, and a lump sum cost deduction of 25% for IP income between €16,560 and €33,110. No cost deduction can be applied for IP income between €33,110 and €62,090. Otherwise, this income would be taxed as professional income at the progressive tax rates between 25% and 50%.

The incentive is applicable to current and future R&D activities. The compensation paid by the employer/third party for the transfer of IP rights from the employee/contractor to the employer is eligible. Obtaining a tax ruling for this incentive is strongly recommended. Furthermore, the transfer of IP rights also needs to be contractually stipulated.

3. Direct subsidies

In Belgium, there are various initiatives on a regional and European level with the objective to stimulate (scientific) research and industrial development. This is done through direct financial support (cash grant), often on a project-by-project basis.

3.1 Flemish Region: VLAIO Grants

For the Flemish Region, the subsidies are administered by Flanders Innovation and Entrepreneurship (in Dutch “Agentschap Innoveren & Ondernemen” or “VLAIO”). Projects can involve a wide range of objectives and activities which can be both technological and non-technological in nature. In general, a distinction is made between development projects and research projects, both for which all enterprises (SMEs and LEs) can apply.

Development projects are defined as:

- ▶ Projects aimed at the concrete realization of an innovative idea (prototype development);
- ▶ Projects resulting in new knowledge build-up (inside the enterprise);
- ▶ Projects with a clear business case describing market potential and strengthening the enterprise's competitive position resulting in economic growth.

Research projects are defined as:

- ▶ Projects aimed at groundbreaking research with significant risks;
- ▶ Projects focusing on new knowledge build-up that will, in the longer term, lead to the development of new or significantly improved products / processes or services and economic growth of the enterprise.

Aside from project-based funding there is also funding for researchers to obtain a PhD in close cooperation with the company (so-called Baekeland-mandaat).

3.2 Walloon Region: Industrial research, Experimental development and First companies

There exist specific subsidy systems in the Walloon Region.

The first program supports industrial research projects. This measure (in French “Prime pour des projets de Recherche Industrielle”) supports planned research or critical investigation aimed at acquiring new knowledge and skills for developing new products, processes or services or for significantly improving existing products, processes or services. Yet, prototypes are excluded. Subsidy percentages range from 30% for LEs up to 70% for SMEs. The eligible project budget comprises personnel costs, next to instruments and equipment costs.

Second, support for experimental development (in French “Prime pour des projets de Développement Expérimental”) is awarded to companies to support the acquiring, combining, shaping and using of scientific, technological, business and other relevant knowledge for producing projects or designs for new or improved products, processes or services.

A single company can only opt for a “recoverable advance” (35% for LE’s and up to 55% for SME’s). In case the project involves a consortium of at least two independent companies, the consortium can opt for a cash grant or recoverable advance. Subsidy percentages are higher in case of a recoverable advance (up to 50% for LEs and 70% for SMEs). The eligible project budget in addition to personnel costs includes (among others): instrument costs, equipment costs and contractual research costs.

The support of VLAIO is based on eligible costs, consisting mainly of:

- ▶ Payroll costs;
- ▶ Direct and indirect costs related to the project (such as travel costs, software, hardware, etc.);
- ▶ Subcontracting costs (services offered by 3rd parties);
- ▶ Large costs (high-value equipment).

The sum of all eligible costs serves as the calculation basis for the awarded cash grant. The level of VLAIO funding is linked to the type of program and the size of the company. For development projects, a basic funding rate of 25% is applied. For research projects, the basic funding rate varies between 25% and 50%. For both type of projects this funding rate can be increased depending on the enterprise’s size (+10% for MEs - +20% for SEs) and in case of collaboration with another enterprise (+10%). The total funding percentage for development projects can never exceed 50%, for research projects there is an upper limit of 60%.

A third support program for companies, is the First Enterprises Support Measure. It applies to a company that wishes to strengthen its scientific and technological potential by the hiring/training of young researchers. The objective is the realization of an internship in a research university or recognized research center. This center has the knowledge and equipment to provide useful information in a scientific project for the company. The knowledge gained will be integrated into the scientific and technical projects of the company by the researcher. The subsidy consists of 50% (LEs) or up to 70% (SMEs) of the (partial) salary of the researcher when the project is related to Industrial Research. In case of an experimental development project, the subsidy consists of 35% (LEs) or up to 55 % (SMEs) of the (partial) salary of the researcher.

3.3 Brussels Capital Region: Innoviris grants

For the Brussels Capital Region, the subsidies are administered by Innoviris. Various incentives exist for both SMEs and LEs and for research and development activities similar to the programs of the Flemish region.

3.4 European Commission's Horizon 2020 Program

Horizon 2020 is the current European Commission’s Research and Innovation Program which has a budget of more than EUR 80 billion for the period 2014 - 2020.

The program aims to secure Europe’s competitiveness by stimulating research and innovation. Horizon 2020 focuses on three main pillars: excellent science, industrial leadership and tackling societal challenges.

Horizon 2020’s funding potential spans a large variety of sectors, types of organization (academia, LEs, SMEs, governments, etc.) and activities. It operates on a call-based system which seeks for specific projects targeting particular EU priorities. Proposals generally require the formation of a consortium of multiple different partners from different EU member states or associated countries. Fostering research and innovation in SMEs is one of Horizon 2020’s priorities. Therefore, the program encourages SME participation in consortia and includes a specific SME instrument (for which no consortium is required).

The average grant a participating organization can potentially secure ranges between EUR 200,000 and EUR 1.5 million per project, with funding rates up to 100% of eligible project costs. There is no limitation on the number of projects for which a company can apply and, additionally, Horizon 2020 funding can be potentially complimented with local tax and non-tax incentives.

Horizon 2020 will be succeeded by Horizon Europe as of 2021. The next European Commission’s Research and Innovation Program has a proposed budget of €100 billion. The multiannual Strategic Plan, serving as a basis for the different work programs and calls for proposals, will be finalized in the course of 2020.

Our approach

EY has a dedicated multidisciplinary research and development team of experienced IP and tax professionals. This team helps companies to ensure they are awarded the research and development benefits to which they are entitled and assist in determining the appropriate tax management for qualifying IP income. Our IP specialists can also assist in identifying IP assets eligible for benefits and support IP protection and commercialization. We cover all tax angles in an integrated manner.

This multidisciplinary team works in close collaboration with international and transfer pricing specialists helping in the assessment, design and implementation of the tax operating model for the commercialization of your IP assets.

Our Center of Excellence does not only help you to identify research and development incentives but also helps you understand the specifics and requirements. Whatever the size, or nature of your company, we can play a critical role throughout the research and development lifecycle. We draw on our significant knowledge to create a tailored approach that meets your needs.

While we can assist on tax and legal matters, we can also support you with the audit on certification procedures (e.g. Horizon 2020).

Why choose EY?

1. One global, integrated team
2. Cross-border experience, in-country resources
3. Proven global methodologies and the latest, high-quality tools and perspectives
4. Collaborative aligned approach
5. Objective and independent advices



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