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TAX COMPARISON: IP-CENTRIC BUSINESS IN NL AND BE

Archipel Tax Advice (NL) & Tuerlinckx Tax Lawyers (BE)

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CASE STUDY: GROWTH OF 'MEDTECH' FROM R&D INTO PROFITABLE BUSINESS

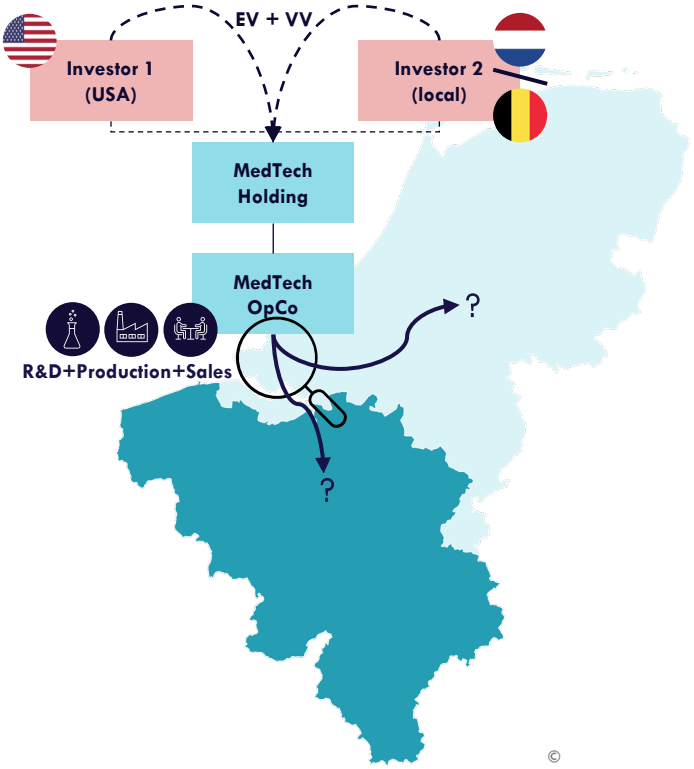
In Europe (and certainly in the Benelux), most of us are realising that 'we' are not resource-rich or low-wage countries. That is why the emphasis is on developing 'the brain economy'; services over production and, in a broader sense, there is a focus on research and development, with the aim of generating (marketable) intellectual property. The Commission has set the target for an annual amount equal to 3% of GDP to be invested in R&D (private/public) within the Union's countries.

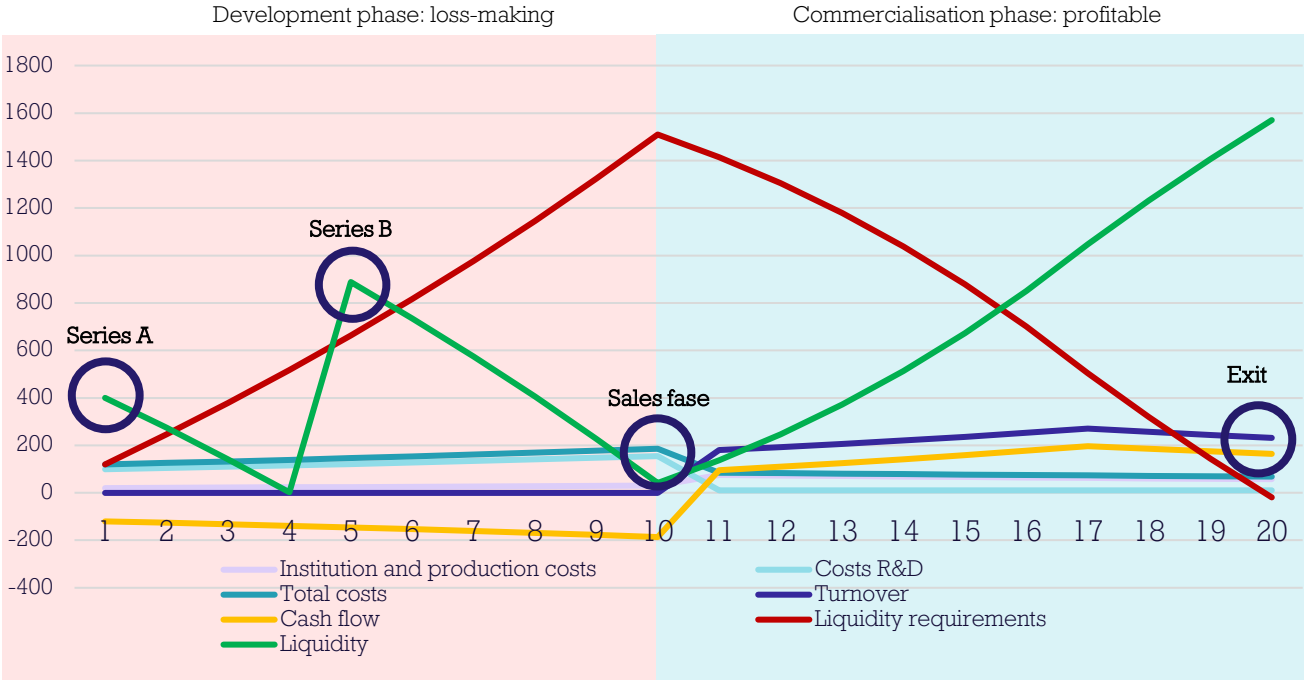
To encourage this, both the Netherlands and Belgium have special innovation tax regimes. These are apparent on the cost side ('R&D credits') and on the profit side ('Patent Boxes'). In addition, other special regimes may apply, directly or indirectly, to 'innovative enterprises'.

However: against the background of an international and especially European trend towards broader tax bases and higher rates in profit taxes, such favourable regimes are under pressure. In addition, other factors – whether or not budgetary – can lead to development companies being de facto adversely taxed.

In this study we investigate how the R&D taxation regimes and general taxation regimes of Belgium and the Netherlands compare based on an identical hypothesis; the MedTech Company:

- MedTech is faced with the choice of establishing itself in Belgium or the Netherlands, where the business owner will also live.
- The company then sets up a research lab to develop a revolutionary and medically new head lice treatment shampoo. At this stage, MedTech does not have any turnover yet.
- In this 'cash burn phase', MedTech is raising funds from two venture capitalists: an American investor and a domestic investor. Leveraging opportunities are also being looked at.
- MedTech is also taking on employees in the venture and setting up a (fiscally efficient) incentive plan for 4 lab technicians and the lab manager.
- All these efforts pay off: after 10 years of development, product commercialisation starts, and 10 fat years ensue. In year 20, MedTech is taken over by a multinational.





GENERAL OUTLINE OF TAX REGIMES

How does the general regime work?

Netherlands

In the Netherlands, companies are taxed on the profit they generate. The profit is subject to corporate tax. The accounting profit is the basis for determining the taxable profit. (Indirect or direct) capital contributions by shareholders and profit distributions to shareholders and other tax/commercial differences are not taken into account in determining the profit. Profit distributions by a company to its shareholders are in principle subject to dividend tax, but this dividend tax can often be offset. The result is taxed according to the corporate tax rate scale.

However, the Dutch corporate tax includes a number of regimes, such as the Innovation Box, that can effectively lower the profit tax. According to the OECD, the Netherlands is one of the most 'innovative economies' (OECD 2nd place 2018), which may have something to do with this.

Belgium

Like most European corporate taxes, Belgian corporate tax is a profit tax. The accounting profit is the basis and the tax law corrects the accounting result to obtain the taxable result to be declared. The taxable base is obtained by adding up the accumulated reserves, the dividends paid and the disallowed expenses. This then undergoes a series of 'operations', whose result is subject to the corporate tax rate.

Belgium has a large number of tax incentives for research and development. In 2017, according to an OECD study, Belgium took third place in the ranking of OECD member states that provide the most tax support relative to GDP to companies engaged in research and development.

What are the corporate/profit tax rates?

Netherlands

Profit	Corporate tax rate 2021[1]
Up to € 245,000	15%
€ 245,000 or more	25%

Belgium

Profit	Profit tax rate 2021
Up to € 100.000[2]	20%
General rate	25%

Which rates apply to employees?

Netherlands

Wage tax is withheld from the salaries of employees employed by MedTech. This wage tax is a withholding tax on the income tax and is ultimately settled - together with the income from other sources of income. The Dutch wage tax/income tax rates follow a sliding scale and in 2021 are **37.1%** (up to a taxable income of € 68,507) and **49.50%** (from a taxable income of € 68,507).[3]

Belgium

Employees are taxed on their professional income under personal income tax. A sliding scale applies, which amounts to 50% from € 41,060 gross income. This percentage must still be increased with the municipal tax, so that the marginal tax burden in the highest income bracket is on average € 57 per € 100. The employer collects part of the personal income tax as withholding tax through the withholding tax system.

1 Article 22 of Corporate Income Tax Act 1969 ('Vpb Act').
2 The reduced rate only applies to companies that can be regarded as 'small' according to European criteria.
3 Article 2.10 of Income Tax Act 2001.

THE DEVELOPMENT PHASE: REGIMES DURING THE R&D CASH-BURN PERIOD

Loss-making phase

Are there special R&D-credits?

Netherlands

There are no special tax regimes on losses for investments in innovation. The usual regime on losses applies[4] to the development of the head lice shampoo by MedTech.

Belgium

x

Are investment regimes and government funding available?

Netherlands

The Dutch government is making various programmes available to companies which can apply for funding to meet their needs for equity. In the first phases of MedTech, the Early Phase Financing (Vroegefasefinanciering - VFF)[5] and the Innovation Credit are a consideration[6]. Both regimes help start-ups by providing a government loan to build the business. The innovation credit is only granted if the company's project is technically innovative and challenging.

For series A funding (in the first growth phases), a company can then opt for SEED capital[7]. This implies setting up a fund into which both private investors and the government invest. Seed funding is for companies which focus on new technical inventions or a new application of existing technologies. Finally, in later years, a venture may opt for a third loan, under the so-called Borgstelling MKB-kredieten (BMKB), a scheme (partly) guaranteed by the government[8].

Belgium

As far as assets are concerned, three tax incentives can be distinguished:
The Research and Development Tax Credit:

companies can offset 25% of a certain percentage of the investment in patents or environmentally friendly research and development against their corporate tax[9]. Among other things, the 'certain percentage' is index linked and is given each year in the tax law. Depending on the asset and calendar year, it varies between 3.5% and 13.5%.[10] One of the conditions is that the asset or patent is used in Belgium for the company's operation.

The part of this credit that cannot be offset due to insufficient profit, is repayable.

Example: In Year X, MedTech invests €100,000 in a machine used in its research phase. The machine only consumes green energy. MedTech may offset 25% x 13.5% x €100,000 or €3,375 against its tax liabilities. If MedTech's tax bill is less than €3,375, the Belgian tax authorities will refund the difference to the company.

1. Accelerated amortization may be applied to intangible fixed assets used in the context of research and development. For example, MedTech can depreciate a patent for tax purposes over three years instead of five years.

2. In addition, subsidies granted to MedTech by the Flanders, Wallonia or Brussels-Capital Region, where appropriate, are exempt from corporate tax.

4 Please refer to section "The Commercialisation Phase: Turning into a Profitable Business"
5 Netherlands Enterprise Agency (Rijksdienst voor Ondernemend Nederland - RVO) website, go to link.
6 RVO website, go to link.
7 RVO website, go to link.
8 RVO website, go to link.
9 Article 12b of Corporate Income Tax Act ('Vpb Act')..
10 Article 12b of Vpb Act.

THE COMMERCIALISATION PHASE: TURNING INTO A PROFITABLE BUSINESS (1/2)

Profit phase

Is there a special IP related profit tax regime?

Netherlands

The Netherlands has a favourable profit regime for companies that research innovative solutions; the so-called 'Innovation box'9. The profit attributable to the self-generated intangible asset is taxed at 9% instead of the 25% corporate income tax rate. In order to obtain the accompanying 'entrance ticket', the company needs to have a research and development declaration (WBSO) issued by the RVO for the research, and - for large companies - this research should have resulted in a patent or plant breeder's right.

It is possible to coordinate the application in advance with the tax authorities, and determine which portion of the profit qualifies. The profit derived from innovation is usually determined based on the 'peeling method', which allows to deduce which portion of the profits is attributable to functions other than R&D. There is also a lump-sum method involving a 'nexus fraction'. For MedTech, this means that 'X%' of the profit is taxed at 9% instead of a maximum of 25%.

Belgium

Once MedTech has obtained a patent and begins to make a profit, it will be able to deduct up to 85% of the profits attributable to its patent from its tax base under the innovation deduction system. Compared with the 25% corporate tax rate, this leads to an effective tax burden of 3.75% on these profits. The intended profits include:

1) License fees, on the assumption that MedTech allows independent companies to use its patent;
2) Compensation obtained due to an infringement of its intellectual property right;
3) The selling price if the patent is sold; or,
4) A specified portion of the sale price of its delivered products, which corresponds to the fees MedTech would have to pay third parties for the use of the patent, had it not created it itself.

How does offsetting losses work, for example from the R&D phase?

Netherlands

Dutch corporate income tax includes a loss offsetting system with a 1-year carry-back and a 6-year carry-forward.[11]

From 2022, losses are no longer time-barred and can be carried forward indefinitely, but up to a maximum of 50% of the annual profit above a deductible of € 1,000,000.[12]

The innovation box only applies after losses have been run at the standard rate, and there is taxable profit as a result.

Belgium

Belgium implements a carry forward system in corporation tax. Losses can be carried forward indefinitely to subsequent taxable periods. However, they are not indefinitely deductible. Indeed, from assessment year 2019, a limitation applies, which means that the total of the deduction for losses carried forward, the DBI deduction15, the deduction for innovation income16 and the deduction for venture capital17 from € 1,000,000 profit can only be applied for 70%. In other words, from the threshold of € 1,000,000 profit, a minimum taxable base of 30% applies.

In addition to the carry-forward loss, there are allowances that MedTech will be able to take advantage of for both personnel and asset investments.

MedTech may only apply the innovation deduction to the maximum if it has fully borne the costs of research and development itself. After all, the nexus fraction, inspired by the OECD, is taken into account. In principle, the nexus fraction is nothing more than a ratio between the global cost of the IP and the costs borne by the company itself. In summary, MedTech can deduct from its profits: own R&D costs revenue x 0.85 x overall R&D costs.

Since the innovation deduction requires a protected intellectual property right (e.g. a patent) and the procedure for applying for such rights can take a long time, a temporary exemption from the profits that MedTech realizes applies from the day of the application until the intellectual property rights are granted. This exemption follows the fate of the application procedure: if MedTech obtains its patent, the exemption becomes final. If the patent is rejected, the exempt profits will be taxable again.

11 Article 20 par. 2 of Vpb Act.
12 Memorandum of Amendment to the 2021 Tax Plan, House of Representatives, session 2020-2021, 35 572, No. 12
13 Final taxed income, the exemption from dividends of a subsidiary under the Parent-Subsidiary Directive.
14 Cf. to next page, under the heading "Are there any other innovation regimes?"

THE COMMERCIALISATION PHASE: TURNING INTO A PROFITABLE BUSINESS (2/2)

Investor

Are there any other innovation regimes?

Netherlands

The WBSO regime and the R&D deduction exist in the Netherlands[15]. Companies engaged in technical-scientific research, such as MedTech, can claim a subsidy on R&D-related wages and assets. The grant is awarded through an R&D decision and implemented by allowing the amount awarded to be deducted from the payroll tax to be paid, so that MedTech's wage costs are lower. This system is thus specifically aimed at employees who conduct research into the head lice shampoo.

Belgium

Additionally, MedTech can avail of the 'investment deduction'. In contrast to the innovation deduction, the investment deduction is a cost deduction. A varying percentage (2021: 13.5%) of the realisation or acquisition value of a purchased or self-developed patent can be deducted from the taxable base. This measure cannot be combined with the research and development tax credit mentioned under the profit phase: MedTech will have to choose which of these regimes it wants to apply.

How are Equity and Borrowings taxed at MedTech?

Netherlands

Equity: deposits to equity are made tax-free. The consideration on equity (dividend) is not deductible from the profits.

While there is dividend tax in the Netherlands, the scope of exemption is broad. Therefore, dividends to be paid are only subject to withholding under certain conditions, for example when distributed to natural persons, <5% legal entity shareholders, or legal entity shareholders established in 'tax havens'.

In other cases, usually those in which the Dutch dividend tax would apply to the beneficiary established in the Netherlands or a treaty state, there is no dividend tax liability, except in cases of abuse.

A dividend payment from MedTech Opco to MedTech Holding is thus exempt from dividend tax and is not included in the MedTech Holding tax liability as a result of the application of the participation exemption.[16]

Borrowed capital: the interest paid to the investor can in principle be deducted from the profit of MedTech Holding. However, if the loan is 'non-commercial' (actually (partly) functions as equity) or if the loan falls within the conditions of a specific interest deduction limitation, it is possible for (part of) the interest to not be deducted from the Dutch profit.

In addition, a generic interest deduction limitation[17] applies in the Netherlands, which means that an interest balance of no more than 30% of MedTech's EBITDA can be taken into account, with a deductible of € 1,000,000 per year.

Withholding tax is only due in case of payment to a group entity in a 'Blacklisted' country.

Belgium

In general, neither borrowings nor equity (with the exception of taxable retained earnings and distributed dividends) is taxed at the expense of MedTech.

On the contrary, market-based interest is a deductible expense (excluding the thin cap rule from the anti-tax avoidance regulation). In order to make financing with own capital more interesting compared to borrowed capital, Belgium has the system of notional interest deduction (deduction of risk capital). Under this system, a fictitious or notional interest is allocated to equity, thereby providing tax incentives to the company to use financing by contribution rather than by capital.

The notional interest deduction system has recently been radically changed from a deduction calculated on the ratio of equity to debt to a deduction calculated on the growth of equity spread over five financial years. The best way to explain the system is through an example:

MedTech is established in year 'X' with a capital of € 40,000. Equity grows in the following years.

X € 40,000
X+1 € 49,000
X+2 € 55,000
X+3 € 60,000
X+4 € 70,000
X+5 € 100,000

In five years' time, MedTech's equity has increased by € 60,000. In X+5 MedTech's notional interest deduction will be calculated on the basis of € 60,000/5 = € 12,000. The basis for the calculation of the deduction is € 12,000 in X+5. This amount is multiplied by a percentage that depends on an index linked to the OLO rate and which is released in law each year. In tax year 2021, this percentage is 0.408% for small companies. If x+5 in our example is tax year 2021, MedTech may apply €48.96 notional interest deduction, which is 0.408% of €12,000. For the other companies, the interest is negative, and the deduction for risk capital therefore does not apply.

15 Article 21 to 29 of Act on Payroll Tax Reduction and National Insurance Contributions.
16 The 'participation exemption' applies to this, cf. Article 13 of Vpb Act.
17 Article 15b of Vpb Act.

HOW ARE INVESTORS TAXED?

Local investor

Netherlands

Domestic investor:

Equity (EQ): Dividends received by the Dutch investor are exempt from the Dutch income tax base if the shareholder is a legal entity and directly owns 5% or more of the shares.[18] In the case of smaller interests, the dividend received is not exempt, to make apparent the intervention an intermediate holding company or cooperative. Cash deposits on capital by the investor are not liable to tax.

Borrowings (BO): the interest income on a loan received by the investor is taxed at the normal corporate tax rate.

Belgium

Domestic investor:

The Belgian investor-natural person who holds shares in MedTech will pay 30% withholding tax on movable assets on every dividend payment. Since the withholding tax on movable assets is a withholding tax, the investor will receive a net dividend of €70 upon a dividend payment of €100. If MedTech can be regarded as a 'small' company, there are specific regimes allowing the withholding tax to be reduced to 15%, 5% or even 0%. Unless the shares have been bought and sold with speculative insight, a capital gain on the shares is tax-free. Under certain conditions, MedTech can establish a liquidation reserve. At the time MedTech sets up the reserve, it pays a separate assessment of 10%, to pay dividends at 5% withholding tax after five years. Upon MedTech's liquidation, the liquidation reserve created is paid out to the shareholders free of withholding tax.

Investor from the USA

Netherlands

Equity (EQ): The Netherlands implement a withholding tax on dividends of up to 15%.[19] There is a tax treaty between the Netherlands and the US. Pursuant to this treaty, the Dutch tax authorities are entitled to withhold a maximum of 15% of the dividend.[20] If the investor in the US acquires an interest of more than 10% in MedTech Holding, a reduction of up to 5% in accordance with the tax treaty can be claimed.[21] In most cases, however, the rate is already 0% based on the exemption under Dutch law,[22] which applies to dividend payments to legal entity-shareholders which are established in a treaty state (such as the USA) and hold an interest of 5% or more.

Borrowings (BO): A 'conditional withholding tax' on interest applies in the Netherlands. However, this requires that the recipient (among other things) is insufficiently taxed because it is located in a 'Blacklisted' tax haven. Since the USA are not on this list, no withholding tax is due on this interest payment, if the interest is actually attributable to the US investor.

Belgium

The withholding tax will in principle also be withheld if the beneficial owner of the dividend is a US resident. The United States will grant a tax credit to the extent that the US resident is entitled to it under the US-Belgian double taxation treaty. A similar rule to the European Parent-Subsidiary Directive applies in this respect, whereby an American company that directly holds at least 10% in MedTech, will ultimately bear 5% Belgian withholding tax. For all other cases, the same percentage is 15%.

18 The 'participation exemption' applies to this, cf. Article 13 of Vpb Act.
19 This is the dividend tax. Foreign tax liability may also play a role in the corporate income tax, with a maximum rate of 25%, but technically this is not a 'withholding tax'.
20 Article 10 par. 2 sub b of Netherlands-USA Tax Treaty.
21 Article 10 par. 2 sub b of Netherlands-USA Tax Treaty.
22 Article 4 of Dividend Tax Act.

COMPARISON BETWEEN TAX TREATIES

Subject	Netherlands - US Tax Treaty		BE - US Tax Treaty	
Equity Investment: Withholding tax on dividend to investor in the US.	Article 10: maximum reduction of up to 5% for interests of 10% or more	5%	Article 10: maximum reduction of up to 5% for interests of 10% or more	5%
Loan Investment: withholding tax on interest to investor in the US.	Article 12: the interest taxed at the rate in the US.	0%	Article 11: the interest taxed at the rate in the US.	0%
IP Access: Withholding tax on royalties to the US licensor.	Article 13: royalties taxed according to rates in the US.	0%	Article 12: royalties tax according to rates in the US.	0%

Subject	Netherlands - UK Tax Treaty		BE - UK Tax Treaty	
Equity Investment: Withholding tax on dividend to investor in the UK.	Article 10: maximum reduction of up to 5% for interests of 10% or more	0%	Article 10: maximum reduction of up to 0% for interests of 10% or more	0%
Loan Investment: withholding tax on interest to investor in the UK.	Article 11: the interest taxed at the rate in the UK.	0%	Article 11: the interest taxed at the rate in the UK.	0%
IP Access: Withholding tax on royalties to the UK licensor.	Article 12: royalties taxed according to rates in the UK.	0%	Article 12: royalties tax according to rates in the UK.	0%

Subject	Netherlands - SG Tax Treaty		BE - SG Tax Treaty	
Equity Investment: Withholding tax on dividend to investor in Singapore.	Article 10: maximum reduction of up to 0% for interests of 25% or more.	0%	Article 10: maximum reduction of up to 5% for interests of 10% or more.	5%
Loan Investment: withholding tax on interest to investor in Singapore.	Article 11: maximum rate of 10%.	10%	Article 11: maximum rate of 5%.	5%
IP Access: Withholding tax on royalties to the SG licensor.	Article 12: royalties taxed according to rates in Singapore.	0%	Article 12: royalties taxed according to rates in Singapore.	5%

Onderwerp	Belastingverdrag NL – BE	
Equity Investment: Withholding tax on dividend to investor in NL/BE.	Article 10: maximum reduction of up to 5% for interests of 10% or more.	0%
Loan Investment: withholding tax on interest to investor in NL/BE.	Article 11: maximum rate of 10%.	0%
IP Access: Withholding tax on royalties to the NL/BE based licensor.	Article 12: royalties taxed according to rates in NL/BE.	0%

ARE THERE SPECIAL REGIMES RELATING TO TALENTED EMPLOYEES?

Netherlands

In order to attract top talent to MedTech, it is possible in the Netherlands to use certain incentives to assure the employees' loyalty to the company. One option is to give employees option rights or stock appreciation rights (SARs). These rights are only taxed in the Netherlands if they are exercised by the employee. These rights are subject to payroll tax at a rate of maximum 49.5% at the time they are exercised by the employee[22]. This will benefit MedTech's liquidity position in the first cash burn phase. These option rights may be subject to the condition that they can only be exercised after a number of years. This gives the employees an incentive to stay with MedTech for a longer period of time.

It is also possible to pay employees a bonus. The payment of a bonus is taxed in payroll tax at the high rate of 49.5%.

Direct allocation of shares

In addition, it is also possible to directly grant employees shares or stock options. Shares are then directly subject to payroll tax if their value exceeds the acquisition price; in this case, the market value at the time of acquisition is taken into account. In the case of options, taxation occurs later, upon exercising the rights and the wage benefit consists of the difference between the value of the shares and the exercise price.

Subsequently, the employee's shares remain taxed under the capital regime of Box 3, provided that the shareholding remains below 5%. In Box 3, tax is only levied on the fixed return: 31% on a notional return of a maximum of 5.69%. If the shares (still) have a low value, it could be advantageous to give employees shares, since value increases or dividend payments will only be taxed at a fixed rate in Box 3 as MedTech grows. Interests of >5% fall into Box 2 (26.9% of the real return) and are usually best placed in a holding company. The latter can apply the Participation Exemption to the shares and the Income Tax is deferred.

The Box 3 vs Box 2 system is ineffectual if the shares constitute a 'lucrative interest'. This is the case when the shares are only accessible to a limited group and have special rights, so that the (often exorbitant) returns are related to labour rather than capital.

Belgium

With some planning, MedTech can draw up a tax-friendly salary package for its employees. To this end, it can use (a combination of) the following systems:

1) Stock option plans;
2) Innovation premiums; and,
3) Benefits in kind.

Stock option plans are systems that are often used to motivate and reward employees depending on the performance of the company. This favourable regime is particularly interesting for unlisted companies. MedTech may grant stock options to its employees as part of their remuneration package, giving them the right to either buy (call options) or sell (put options) shares in MedTech at their request and at a predetermined price.

Under certain conditions, the value of such stock options is fixed at 18% or even 9% of the underlying shares. The employee is then taxed on that fixed value, allowing the employee in question to be awarded a tax-friendly salary depending on the modalities of the stock options and the price of the underlying shares. Applied to MedTech, this can be particularly beneficial when such plans are awarded just before the operational phase, given the expected increase in share value as its head lice shampoo is launched on the market.

An innovation premium is a set-amount premium that can be awarded once a year to an employee who is active in research and development. The premium cannot exceed the value of the employee's gross monthly salary. The advantage is that neither MedTech nor the employee will pay social security contributions on this premium. In addition, the allowance for the employee is entirely income tax free.

A benefit in kind is any benefit with a monetary value which is granted to the employee because of his/her employment relationship with the employer. Frequent examples include the provision of a mobile telephone or a laptop that the employee may use for work as well as for private purposes, company cars, and the provision of real estate. Some benefits in kind are made taxable for the employee on the basis of a statutory lump sum that is often much more favourable than the granting of a monetary compensation with which an employee then purchases the same good.

Are there special rules to attract foreign talents?

Netherlands

The Dutch payroll tax has a favourable regime for incoming employees, the so-called 30% regime.22 For MedTech, this would mean that lab technicians recruited from abroad would receive 30% of their wages tax-free for a period of maximum 5 years. This regime can make working for MedTech in the Netherlands even more attractive to foreign employees. It also means that the payment of the gross salary is higher

Belgium

A preferential tax regime applies to attracting foreign employees. Such professionals who are temporarily assigned to Belgium can obtain a non-taxable allowance of up to 29,750 EUR per year. In addition, certain allowances granted to the foreign researcher by MedTech, such as costs for relocation, tuition fees, travel expenses, tax equalisation costs, etc. are not taxable on the employee's part. The temporarily posted professional also retains the status of non-resident, which means that he/she is not taxed on his/her worldwide income in Belgium.

22 Article 10a of 1964 Wage Tax Act ('LB Act').
23 Article 31a of LB Act.

IP PROTECTION

General features of the IP protection regime

Netherlands

IP rights such as copyrights, patents and design rights can protect inventions or designs. In addition, know-how is also protected as a trade secret, as long as the information is also kept secret.

Design rights, trademarks and copyrights
The European Union's "Community Design" protects the design of products, if the design is new and has its own character. It therefore concerns the appearance of the product. In the case of the head lice shampoo, this protects the packaging if it is new and has its own character.

The 'branding' of innovations and inventions can be protected by trademarks. These trademarks must be registered with the Benelux Office for Intellectual Property (BOIP).

Copyrights mainly concern the protection of creative achievements. This will have no relevance for the head lice shampoo, unless it is intrinsically original. Incidentally, this right arises automatically – and free of charge.

Trade secrets
Trade secrets are protected to the extent that they (1) are secret, meaning that the information is not generally known or easily accessible, (2) have commercial value, and (3) are protected by reasonable measures to keep them secret. Thus, for example, the (unique) formula of the head lice shampoo is protected by the Trade Secrets Protection Act if the trade secret is not easy to deduce from the product itself.

Patents
For the sake of completeness, the patent is also an important IP right. Inventions can be patented for a period of 20 (+5) years if they are (1) new, (2) innovative and industrially applicable. Software and business methods are excluded. Patents are issued by the Patent Office. The Patent Office does not assess the applications in advance, but only if and when there is an infringement, which means that Dutch patent applications are not subject to objection procedures. Since there is no technical character, this is irrelevant for the head lice shampoo.

Belgium

The head lice shampoo may be protected by patent law if it is an invention that is new, involves an inventive step and is amenable to industrial application. This right is temporary and is granted to the inventor in order to prohibit third parties from using the new invention. Anyone who has actually played a part in the creation of the head lice shampoo through his/her intellectual and creative contribution is also considered to be co-owner of the patent. This may concern a Belgian patent right – which is only valid in Belgium – or a European patent right. The patent is publicly accessible in the register of patents.

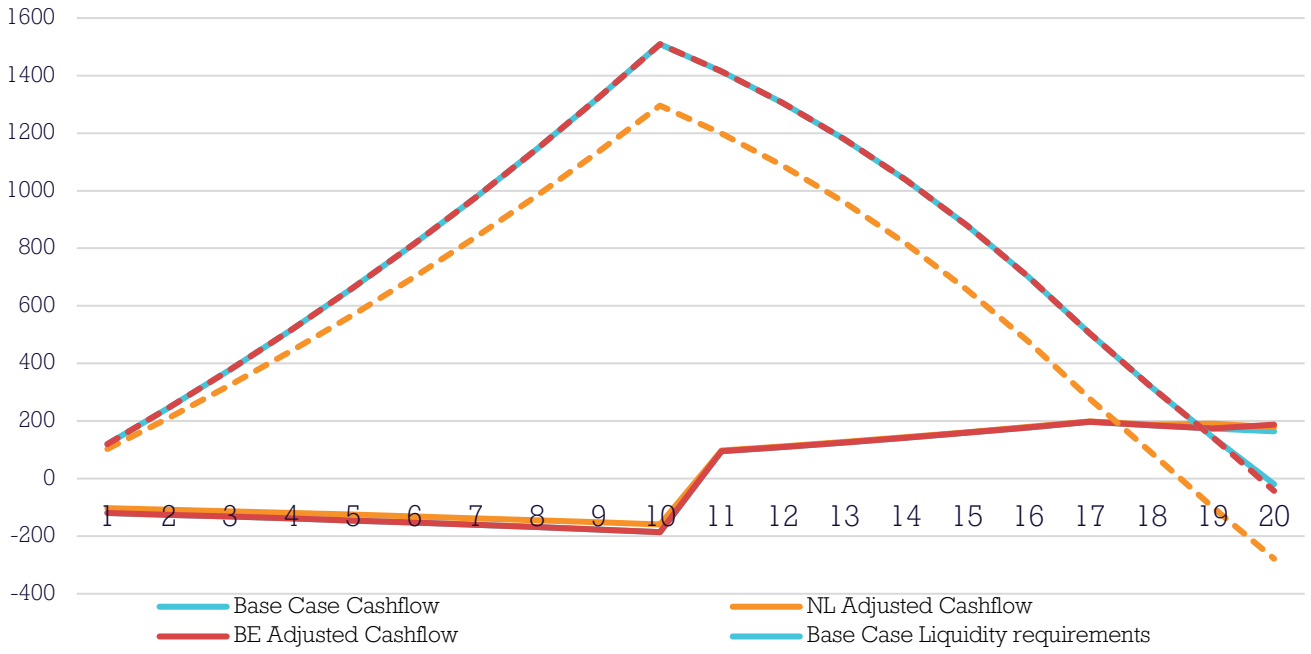
The company's trade name, the shampoo name and/or the logo may also be protected if the branding concerned uses characters that can be accurately identified and are suitable to distinguish the company's head lice shampoo from that of other companies. This falls under trademark law.

The company's trade secrets may also have significant economic value. These secrets may include customer lists, a future commercial strategy or technical information. They can be protected as such or under a patent right or other intellectual property rights. This ensures that the trade secret holder is protected against the unlawful acquisition, disclosure or use of the trade secrets.

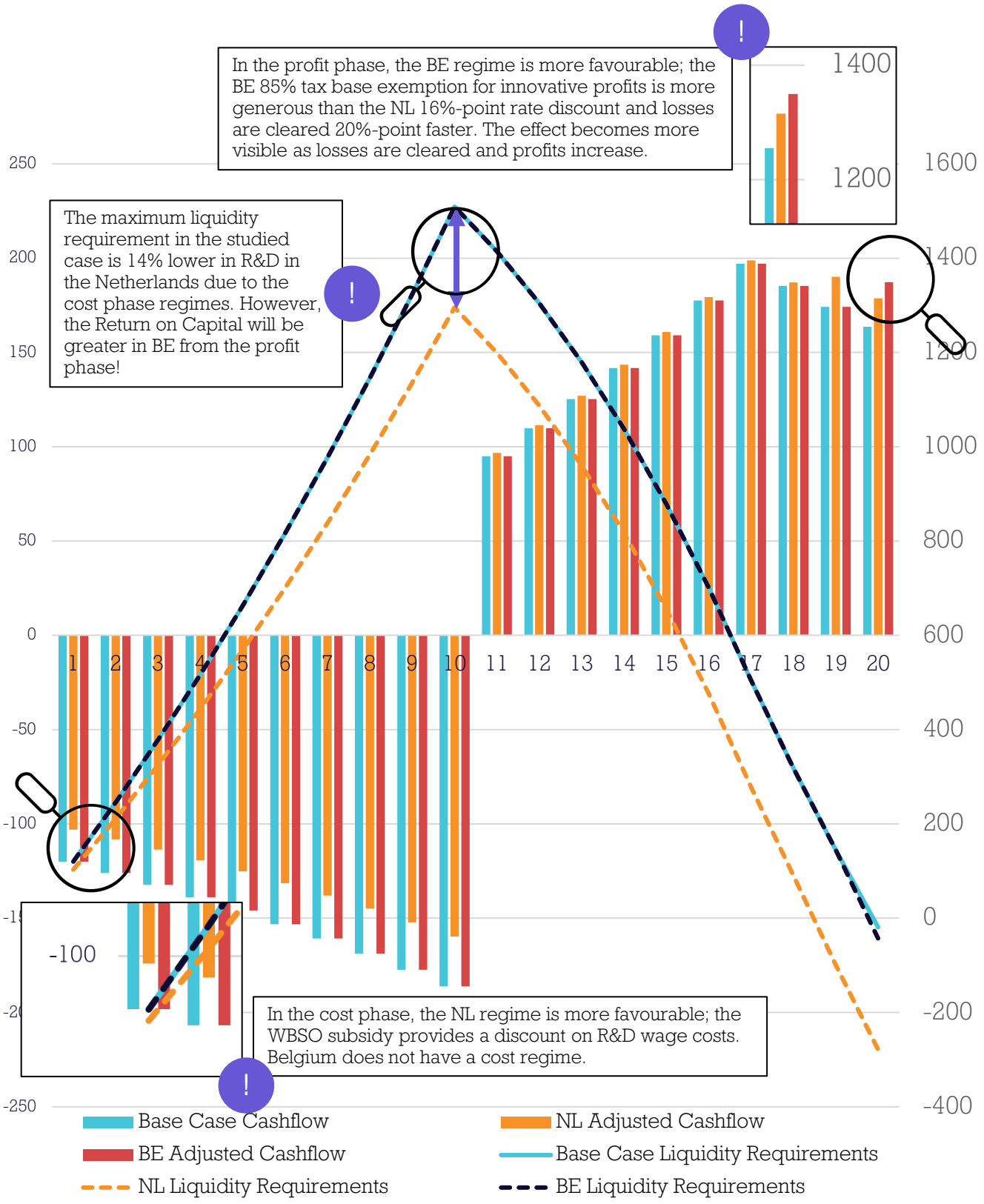
SIDE BY SIDE

In this study we investigated how the R&D taxation regimes and general taxation regimes of Belgium and the Netherlands compare based on the hypothetical MedTech Company: You will find below a summarised 'comparison' of the analysis, with an additional graphic representation of the Base Case depending on whether MedTech chooses the Netherlands or Belgium.

	Netherlands	Belgium
Profit tax	• 15% on the first €245k, 25% on the excess.	• 20% on the first €100k, 25% on the excess. • Average 57% marginal top rate from income above €41,060.
Income tax	• 37.1% on €68,507, 49.5% on the excess.	
R&D credit	• 40-50% payroll tax credit on the first €350k R&D costs, 16% on the excess. WBSO necessary.	• None.
Investment regimes and government funding	• Early phase financing (VFF) and innovation credit for the younger entrepreneurial phase, SEED Capital for Series A, and guaranteed loan (BMKB) for the later phase. There is also a deduction of max. 28% for small investments.	• 25% credit against tax liability of 3.5% - 13.5% of an investment in certain assets. Accelerated depreciation (3 years) possible on R&D assets.
IP related profit tax regime	• Innovationbox: basis for 9/25 portion eligible: effective rate 9% (5.4% on the first €245K). WBSO required.	• Royalties and capital gains earned with IP are only taken into account 15%. Effective rate therefore 3.00%-3.75%.
Loss offsetting	• 1 year carry back, 6 years carry forward. From 2022 infinite carry forward for 50% of profits above €1m.	• Unlimited carry forward, but above €1m profit only 70% deductible.
Taxation of investment	• Domestic company with ≥5% interest: dividends and capital excempt. 15-25% if interest <5%. Foreign company only taxed (15-25%) if no abuse.	• X
Attracting talent	• 30% of the wages of the hired 'skilled' foreign employee can be refunded tax-free.	• X

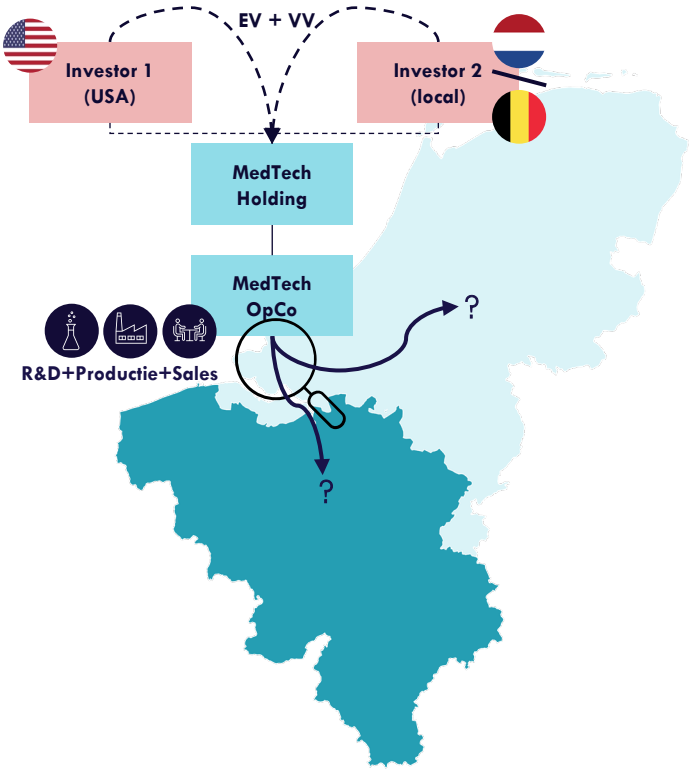


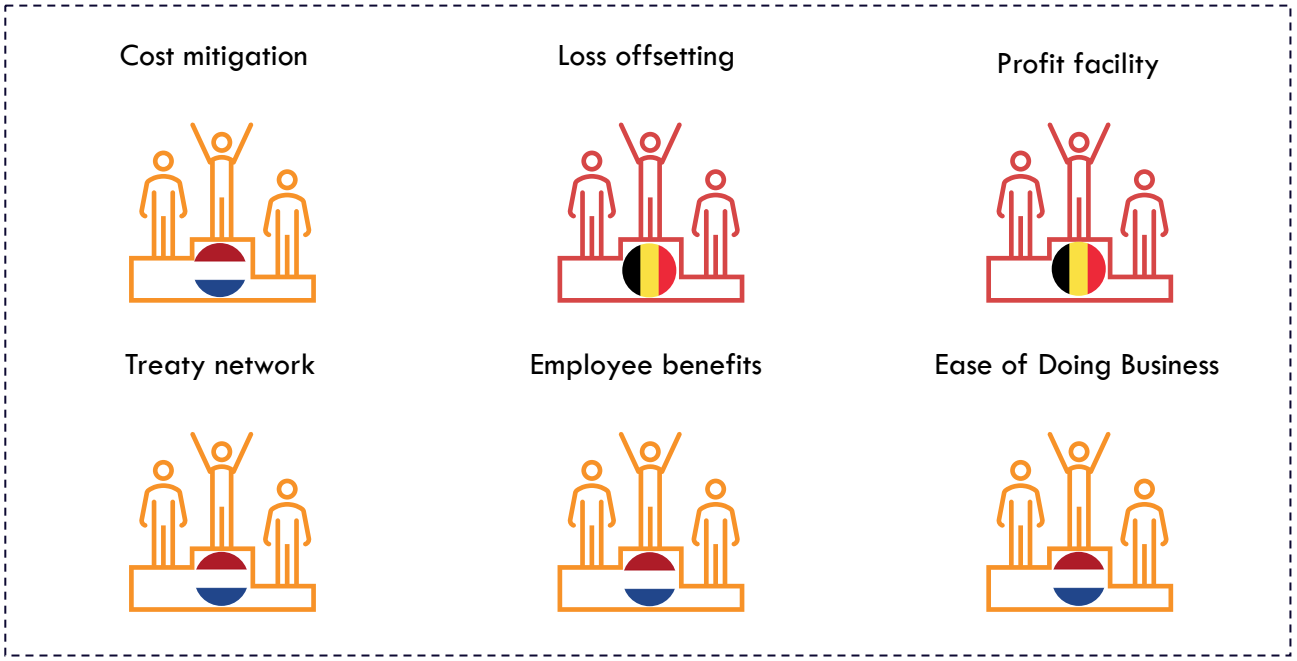
VISUAL COMPARISON



CONCLUSIES

1. In the cost phase, the study shows that the Dutch WBSO subsidy has a positive effect on costs, and therefore also on liquidity requirements. In an 'IP Centric Business' a significant portion of the expenditure will consist of the costs incurred for (the wages of) the R&D Department. Any deduction affecting these costs results in lower capital intensity.
2. When the product becomes profitable, the speed at which losses can be offset is important. In the Netherlands, a maximum of 50% of losses above €1 million can be offset, and 70% in Belgium. This means that the 'cost phase' will be recovered faster in Belgium.
3. Furthermore, the profit regime for innovative profits is more generous in Belgium. Indeed, there is an 85% tax base deduction for innovation gains in Belgium, while a 16 percentage point rate discount applies in the Netherlands.
4. All in all, the liquidity curve for a new IP-Centric Business in the Netherlands will be flatter than in Belgium. The risk is more limited, but the profit regime is less generous.
5. From a non-corporate perspective, the Netherlands has a friendlier climate at first glance. Employees are burdened with a lower income tax rate and there are specific regimes to attract highly educated foreign workers to the Netherlands.
6. From the investment perspective, the Netherlands also seems to have a better treaty network. Foreign investors can expect less predictable 'tax leakage' on their investments.
7. Does this make the Netherlands a 'development country', and Belgium a 'continued development country'?
8. When comparing the World Bank's Ease of Doing Business Index, Belgium and the Netherlands barely differ from each other: 46th place (BE) and 42nd place (NL).





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