Dutch Fiscal Subsidy For Software Development – WBSO and Innovation Box

Introduction
Dutch entrepreneurs engaged in Research & Development ('**R&D**'), or in Dutch: *Speur en Ontwikkelingswerk* ('**S&O**'), can use the WBSO (Dutch Research and Development Promotion Act) and the innovation box to reduce their costs.

Effectively, the application of the WBSO and the Innovation Box results in a reduction of Dutch payroll tax liabilities and Dutch corporate income tax burdens, respectively.

The WBSO and the Innovation Box have a broad scope of application. In this article, we will discuss both the WBSO and the Innovation Box in general, with a specific focus on the possibility of applying these schemes to software development.

The WBSO (and consequently, the Innovation Box) is available for two main WBSO categories: 'development project' and 'technical scientific research.' Software falls under the main category of 'development project.'

First, this article discusses some general features of the WBSO, followed by an exploration of the requirements that software as a development project must meet to qualify for WBSO application. In the second part of this article, we discuss the main rules for applying the Innovation Box, followed by the application of the Innovation Box rules to software.

1. WBSO

1.1 Lower (Payroll) Costs For R&D Activities
The WBSO is a Dutch fiscal incentive scheme through which the Dutch government compensates part of the Dutch wage costs, other costs, and expenses for S&O/R&D. In practice, this means paying less Dutch payroll tax. For self-employed individuals that are subject to Dutch personal income tax, there is a fixed deduction for S&O, with an additional allowance available for startups.

1.2 Who Qualifies?
Self-employed individuals (natural persons who meet the so-called hour criterion of the Dutch 2001 Income Tax Act) conducting S&O and companies subject to Dutch corporate income tax with employees engaged in S&O, may qualify for the WBSO. S&O hours of interns or graduates with an actual employment relationship in a company subject to Dutch corporate income tax also generally qualify for the WBSO, provided all S&O conditions are met.

For self-employed individuals, more than 500 hours of S&O work must be performed in a calendar year to qualify for the WBSO. Self-employed individuals cannot claim costs and expenses. The subject of costs and expenses in light of the WBSO will be discussed further below.

1.3 What Projects Qualify?
WBSO is available for two types of projects: technical scientific research and development projects. Below, we first briefly discuss technical scientific research and then focus more extensively on development projects, which include software development.

1.3.1 Technical Scientific Research ('TWO')
TWO refers to exploratory research of a technical nature. Research projects that generate new technical knowledge can, under certain conditions, be considered 'technical scientific research' under the WBSO. TWO is explained using the terms "technical" and "scientific," as discussed below.

1.3.1.1 Technical

Technical means the research pertains to areas such as physics, chemistry, biotechnology, production technology, or information and communication technology. Economic, social, or psychological research, for example, does not qualify as technical scientific research.

It is not required that the results of the research be applicable in a technically new physical product or production process.

1.3.1.2 Scientific

The term ‘scientific’ relates to the purpose and results of the research as well as how the research is designed and conducted. Scientific research aims to find an explanation for a phenomenon that cannot be derived from publicly accessible knowledge. The research should acquire theoretical or practical knowledge and must not be routine in nature. The research process and results must be transparently documented.

It is not required that the research result be reproducible or that its statistical reliability is demonstrable. Nor is it necessary to develop new concepts, laws, or theories, or to explain unknown working principles.

In our practice, we see TWO less frequently than development projects.

1.3.2 Development Projects

This includes the development of technically new (components of) physical products, physical production processes, or software. For instance, a breeder developing technically new plants also falls under this category. The technical ‘novelty’ must apply to the entity conducting the development, unlike patents, which require that the invention has never been disclosed before.

Note! There is a distinction between "new" and "technically new." If the intended end result can be achieved using conventional techniques or generally known principles, it does not qualify as development under the WBSO. Copying, imitating, or reverse engineering existing technology does not qualify.

WBSO-eligible projects are characterized by concrete technical problems that must be solved independently. In the chosen solution direction, technically new principles, methods, or techniques must be developed or existing technology further advanced by the applicant. This distinction also applies to technically new software, discussed further below.

1.3.2.1 Technically New Software

Technically new software under the WBSO always addresses an information technology problem.

Software is defined as "the non-physical, logical subsystem of an information system that determines the structure of data and processing processes, insofar as this subsystem is documented in a formal programming language."

The development of technically new software is iterative in nature. It must involve resolving (programming) technical challenges by the applicant. The S&O trajectory ends when a new information technology working principle has been demonstrated.

Describing models, formulating algorithms, or defining architecture does not qualify as developing technically new software.

As mentioned above, "technically new" is distinct from "new." Most software built is new (but not technically new). The key questions are:

1. Does the software involve a "new information technology principle"?
2. Are technical challenges independently resolved?

The answer to both questions must be "yes."

Projects involving the development of software to integrate or enable existing components to work together in a technically new way can qualify as S&O. An important condition is that the existing software components must primarily be self-developed and already in use by the organization.

It is essential to distinguish between a project and a problem. For example, a project could involve the creation of a new route-planning system. A technological problem in this project might be that achieving the desired specifications is not possible with the current algorithm.

Developing a new and more efficient algorithm can qualify as developing technically new software. However, merely describing or formulating a new algorithm without implementing it in a formal programming language by the applicant does not qualify as developing technically new software and thus does not count as S&O.

The following activities related to software development generally do not qualify for the WBSO:

- Activities related to the application, assembly, or implementation of software;
- Designing and creating new functionality (building blocks, modules, packages, etc.) using available or off-the-shelf technology (software and techniques);
- Building systems.

1.4 Examples

We frequently receive questions about the application of (generative) Artificial Intelligence (AI), Machine Learning (ML), and blockchain. However, WBSO is only accessible if – in summary – the software is self-developed and programming challenges are resolved using unconventional solutions during the code-writing process (in a formal programming language!).

The possibilities for using WBSO when working with open-source software are limited.

When does software development, for example, using generative AI, ML, and blockchain, qualify?

Below are examples from the Netherlands Enterprise Agency (‘**RVO**’). First, we describe some examples of software development that do not qualify, followed by examples that do qualify for the WBSO.

1.4.1 Examples That Do Not Qualify

New Database And Network Environment
An example of a project that does not qualify as an R&D project due to the application of available technology is the implementation of a new information system, where the innovative aspects include a new database environment and a new network environment. The project primarily focuses on designing an application and realizing the required functionality by the applicant. Searching for the optimal design and the most suitable components does not qualify because it is application-oriented rather than technology-oriented.

New Development Environment
The fact that a development environment is entirely new to a software developer, and they must first learn new methods and techniques (first use), does not make a project a qualifying R&D project. The learning phase is considered training and is not classified as qualifying R&D.

Application of Machine Learning
A company develops an application for doctors. The information system must suggest medication and treatments. Using machine learning and natural language processing, the company collects, evaluates, and interprets various data. This data serves as input for the application. Using techniques such as TensorFlow (an open-source software library for machine learning and artificial intelligence), a model is created and trained. This model is applied in this situation. The development of the application does not qualify for WBSO.

Integration Of Machines
A company has purchased several machines to set up a new production process. The company develops a dashboard using C# and employs available APIs to exchange data between the machines and the administrative systems. The development of the dashboard does not qualify for WBSO.

1.4.2 Examples Of Qualifying Software Development For The WBSO

Development Of Apps
A company specializes in developing mobile phone apps. The applicant intends to create an app that functions as a voice-activated search engine. The app incorporates augmented reality, allowing users to initiate a search for textual information about their surroundings. The sought content may vary from the history of an area or object to nearby dining options.

The company independently develops the software for both speech processing on the phone and reducing the smartphone's energy consumption. The app's development qualifies for WBSO.

Development Of Bots And AI Technology
A company develops bots and AI technologies for handling online customer interactions. Additionally, it creates technology for processing the Dutch language, managing decision trees, and measuring intents. Backend development is done in Python, while statistical processing software is developed in R. This development qualifies for WBSO.

Synchronization Of Machines
A company purchases two machines for a production process. The challenge is to synchronize, monitor, and adjust the two machines in real-time. The machine manufacturer does not provide a solution for this. The company develops software in C to enable real-time communication.

1.5 The WBSO Application Process

In the application, you must clearly describe what you plan to develop or research. For development, you need to describe technical challenges and indicate possible solutions. A well-prepared application avoids additional questions from the RVO adviser during the evaluation process and ensures quicker decision-making.

In the WBSO application, you request a number of WBSO hours and include costs and expenses. We briefly discuss these two elements below.

1.5.1 Number Of WBSO Hours

In the first application of the calendar year, you make a realistic estimation of the time required for each project up to December 31 of that year. Projects with only a few estimated R&D hours are generally not considered R&D. The minimum hours for a project that you wish to supplement in a follow-up application is 1 hour. Indicate changes under 'Update project' in the application form. Self-employed individuals must complete at least 500 R&D hours per year to qualify for WBSO.

1.5.2 Costs And Expenditures

There are two main options for 'costs and expenditures':

1. The fixed-rate approach;
2. Actual costs and expenditures.

Under the simplified fixed-rate approach, the additional amount is calculated based on the approved R&D hours. The fixed rate provides a rough estimate of the costs and expenditures incurred by an average entrepreneur for R&D. The fixed-rate amount per calendar year (amounts in 2024) is:

- €10 per R&D hour for the first 1,800 R&D hours;
- €4 per R&D hour beyond 1,800 hours.

Actual costs and expenditures are only eligible for an R&D statement (in Dutch: '*WBSO verklaring*') if they are solely and directly attributable to performing the R&D activities. This means that the costs and expenses must have a clearly identifiable causal relationship with the R&D activities.

Note that the choice for the fixed-rate approach or the actual costs and expenses can only be made once per calendar year. It is therefore important to estimate well in advance and make a trial calculation (or have one made) to consider which choice is advantageous in this regard.

The self-employed individual cannot enter costs and expenses for themselves, nor can they opt for the fixed-rate approach.

1.5.3 General Remarks on the WBSO Application

- The WBSO application must be submitted no later than the day before the start of the application period. Exceptions apply if the period starts on January 1 (deadline: December 20 of the previous year).
- A 'pro forma application' can be a solution in cases of time constraints.
- WBSO can be applied for up to four times per calendar year.
- Applications for the current calendar year can be submitted until September 30.
- Suppose that during a project you decide that this project is eligible for WBSO. Then it is possible to still apply for WBSO, whereby the WBSO period can start from the 1st of the following month. The hours already spent until the start of the WBSO period are then not eligible for WBSO.

1.6 Benefits of the WBSO

The financial benefit of WBSO is the "R&D Tax Reduction." You calculate this as follows. First you determine the 'R&D base'. The R&D base consists of: the total R&D wage (WBSO hours x hourly wage or flat rate wage)+total costs and expenses or fixed-rate costs.

You then take 32% (in 2025 36%) of the first €350,000 (in 2025 €380,000) of the total R&D base + 16% of the surplus R&D base. This is the “R&D remittance reduction.”

S&O withholding agents set off the allocated R&D remittance reduction in the Dutch payroll tax return. The offset can only be made against the Dutch payroll tax (Dutch wage tax and national insurance contributions) that the employer must withhold and remit to the Dutch Tax and Customs Administration. Settlement of the S&O remittance reduction cannot be made against the Dutch employee insurance contributions and healthcare insurance contributions.

The withholding agent may only set off the R&D remittance reduction in return periods (for example, one month) in the calendar year to which the R&D statement relates. The application of the R&D remittance reduction cannot result in the Dutch wage tax to be paid over a return period being reduced beyond zero.

The R&D hourly wage is a fixed average amount per hour that applies to all R&D employees. This R&D hourly wage is used in the further processing of the application(s) and applies to the entire calendar year. The R&D hourly wage 2024 is determined as follows: did employees not perform any R&D work in 2022? Then a fixed average hourly wage of €29 (fixed-rate, 2024) applies to the company. Did you perform R&D work in 2022 and had an R&D statement for it? Then the average S&O hourly wage for 2024 is calculated by the RVO based on data from the Dutch payroll tax returns for 2022. The RVO therefore also requests the data from the employees performing S&O work.

For self-employed persons who meet the conditions, the amount of the R&D deduction may be claimed in the Dutch personal income tax/ national insurance contributions return for the year to which the R&D statement(s) relates. In 2024, the R&D deduction for the self-employed is €15,551. The additional R&D deduction for starting self-employed persons is €7,781 in 2024.

1.7 Administrative Obligations for WBSO

R&D activities and time spent are verified by RVO through the R&D administration. In case 'actual costs and expenses' were chosen instead of the fixed costs, then the R&D records will be used to check which costs and expenses were incurred and paid for the R&D work for which the R&D statement was issued.

To make use of the WBSO, therefore, a number of conditions and administrative requirements must be met. Note, for example, that no R&D hours should be recorded on projects that have not been requested. Costs and/or expenses that have not been requested cannot be recorded. Frequently occurring is, for example, that R&D hours (and costs and/or expenses) have been registered that are excluded from R&D or that the number of R&D hours and any costs and expenses realized are incorrectly reported.

In this case, the RVO can make a correction and possibly impose a fine. This is processed as a negative R&D remittance reduction in the return for the period in which the corrective R&D statement was dated or in the subsequent period.

1.8 Closing Section on WBSO

If you are unsure whether you qualify for WBSO or wish to optimize your WBSO usage, contact Twan Weusten at 06-82 53 57 13.

Further details on the innovation box follow below.

2. Innovation Box

Above, we discussed some general characteristics of the WBSO, followed by a discussion of the requirements software must meet to qualify for the WBSO.

Hereafter, we will delve into the main rules for applying the innovation box in the Dutch corporate income tax return, highlighting some considerations related to software development.

2.1 General Overview of the Innovation Box

The innovation box is, in short, a scheme under the Dutch Corporate Income Tax Act 1969, which applies an effectively lower tax rate to profits derived from certain innovative activities. The innovation box is available only under Dutch corporate income tax (e.g., for private limited companies (‘**BV**’) or public limited companies (NVs)) and not for entrepreneurs subject to Dutch personal income tax (e.g., sole proprietorships or partnerships such as VOFs).

The innovation box applies to benefits derived from so-called “qualifying intangible assets” that the taxpayer (usually the BV) has developed through R&D activities for which an R&D declaration (S&O statement) has been issued. The goal of the scheme is to stimulate innovation in the Netherlands.

2.2 Benefits of the Innovation Box

Instead of the regular Dutch corporate income tax rate of up to 25,8% (2025 and 2024, for profits exceeding €200,000), benefits from qualifying intangible assets are effectively taxed at a rate of only 9% (2025, 2024, 2023, 2022, and 2021). From 2018 to 2020, this rate was 7%.

2.2 WBSO as a Ticket to the Innovation Box

The reduced Dutch corporate income rate under the innovation box applies in principle only to "benefits from qualifying intangible assets created by the taxpayer themselves." As of January 1, 2017, a distinction is made between smaller taxpayers and other (read: larger) Dutch corporate income taxpayers.

Whether a Dutch corporate income tax payer is considered large or small depends on the taxpayer's (or group's) revenue and the size of the benefits from intangible assets for which an R&D statement has been issued.

2.2.1 Smaller Taxpayers

For smaller taxpayers, the ticket to the innovation box is that the intangible assets must have resulted from R&D activities for which an R&D statement has been issued under the WBSO.

2.2.2 Larger Taxpayers

For larger taxpayers, in short, a second ticket is required in addition to the R&D statement issued for an intangible asset derived from R&D activities for which an R&D statement has been issued under the WBSO. For instance, a patent or plant breeder's right must be granted to or applied for by the Dutch corporate income tax payer, or the intangible asset should be software.

In summary, a "larger taxpayer" qualifies for the innovation box with a "second ticket" when software is developed under the WBSO.

When is a taxpayer considered "large" or "small"?
A taxpayer is considered a "large taxpayer" for the innovation box if:

- The gross benefit from all intangible assets in the fiscal year for which you want to use the innovation box, plus the four preceding fiscal years, exceeds €37.5 million; or
- The net revenue in the fiscal year for which you want to use the innovation box, plus the four preceding fiscal years, exceeds €250 million.

If the Dutch corporate income tax payer is part of a group under the financial reporting rules, the group's net revenue determines the qualification as a large or small taxpayer. This is relevant, for example, in cases of acquisitions or participations by a private equity firm in a taxpayer using the innovation box. In such cases, the taxpayer may be classified as a large taxpayer, requiring a second ticket to continue applying the innovation box.

2.3 Flat-Rate Scheme

Since January 1, 2013, there is the so-called "flat-rate innovation box scheme." This scheme is mainly intended to encourage SMEs (Small and Medium Enterprises) to make more use of the innovation box.

Applying the innovation box can be complex, which has led to limited use of the scheme by SMEs. The flat-rate scheme, however, can be easily applied (if the rules are met) by selecting it in the Dutch corporate income tax return.

Under the flat-rate innovation box scheme, corporate taxpayers (e.g., BVs or NVs) can allocate an amount equal to 25% of the profit, up to a maximum of €25,000, to the innovation box.

For a taxpayer subject to the first bracket of Dutch corporate income tax (19% for profits up to €200,000 in 2024 and 2025), the benefit of the flat rate in 2024 and 2025 is a maximum of €3,094. The calculation: €25,000 is taxed at 9/25,8 and taxed at 19%, i.e., €25,000 × 9/25.8 × 19% = €1,656. Without the innovation box, the entire amount is taxed at 19%, i.e., €25,000 × 19% = €4,750. The benefit is therefore €3,094. The effective tax rate in this case is 6,6%.

For taxpayers in the second bracket Dutch corporate income tax (25,8% for profits above €200,000 in 2024 and 2025), the benefit is a maximum of €4,200 under the flat rate. The calculation: €25,000 × 9/25,8 × 25.8% = €2,250. Without the flat-rate innovation box, the total would be taxed at 25,8%, i.e., €25,000 × 25.8% = €6,450. The benefit is €4,200.

The flat-rate innovation box method has additional specific rules. For example, a taxpayer can only use this scheme for a maximum of three years for the same intangible asset. This article does not cover these specific rules.

2.4 Methods of Allocating Benefits

In addition to the flat-rate scheme, the following methods of benefit allocation are recognized under the innovation box regime:

1. **Peeling Method (in Dutch: '*afpelmethode*')**: Used when R&D is a core function.
2. **Per-Asset Method**: Used when benefits from intangible assets are individually determinable.
3. **Cost-Plus Method**: Used when R&D is incidental or ancillary.

The method must be applied at the lowest possible level of aggregation. The hierarchy starts at the intangible asset level and moves to the product, product group, business unit, and finally the overall fiscal EBIT of the taxpayer.

Thus, in this analysis, a "bottom-up approach" applies where the taxpayer's entire Dutch corporate income tax EBIT, is the highest possible level of aggregation. The lowest level is the intangible asset itself. Then these levels are product, product group or family, business unit, EBIT of the Dutch corporate income tax payer.

2.4.1 Peeling Method

In practice, the peeling method is the most commonly used method for allocating benefits. This method is also referred to as the "ideal complex." It can be applied by a taxpayer who produces intangible assets (at least) annually, for example, when WBSO is used for developments in many or all products/services of the taxpayer.

In the peeling method, the functions within a company are categorized as either supportive and routine functions or "core functions."

The "peeling" process works as follows:

1. First, the portion of operational profit related to the qualifying intangible assets is determined.
2. Of this operational profit, a part is allocated to the supportive and routine functions (typically using a cost-plus approach).
3. The remaining qualifying profit is then distributed among the core functions based on their relative importance to the company.

In practice, the following three core functions are generally identified: entrepreneurship (also referred to as "corporate excellence"), sales, and R&D. R&D as the sole (core) function is rarely observed in practice. Moreover, R&D may include activities that do not result in qualifying intangible assets. Alongside the core R&D function, there may also be a "routine R&D" function, such as the development of intangible assets without applying the WBSO to this development.

Other typical functions include "production," "implementation," and "service & maintenance." Depending on the circumstances, these functions may be either core functions (vital to the company) or routine/supportive functions.

The portion of the profit that, following the above steps, is allocated to R&D is generally taxed in the innovation box at 9% Dutch corporate income tax (rate for 2025 and 2024).

An important question is how to determine the percentage for the R&D core function. The starting point is the number of WBSO hours recorded by the taxpayer (including within the fiscal unity for Dutch corporate income tax) in proportion to the total number of hours worked by the taxpayer's personnel. In practice, the R&D percentage typically ranges between 10% and 35%, as reflected in published agreements by the Dutch Tax Authorities on the innovation box. This percentage may be higher if there are substantial WBSO hours requested and recorded.

2.4.2 Per-Asset Method

This method is suitable when innovations are occasional or not deeply integrated into the taxpayer's overall business processes.

The per-asset method works similarly to the peeling method: the qualifying operational profit is allocated or "peeled" between supportive/routine functions and core functions. This allocation is based on the relative importance of the functions in realizing the benefits of the asset.

The difference mainly lies in the level of aggregation: under the per-asset method, the level of aggregation is at the intangible asset itself, the lowest level. Under the peeling method, the aggregation level is higher.

For example, the per-asset method is often applied to royalties, as these inherently represent benefits derived from intangible fixed assets.

2.4.3 Cost-Plus Method

The cost-plus method for allocating innovation box benefits is the least commonly used in our practice. This method is appropriate when the research function and the qualifying assets play a supporting or incidental role.

In this method:

1. The costs associated with the qualifying assets are identified.
2. A markup is applied to these costs, representing the benefit eligible for the innovation box.

The markup is based on what a third party would be willing to pay for the activities and generally ranges between 8% and 15% of the costs, depending on the facts and circumstances.

An example is provided below to illustrate this method:

Example of the Cost-Plus Method: A Travel Organization
A travel organization with approximately 2,000 employees developed new software primarily in-house a few years ago, replacing part of its back-office IT infrastructure. After its completion, the software is continuously updated to keep pace with the latest developments. This involves ongoing improvements, creating a new intangible asset annually. For the employees involved, an annual R&D statement from the RVO is obtained.

The annual costs amount to €1 million. Given that the software package has a supportive nature and provides cost savings, a cost-related approach is appropriate. Depending on the circumstances, for example, 10% of the costs may be considered as the benefit eligible for the innovation box each year.

2.5. Which Benefit Allocation Method for Software?

In the above described travel organization example, the cost-plus method was used as the benefit allocation method for software development. In summary, because the research function and the software, as qualifying assets, play a supporting or more ancillary role in the company.

It follows that the role of software development within the organization of the Dutch corporate income tax payer must be carefully examined in order to use an appropriate method of benefit allocation for the innovation box regime. If software development is the basis of the company's earnings model, the peel-off method may be applicable and advantageous. For example, in companies operating a software platform where supply and demand are brought together, such as online auction sites, online marketplaces or online travel providers, the peel-off method may be applicable and advantageous.

The peel-off or per asset method could also potentially be used by companies operating a Software-as-a-Service (‘**SAAS**’) business model. SAAS is a model where software applications are delivered over the internet, i.e., as a service. Usually users have a subscription to access the service. For example, for business software such as CRM systems, accounting systems, e-mail or instant messaging. Another example where the peel-off method (but also the per asset method) can be applied, for example, is in case licenses are provided to use a developer's software in software applications of the buyer.

2.5 Inclusion, threshold, nexus (in Dutch: ‘*Ingroei, drempel, Nexus’*)

This section discusses some of the conditions for application of the innovation box.

2.5.1 Threshold and ingrow-in (factor)

The term “ingrow” in the context of the innovation box has two meanings. On the one hand, as part of the so-called threshold, the term means - in short - that the benefits of an intangible asset are not taxed in the innovation box until the threshold is exceeded. The threshold is equal to the “production costs” of the intangible asset in respect of which the taxpayer has opted to apply the innovation box.

This is because these production costs have been deducted at the full Dutch corporate income tax rate (in the second bracket this is 25,8% in 2024 and 2025) during the time of the development of the intangible asset, at least if the choice was made to do so by writing off the production costs in one go instead of capitalizing them. Subsequently, the profit associated with this intangible asset would be taxed (in part) at 9% Dutch corporate income tax (corporate income tax rate innovation box 2024 and 205).

If with respect to more than one (patented) intangible asset, the application of the innovation box is chosen, the production costs of all qualifying intangible assets will have to be exceeded before the benefits are included in the innovation box.

The term ingrowth also has a meaning in terms of the “ingrow factor”. This factor is usually agreed upon with the Dutch tax authorities in the innovation box settlement agreement and, in summary, refers to the presence of benefits attributable to intangible assets completed before the innovation box (WBSO!) applies. The growth factor should ensure that profits from intangible assets developed without the application of the WBSO are not taxed at the lower Dutch corporate income tax rate in the innovation box. Typically, for example, not all benefits in the first year that a taxpayer can opt for the innovation box will immediately be due to the R&D developments under the WBSO of that first year. Often there is technology from earlier years (with which profits are made) that is being further developed. If the further development has taken place with WBSO, then the ingrow factor actually ensures that only the profit made from the further development of the intangible asset is taxed in the innovation box.

The ingrowth in the sense of the ingrow factor is derived from the lifetime of these assets (rate at which new qualifying intangible assets are produced). A company that develops software will generally be able to grow in faster (have a smaller ingrow factor) than, say, a producer of physical products. This is because software generally has a shorter lifespan than, say, physical products. This is due to the rapid technological developments in the field of software, especially if no further development of the software takes place.

2.5.2 Nexus approach

The operation of the so-called nexus fraction can limit the innovation box benefit if R&D is outsourced within the group (substance criterion). Outsourcing R&D to a third party does not provide a restriction in this context. The nexus approach entails the following mathematic approach: ((qualifying expenses *1.3) / total expenses * innovation box benefits)) which may result in a limitation of the benefits to be taken into account. 'Qualifying expenses' are the total expenses incurred by the taxpayer for the purpose of generating a qualifying intangible asset in the year and all previous years less expenses related to outsourcing R&D work to an affiliated entity in the year and all previous years.

2.6 Innovation box route

If a taxpayer has WBSO statements and makes or expects to make taxable profits in the near future, than it would be a good time to start thinking about the innovation box.

If the flat-rate method is chosen, whereby the benefit attributable of the innovation box is maximized (as described above), this choice must be made known in the Dutch corporate income tax return.

If the flat-rate method is not chosen, it is advisable to make prior arrangements with the Dutch Tax Authorities regarding the calculation of the innovation box benefit. This process can be divided into three phases.

In the first phase, all relevant information should be collected. Once this information has been discussed and an approach has been determined (in particular with respect to the benefit allocation method as discussed above), the calculation of the innovation box benefits will result in phase 2. In this phase the Dutch Tax Authorities will be asked for coordination (the so-called pre-consultation). During this phase, the Dutch Tax Authorities will schedule a visit to the company to get to know the company in more detail.

The third phase involves recording and processing. After the company visit by the Dutch Tax Authorities, the agreements on the application of the innovation box will be recorded by the taxpayer in a settlement agreement (in Dutch: '*vaststellingsovereenkomst'*or '*VSO*') with the Dutch Tax Authorities. Finally, the agreements should be processed in the Dutch corporate income tax return.

2.7 Duty to keep records or administration obligations innovation box (in Dutch: '*Administratieplicht innovatiebox'*)

A Dutch corporate income taxpayer using the innovation box must meet specific (additional) administration obligations. The taxpayer must (among other things) include data in its administration showing:

- That he owns one or more qualifying intangible assets that have been produced by himself;

- What is the extent of the benefits the taxpayer obtains from these qualifying intangible assets;

- What is the most appropriate method for determining the benefits from these intangible assets.

In addition, "smaller" taxpayers must include information in their records that demonstrates that they are a "smaller" taxpayer. Note that this is in addition to the administration obligation associated with the application of the WBSO (see part 1 of this article).

2.8 Conclusion innovation box

For the application of the 'regular' innovation box, a settlement agreement is usually concluded with the Dutch Tax Authorities. We have extensive experience with this. We can provide accurate cost estimates or quotations for our guidance in the process of concluding an innovation box agreement with the Dutch Tax Authorities. We can also assist in the application of the flat-rate innovation box scheme, for example by determining together with the taxpayer whether this method can be applied or whether application of the 'regular' innovation box is advisable.

2.9 Conclusion

In this article, we discussed the Dutch WBSO and innovation box regime in general and the possibilities of applying these facilities when developing software/programs in more detail.

Besides the innovation box there are also other Dutch (corporate income) tax facilities to stimulate innovation, here too we have extensive experience. Newtone also employs subsidy consultants.

Do you have any questions about the WBSO or the innovation box? Interested in a free quick scan of whether the innovation box can be applied by you? Please feel free to contact Twan Weusten at twan.weusten@newtone.nl or 06-82 53 57 13.