

# YUFE: Dutch innovation box

Innovation at the EU in the aftermath of the Covid-19.

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Erik Jansen, Innovative Tax  
Nijmegen, Netherlands

# YUFE: Dutch innovation box

- In order to further stimulate R & D activities in The Netherlands for SME (= MKB) and Large companies;
- Net (taxable) profit from qualifying intangible assets created 'in house' by applicant innovationbox is effectively taxed against a reduced rate of corporate income tax of 9% (in stead of 15% - 25,8% (2022));
- How to claim the innovation box?
- Small and Medium sized (SME) companies with worldwide revenue (group level) < € 250 million *and* qualifying profit < € 37,5 million over a five year period can suffice with (WBSO) R & D statement of the innovation (intangible asset);

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Large companies (revenue > € 250 million or qualifying R & D profits > € 37,5 million (group level) on a five year period) have to comply with following additional conditions (beneath R & D statement WBSO):

- Intangible asset has arisen out of granted or requested patent (plus ownership IP by applicant innovation box);
- Intangible asset has arisen out of granted or requested plant breeders rights;
- Intangible asset as developed in WBSO / R & D statement;
- Intangible asset has arisen out of registered utility model, licenses for bringing to market medicines;
- Exclusive licenses on above mentioned 'legal rights';

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- With respect to the part of the net (EBIT) profit which benefits from innovation box: the higher the role (or importance) of R & D in the company is for the generation of these profits the higher will be the reward for the R & D activities of the company (applicant of innovation box);
- Research costs of the intangible assets or losses have to be recaptured before attractive tax rate is applicable;
- Cooperation within the group with (foreign) related companies on the field of R & D will limit the tax benefits of innovation box due to 'modified nexus approach' (OECD).
- Advance tax ruling for 4 years about applicability of innovation box to be concluded with Dutch Tax Authorities;

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## Example

- Dutch BV company (with 100% Dutch clients);
- 100% Dutch nexus of IP development which generates royalty income;
- Dutch BV beneficial owner of IP;
  
- Turnover: € 1.000 and cost level of € 400 (EBIT = € 600)
  
- Advance tax ruling innovation box with following remunerations of key value functions:

- corporate excellence	25%	
- sales		25%
- R & D		50%

Corporate income tax : 25%

Innovation box tax rate : 9%

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Corporate income tax due (with innovation box)

Residual profit split method:

R & D (50% x EBIT of € 600)	€ 300
Tax advantage $25-9 / 25 \times € 300$	€ <u>192</u> -/-
	€ 108
Corporate excellence / sales (50% x € 600)	€ <u>300</u>
Taxable profit	€ 408
Corporate income tax due (25% x € 408)	€ 102
Effective tax rate (included with innovation box)	17%

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Dutch policy to settle foreign withholding tax to avoid double taxation with respect to (innovation box) royalty's:

The **lowest** amount of the following three results:

- 1) The amount of foreign withholding tax on (gross) royalty's;
- 2) The amount of net royalty income (taxable income) multiplied by highest C.I.T. rate (25%);
- 3) The amount of net royalty income multiplied by 9%

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- Dutch BV company (with 100% foreign clients out of Austria, Portugal and Letland);
- 100% Dutch nexus of IP development which generates royalty income;
- Dutch BV beneficial owner of IP;
- Total foreign (EU) withholding tax amounts to € 100 (10% of € 1.000)
- Dutch corporate income tax rate: 25%, innovation box: 9%;
- Turnover: € 1.000 and cost level of € 400 (EBIT = € 600)
  
- Advance tax ruling innovation box with following remunerations of key value functions:
  - - corporate excellence 25%
  - - sales 25%
  - - R & D 50%
  
- Corporate income tax due amounts to € 102
- The amount of net royalty's multiplied by 9%: € 600 x 9% = € 54

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Amount to settle with Dutch corporate income tax due: € 102

- 1) Foreign withholding tax: € 100;
- 2) Dutch corporate income tax due: €102;
- 3) Amount net royalty income x 9%: € 54

The lowest amount of € 54 can be settled with amount due of € 102 (to be paid: € 48)

Amount of foreign withholding tax € 46 (€ 100 -/- € 54) will be forwarded (unlimited) in the future.

**Conclusion:** due to the (very) restrictive policy of The Netherlands to settle foreign (EU) withholding tax Dutch companies with foreign royalty income are treated disadvantageously compared to the same BV with the same royalty income from Dutch clients. When will BV be able to settle the forwarded foreign withholding tax?

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- The disadvantageous treatment of the Dutch BV company in settling the foreign withholding tax on royalty income is an infringement of the freedom of establishment (without any justification)
- The Netherlands must broaden the basis for the settlement of foreign withholding tax on royalty's and should stop to apply the third rule;
- From the business perspective: besides the R & D also the corporate excellence and the sales function of the BV company are rewarded out of EBIT (generated out of foreign royalty income)

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Questions?

[erik@innovativetax.nl](mailto:erik@innovativetax.nl)

phone: 0031-24-7600136