R&D Tax Incentives in the Netherlands

This newsletter briefly covers the key features of Dutch R&D tax incentives, including recent developments. These incentives are part of the Dutch government's policy of stimulating creative and innovative businesses.

On 10 October 2011, the Dutch government—acting on its previously announced plans to introduce a new research and development ("R&D") deduction—put its plans into effect by publishing an amendment to the 2012 Tax Bill released on 15 September 2011. (Please see our News Update of 29 September 2011 for the most important proposals here).

Once introduced, this R&D facility will join the R&D tax incentives already in place, i.e. the wage tax reduction and the Innovation Box.

Wage tax reduction

An employer resident in the Netherlands and performing qualifying R&D activities is allowed a reduction on the wage tax payable for the salaries of all employees performing R&D activities. In 2011, the reduction amounts to 50% for the first €220,000 (or 64% for certain qualifying companies) and 18% for any amount above this. The maximum annual reduction per employer is €14 million.

The reduction is allowed if the company has obtained an "R&D wage tax statement" (*S&O verklaring*) from Agentschap NL, an agency in the Ministry of Economic Affairs. The application for an R&D statement must be filed at least one month prior to the beginning of the period in which the R&D activities are performed. R&D statements are issued for periods of three to six calendar months (but for no more than three periods per calendar year) or for one calendar year if certain conditions are met. To be eligible as qualifying activities for the purpose of the R&D statement, the activities must be organized by an employer resident in the Netherlands and performed by its employees within the European Union. Qualifying activities must be aimed at (i) the development of technically new products, production processes or software, (ii) technical and scientific research, (iii) analysis of the feasibility of an R&D project or (iv) technical research on the improvement of a production process or software.

The 2012 Tax Bill limits the wage tax reduction. Starting 1 January 2012, the reduction will amount to 42% (60% for starting companies) for the first €110,000 and 14% for the amount above this. The maximum annual reduction will remain €14 million per employer.

Innovation Box

Starting 1 January 2010, a company deriving income from self-developed, patented intangible assets (excluding logos and trademarks), or from intangible assets arising out of R&D activities for which an R&D statement has been obtained, may opt to report this income in the "Innovation Box" on the tax form. If the company chooses this option, qualifying income that exceeds the intangible's assets development costs will be taxed at an effective tax rate of 5%. Gains derived from the sale of the qualifying intangible assets are also eligible for the Innovation Box.

Losses connected to the qualifying intangible assets are deductible against the maximum general rate of 25% (2011/2012). If such losses are reported, a full recovery of the losses at the maximum rate is required before the effective 5% rate of the Innovation Box becomes available again for the profits derived from that intangible asset.

The Innovation Box replaced the Patent Box, which had been introduced in 1 January 2007. Transitional provisions apply to income derived from a patented intangible asset developed between 31 December2007 and 31 December 2010, and for which an R&D statement has been issued. The income from these assets eligible for the Innovation Box (and its effective tax rate of 5%) is capped at four times the

This information is intended to highlight issues for general reference only. It is not comprehensive nor does it constitute legal, tax or financial advice. Any information contained herein is subject to change without notice. This information should not be relied upon in any specific factual or legal situation and does not cover all laws or regulations that may be applicable in all circumstances. You should seek professional advice before making use of any of the information. Houthoff Buruma further gives no warranty as to the accuracy or completeness of this information. No liability whatsoever is accepted by Houthoff Buruma.

production costs of the intangible asset. The excess is taxed at the general rates.

New R&D cost-related deduction

The new R&D facility provides for an additional tax deductible item, on top of the regular available deductions for R&D activities ("R&D deduction"). The amount of the R&D deduction will be based on a certain percentage of the qualifying costs and investments directly attributable to the R&D activities ("qualifying cost base"). The qualifying cost base will not include wage costs (because these costs are already facilitated in the wage tax incentive) and costs incurred for the outsourcing of R&D activities to third parties. Further rules on the determination of the qualifying cost base and the percentage applied to the qualifying cost base will be promulgated in a ministerial decree that has not yet been issued. The 2012 percentage is now anticipated to be set at 40%. Currently, this implies a benefit of 10% for a company subject to the corporate income tax rate of 25% (2011/2012).

To be eligible for the R&D deduction, an "R&D cost statement" (*RDA-beschikking*) is required from Agentschap NL. An application for this statement will be based on an estimate of the qualifying costs and investments, but the statement can be amended should the actual costs differ from the initial estimate. A ministerial decree will be issued with more detailed rules about the application procedure. It is expected that the procedure should be similar to and coincide with the application for the R&D wage tax statement.

This new R&D deduction is part of the 2012 Tax Bill and will go into effect on 1 January 2012, subject to the approval of the Dutch parliament.

Contact

Rob Havenga
T +31 (0)20 - 605 65 37
E r.havenga@houthoff.com

Sylvia Dikmans
T +31 (0)20 - 605 69 33
E s.dikmans@houthoff.com

This information is intended to highlight issues for general reference only. It is not comprehensive nor does it constitute legal, tax or financial advice. Any information contained herein is subject to change without notice. This information should not be relied upon in any specific factual or legal situation and does not cover all laws or regulations that may be applicable in all circumstances. You should seek professional advice before making use of any of the information. Houthoff Buruma further gives no warranty as to the accuracy or completeness of this information. No liability whatsoever is accepted by Houthoff Buruma.