Tax incentives on Research and Development (R&D)

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Tax incentives on Research and Development (R&D)

I. R&D incentives under domestic tax taw

- Friendly and encouraging “general tax climate" for R&D:
  - National Agency for Innovation and Research in Luxembourg, public research centres, business incubator, various clusters…
  - General deduction of all kinds of expenses directly linked to the activity of a business (including R&D expenses)
  - Easily accessible tax credits

- Reasons for introducing R&D
  - 1980’s: encourage the largest possible number of stakeholders of the local economy to engage efforts in the research and development of new products, processes and services
  - 1987: law enabling creation of public research centres
  - 2009: R&D law

Tax incentives on Research and Development (R&D)

I. R&D incentives under domestic tax taw

- R&D incentives, equality of treatment and ability to pay
  - No distortion in favor of R&D when compared to other activities
- Eligible taxpayers
  - Restrictions related rather to the nature of activity rather than the form
- R&D incentives: MNEs versus SMEs
  - Strong support for SME sector (law dated 30 June 2004 sector of middle classes; increased incentives under R&D Law)

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I. R&D incentives under domestic tax taw

- R&D input incentives
  - Indirect tax incentives promoting R&D
  - Tax credits vs. cash allowances: declining balance depreciation method, special tax depreciation for investments in clean technology, tax credit for investments
  - Territorial scope limitations: compatibility of art. 32bis LIR with CJEU on Tankreederei?

- R&D output incentives
  - Art. 50bis LIR
  - Acquired IP & pre-existing IP: CAA 33148C and 33772C dated 30 July 2014
  - Anti-avoidance provisions

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II. R&D incentives in an international context

- Eligible taxpayers & territorial scope

  - Compatibility with the non-discrimination provision of DTCs

  - Compatibility with EU fundamental freedoms
    - Art. 152bis LIR: permanent establishment in EU jurisdiction without double tax treaty

  - Compatibility with EU State aid rules
    - No selectivity on art. 50bis LIR:
      - Applicable to all taxpayers
      - Simplification rule for SMEs
      - No partial exemption for a loss-making company

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II. R&D incentives in an international context

- Patent box regimes and harmful tax competition
  - Under the OECD BEPS Action Plan
    - Amendment required if nexus approach agreed on
  - Under the Code of Conduct for business taxation
    - Out of scope since:
      - No ring-fencing
      - Impact on domestic tax base
      - Substance requirements
      - Regime covered by TP rules & exchange of information
      - No discretionary power

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II. R&D incentives in an international context

- Patent box regimes and harmful tax competition (continued)
  - Under EU State aid rules
    - IP regime approved by Commission in 2008
    - Obligation to evaluate qualifying IP as well as income thereon by reference to general TP standards
    - Other caveats: acquisition / constitution date; restriction as regards related parties; recaptured expenses
  - Harmful tax competition and fundamental freedoms
    - Not be considered harmful tax competition because anchored in the general framework preventing abuses: TP, substance requirements, recapture and transparency in exchange of information

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II. R&D incentives in an international context

- Intangibles and BEPS situations
  - Transfer of intangibles to low-tax jurisdictions
    - Application of OECD TP standards
    - Substance and activities in Luxembourg
    - New art. 56 LIR
  - Royalty payments to intermediary IP companies
    - No WHT on royalty payments