Patrick Schrievers and Mats Emonts***

Amendments and Developments Involving Netherlands Tax Incentives Promoting R&D Activities

The Netherlands government promotes engagement in research and development (R&D) activities through a preferential corporate income tax regime and specific R&D tax incentives granted to employers with regard to salaries paid to employees who carry on qualifying R&D activities and related capital expenditure. This note describes developments in relation to these provisions.

1. Existing R&D Tax Incentives

1.1. Introductory remarks

The Netherlands government has introduced a number of tax measures promoting research & development (R&D) activities. From a tax perspective, however, the most important measures are:

(1) the wage tax reduction attributable to R&D personnel performing qualifying research activities;
(2) the deduction for qualifying non-wage expenses directly attributable to qualifying research activities; and
(3) the innovation box, which offers a preferential corporate income tax (CIT) rate in respect of income earned after the creation and exploitation of intellectual property (IP).

1.2. R&D wage tax credit and R&D allowance

Both the wage tax reduction (WBSO,[1] R&D Wage Tax Credit; R&D WTC) and the deduction for qualifying non-wage expenses (Research and Development Allowance, RDA)[2] are front-end tax benefits that directly relate to the labour expenses of R&D personnel (i.e. R&D WTC) and the capital expenses involved (i.e. RDA). The R&D WTC is an immediate benefit for companies, as it reduces the cost of salaries for qualifying R&D employees. To this extent, the provision effectively increases the R&D budget. This provision has widely been regarded as a successful measure in stimulating R&D activities in the Netherlands, especially for small and medium-sized enterprises (SMEs).[3] In essence, the RDA is linked to the R&D WTC. Both have similar application procedures and qualifying capital expenses, for example, equipment, office rent and materials are linked to the qualifying R&D projects in respect of the R&D WTC. The net tax savings are also treated similarly. The R&D WTC increases the R&D budget, whereas the RDA offers a super deduction (of qualifying R&D expenses) from the taxable CIT base.[4] To a certain extent, the mechanics of the Netherlands RDA are comparable with the existing UK Research and Development Allowance.[5] In addition to both front-end tax regimes, the Netherlands also has a "back-end" tax regime: the innovation box.

1.3. Innovation box

The innovation box applies to income earned following the creation of IP. This regime has been designed to increase R&D investments and to support the Netherlands' investment climate.[6] Under the innovation box regime, a tax rate of 5% is imposed on income generated by qualifying intangibles to the extent that the income from the intangible exceeds the related R&D expenses, other charges and amortization of the intangible.[7]

2. Amendments to the RDA & R&D WTC

2.1. Introductory remarks

On 7 July 2015, the Ministry of Economic Affairs and the Ministry of Finance informed the Lower House of the parliament, in a joint statement, of their intention to integrate the RDA into the R&D WTC (Joint Statement).[8] Subsequently, on 15 September 2015, the Ministry of Finance

* **Tax adviser at NovioTax. The author can be contacted at patrick.schrievers@noviotax.com.**
** **Tax adviser at Loyens & Loeff. The author can be contacted at mats.emonts@loyensloeff.com.**

1. NL: Promotion of Research and Development Act (*Wet Bevordering Speur- & Ontwikkelingswerk*).
2. *Research & Development Aftrek*, *RDA*. *See* the former NL: Income Tax Act 2001 (*Wet Inkomstenbelasting 2001*), art. 3.52a, National Legislation IBFD.
3. W.H.J. Verhoeven, A.J. van Stel & N.G.L. Timmermans, Hoofdrapport Evaluatie WBSO 2006-2010 (Feb. 2012), available at https://www.rijksoverheid.nl/documenten/rapporten/2012/04/02/hoofdrapport-evaluatie-wbso-2006-2010.
4. In 2014 and 2015, entrepreneurs were also entitled to deduct 60% of recognized R&D costs.
5. There is no general scheme of investment tax credits in the United Kingdom. Relief is, however, available for R&D expenditure under the rules for R&D allowances. The mechanics of the relief are that R&D companies are deemed to have incurred a (deductible) trading loss.
6. Parliamentary proceedings II 2015-2016, 34302, no. 116.
7. The predecessor to the current innovation (the "Patent Box" regime) was introduced in 2007. Already in 2008, the regime was also applied to intangibles that originated from activities in respect of which a "S&O Verklaring" or "R&D Declaration" was granted by the Ministry of Economic Affairs. Due to the restrictive nature and the complexity of the regime, however, it was not a success in its early days. As of 1 January 2010, the tax rate was lowered from 10% to 5% and the maximum amount was eliminated. Since 2010, there has been an increase of about 100% in users of the innovation box (910 users in 2010 and 1841 users in 2012). *See* parliamentary proceedings II 2014-2015, 34002, no. 83, p. 2.
8. Letter of Minister of Economic Affairs of 7 July 2015, no. DGBI-I&K / 15079043, available at http://www.health-holland.com/public/downloads/useful-documents/letter-to-the-house-of-representatives-by-the-ministry-of-economic-affairs-integration-wbso-rda.pdf.

issued its tax budget proposals for 2016. Among other elements, the aforementioned integration was mentioned in the 2016 Budget, with effect from 1 January 2016. Note that the Ministry of Finance also took the opportunity to propose several other amendments in relation to the R&D WTC, including (among other items) limitations on qualifying R&D activities, amendments to the definition of R&D withholding agents and measures involving fiscal unity.

2.2. Integration of the RDA & R&D WTC

Following the integration of the RDA into the R&D WTC, the RDA will no longer result in a CIT reduction, but in an increase in the wage tax benefits. As from 1 January 2016, the reduction is 32% (up to 40% for start-up companies) of the first EUR 350,000 in R&D costs and 16% for such costs exceeding EUR 350,000. It should be noted that by doing so, SMEs engaged in R&D activities will benefit from the RDA. Typically, these companies have insufficient profits to qualify for the RDA incentives.[9] The previous RDA, however, did have a rollover mechanism and, in theory, could be offset in subsequent years.[10] Unfortunately, there is no rollover mechanism in the R&D WTC, which may trigger adverse tax consequences.[11] In addition, the increase in R&D WTC will enhance the EBIT(DA) of R&D companies. This may affect existing innovation box rulings that typically use the EBIT(DA) to determine the appropriate innovative income. In addition, companies that benefitted from the RDA might want to focus on the innovation box instead.[12]

Interestingly, in the Joint Statement, reference was made to a potential RDA tax issue in relation to the United States. Assuming that profits of foreign subsidiaries are taxed in the United States, the United States will likely grant a tax credit for tax already paid abroad. In calculating and determining the appropriate amount of the credit, reference is made to the effective Netherlands CIT amount. Under this system, the RDA might be eliminated through an increase in US taxation to match the amount of tax paid abroad (i.e. in the Netherlands) with US taxes. By doing so, the United States will effectively be absorbing the Netherlands RDA.[13] One would expect, however, that the same issue would occur in relation to the application of the Netherlands innovation box, which, from the perspective of the United States, also results in a reduction in the effective CIT in the Netherlands.

2.3. Limitation on qualifying R&D activities

With regard to the general mechanics of the R&D WTC, no amendments have been made. Qualifying activities must be systematically organized in the Netherlands and be directly and exclusively aimed at developing technically new physical products, physical production processes, software or components thereof or performing technical-scientific research to explain phenomena in fields such as physics, chemistry, biotechnology, etc.[14] Hence, the technological developments should be new to the company and accompanied by technical problems.[15] This is an important remark taking into consideration the fact that the R&D Declaration (*S&O Verklaring*) that is granted by the Ministry of Economic Affairs in order to determine the net amount of the R&D WTC, also functions as a starting point for the innovation box. It is important to note that the Netherlands government has limited the definition of software. The development of new technical software only qualifies as an R&D cost if the non-physical logical subsystem of an information system is laid down in formal programming language (such as C++ or Java).[16]

In addition, technical feasibility studies, as well as technical research regarding amending production methods or production models, have also been excluded from the definition of qualifying R&D activities. The Netherlands government is clearly putting more emphasis on R&D activities that are essentially innovative.[17]

2.4. Other remarks (including fiscal unity consequences)

The definition of an R&D withholding agent has been slightly adjusted. The definitions of costs and expenses under the R&D WTC have been broadened, now extending to costs and expenses incurred by an entity within the same fiscal unity as the R&D withholding agent. Note that the integration of the RDA into the R&D WTC can lead to an excess amount of R&D WTC, which needs to be utilized before the relevant fiscal year end. Otherwise, the excess amount is forfeited. A possibility for utilizing this excess may be to transfer personnel (who, in principle, do not need to be engaged in R&D activities) within the fiscal unity to the R&D company that has the excess R&D WTC.[18]

9. Id., Parliamentary proceedings II, 2015-2016, 34 302, no. 11, p. 60 and Parliamentary proceedings II 2013/2014, 32637, no. 147. The government argued that a shift from profit deduction at the end of the year, to a reduction of wage costs throughout the year, will lead to a better cash position for taxpayers. *See* Parliamentary proceedings II, 2015-2016, 34 302, no. 11, p. 63.
10. Tax losses can be carried back one year and carried forward nine years (NL: Corporate Income Tax Act 1969 (Wet op de vennootschapsbelasting 1969), art. 20(2), National Legislation IBFD.
11. IJ. de Nies, *Integratie van de RDA in de WBSO en actualiteiten innovatiebox*, EY TFO 2016/143.1.
12. Such as research companies or, to a certain extent, engineering firms. Typically, these types of companies have an R&D workforce that is able to benefit significantly from the R&D WTC. This reduces the necessity to consider the innovation box, as the CIT burden is already limited or at least reduced significantly.
13. *Supra* n. 8.
14. Available at http://english.rvo.nl/subsidies-programmes/wbso.
15. From an administrative point of view, the proposed R&D activities must take place in the company with the R&D personnel on the payroll and companies should submit a WBSO application in advance. Applications must be received one month before the start of the period for which the facility is required. Following receipt of the WBSO application, the Ministry of Economic Affairs may grant the application via an S&O verklaring (or R&D declaration). It should be noted that a number of companies engaging in R&D have applied this regime and it is widely regarded as a successful measure stimulating R&D activities.
16. Parliamentary proceedings II, 2015-2016, 34 302, no. 3, p. 51.
17. Id., at 50-51.
18. It should, however, be noted that the transfer may trigger adverse tax and legal consequences.

3. Developments Regarding the Innovation Box

3.1. Introductory remarks

In order to understand recent developments in the Netherlands in respect of the innovation box, the history leading to the current developments should first be clarified.

3.2. Historical overview

In the BEPS context, preferential IP regimes have been subject to a detailed evaluation by the OECD Forum on Harmful Tax Practices (FHTP), the Economic and Financial Affairs Council (ECOFIN) and the EU Code of Conduct Group, which, beginning in 2013, started to look at the UK patent box scheme and the Luxembourg patent income deduction.[19] On 16 September 2014, the FHTP published an interim report discussing the possibility of requiring substantial activities to take place in a jurisdiction for a company to benefit from a specific preferential IP tax regime.[20] In September 2014, it became clear that the UK's Patent Box, which was the leading example of several IP incentive regimes, was facing international opposition.[21] Hence, in the run-up to the G20 Brisbane summit, which was held on 15-16 November 2014, the United Kingdom and Germany drafted[22] a bilateral agreement that contained small amendments to what was referred to then as the "nexus approach" (Modified Nexus Approach, MNA). This proposal was welcomed and endorsed at the G20 meeting in Brisbane.[23] Finally, on 5 October 2015, the OECD published its Base Erosion and Profit Shifting Action Plan.[24]

3.3. OECD Plan on Action 5

Action 5 focuses (partly) on "substantial activity" and may have a significant impact on the Netherlands innovation box. First, the authors note that the Netherland's government fully supports the objective of ending aggressive tax planning and putting a stop to innovation/patent boxes that encourage profit shifting and the trading of patents solely for the purpose of moving them to the most favourable tax regime.[25] It should be noted, however, that the Netherlands' innovation box is not applied (solely) to patents or other IP rights that are capable of being registered.[26] Only intangible assets that are self-developed by taxpayers are eligible for the innovation box regime. To this extent, the possibilities for aggressive tax planning and profit shifting have already been restrained.[27] On 19 May 2016, the Netherlands government launched a consultation on proposed changes to the Netherlands innovation box regime.[28] The proposed changes follow the recommendations made in Action 5, as well as recent evaluations of the workings of the Netherlands innovation box.[29] It should be noted that in the upcoming months the consultation paper will be subject to changes and the new innovation box rules are planned to be effective as of 1 January 2017. Hence, the authors have chosen to provide some (high-level) observations in respect of the qualifying IP assets mentioned in paragraphs 34-41 (at pages 25-27) of the OECD Plan on Action 5 in relation to the proposed consultation paper.

3.4. Limitation on qualifying assets?

Identifying which assets qualify for an MNA-based IP regime is of fundamental importance. Paragraph 34 of the OECD Plan on Action 5 starts by saying that the only IP assets that could qualify for tax benefits are patents and other IP assets that are functionally equivalent to patents if those IP assets are both legally protected and subject to similar approval and registration processes (where such processes are relevant). In general, any tax incentive that is limited to patents or other IP rights that are capable of being registered will exclude significant amounts of R&D activities. Patents are not always available or even not appropriate for R&D activities for a variety of reasons. For instance: software developments are not easily patentable[30] in Europe (and the Netherlands), and SMEs typically avoid the cost of securing patents (let alone defending them).

19. The Code of Conduct Group operates on a similar basis as the FHTP. The Code of Conduct Group partnered with the FHTP in these discussions in early 2014. *See* http://en.wikipedia.org/wiki/Patent_Box#Anglo-German_accord_on_the_UK_Patent_Box.
20. OECD, Action 5, Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, OECD/G20 Base Erosion and Profit Shifting Project, pp. 27-35 (OECD 2014), available at http://dx.doi.org/10.1787/9789264218970-en.
21. Forty countries supported the German position, while the United Kingdom was joined only by Luxembourg, the Netherlands and Spain in opposing them. *See* the statements made in a G20 Brisbane press briefing by Pascal Saint-Armans, Director of the Center for Tax Policy and Administration at the OECD. He actually referred to 40 out of 44 States and did not mentioned the names of the opposing countries. *See* http://www.4-traders.com/news/G-20-of-Twenty-Finance-Ministers-and-Centr--OECD-press-conference-G20-International-Media-Centre--19395261/.
22. HM Treasury, HM Revenue & Customs and The Rt Hon George Osborne MP, *Germany and UK agree joint proposal for rules on preferential IP regimes* (11 Nov. 2014), available at https://www.gov.uk/government/news/germany-and-uk-agree-joint-proposal-for-rules-on-preferential-ip-regimes.
23. Statements made in a G20 Brisbane press briefing by Pascal Saint-Armans, *supra* n. 21.
24. *Supra* n. 20.
25. Statement of the Netherlands on the draft Council Conclusions (Code of Conduct – patent boxes) ECOFIN Council, Brussels, 9 Dec. 2014, available at http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2014/12/12/statement-of-the-netherlands-on-the-draft-council-conclusions-code-of-conduct-patent-boxes.html. *See also* Parliamentary proceedings II, 2014-2015, 21 501 – 07, no. 1213, p. 8.
26. Article 12b(1) of the Corporate Income Tax Law 1969 (*Wet op de vennootschapsbelasting 1969*), National Legislation IBFD, provides, in brief, that (under certain conditions) income derived from self-developed intangible assets as a result of research and development work for which an R&D declaration was granted (S&O-verklaring) or a patent may be taxed at one fifth of the statutory Netherlands CIT rate.
27. *Supra* n. 6, item 32.
28. Available at https://www.internetconsultatie.nl/innovatiebox.
29. P. Den Hertog et al, Evaluatie innovatiebox 2010 – 2012, available at https://www.rijksoverheid.nl/documenten/kamerstukken/2016/02/19/evaluatie-innovatiebox-2010-2012.
30. In a knowledge-based society such as ours, software is of the utmost importance. Following an era of cellphone improvements, Apps are now omnipresent. However, the protection of software in Europe is subject to some ambiguity. The European Patent Convention, and in line therewith national patent laws, provide that software, as such, is not patentable. In practice, however, many software-related inventions have been granted a patent. The conclusion is that, indeed, software, as such, is not patentable, but software inducing a novel and surprising effect on a technological process is patentable. The European Patent Office defines the condition for patentability of software as follows: "For a patent to be granted for a computer-implemented invention, a technical problem has to be solved in a novel and non-obvious manner". Hence, software is patentable in Europe when complying with this condition.

Based on the consultation paper, the following qualifying intangible assets should provide access to the Netherlands innovation box regime. In this respect, a distinction is made between (i) small and medium-sized companies (SMEs) and (ii) other taxpayers.

Qualifying intangible assets in respect of SMEs are self-developed intangible assets from R&D activities in respect of which "R&D wage tax certificates" from the competent Netherlands governmental agency have been obtained. For other taxpayers, the definition of qualifying intangible assets contains a limitation in comparison to SMEs; as an additional condition, such intangible assets should also qualify as one of the following:

(1) patents or plan breeder's rights;
(2) software program(s);
(3) supplementary protection certificates for medicinal products for human use, or supplementary protection certificates for veterinary medicinal products;
(4) intangible assets that are related to intangible assets qualifying under (1), (2) or (3); or
(5) exclusive licences to use an intangible asset qualifying under (1), (2) or (3) in a certain way, in a certain area or for a certain period of time.

Currently, the consultation paper clarifies that the patent needs to be granted.[31] Based on the wording of Action 5 the authors are of the opinion that the patent filing registration date should be sufficient considering that the patent is legally protected as from that date.[32] In addition, the Netherlands has not availed itself of the possibility to include utility models, as well as supplementary protection certificates, to extend the exclusive right of certain patents for plant protection products.[33]

3.5. Position of SMEs

In this respect, and considering SMEs specifically, paragraph 37 of the OECD Plan on Action 5 mentions an important provision for the Netherlands. This paragraph more or less states that other innovations derived from R&D, provided that such activities have been certified by a competent government authority (not being the tax authorities), such that the linkage between R&D, IP assets and profits (tracking and tracing) can be ensured, may also benefit from a preferential IP regime. This provision facilitates, to a certain extent, entrance to the innovation box via the R&D declarations that are certified by the Dutch Enterprise Agency (i.e. a department governed by the Ministry of Economic affairs). Based on paragraph 37 there are, however, some quantitative requirements for taxpayers (i.e. no more than EUR 50 million in global group-wide turnover and the taxpayer cannot, itself, earn more than EUR 7.5 million per year in gross revenue from all of its IP assets),[34] as well as some qualitative requirements (i.e. the IP assets should still share features of patents – be non-obvious, useful and novel).[35] Although, at first glance, this provision is being welcomed by Netherlands SMEs it might be difficult to satisfy some requirements. In addition, it should be noted that the SME exception mentioned in paragraph 37 is more important in the Netherlands than in other OECD member countries, considering that the Netherlands does not have any utility model legislation. To this extent, SME companies in other Member States may already benefit from a preferential IP regime based on utility models that typically benefit SMEs.[36]

Unfortunately, the consultation paper does not shed light on these topics. SMEs are – in this context – defined as taxpayers (1) deriving (gross) benefits from qualifying intangible assets of less than EUR 37,500,000 in the respective financial year and the four preceding financial years combined, and (2) also having a net turnover of less than EUR 250,000,000 in the respective financial year and the four preceding financial years combined. This item will receive considerable attention during the coming months.

3.6. Netherlands software companies

Another important remark for the Netherlands is mentioned in paragraphs 34 and 36 of the OECD Plan on Action 5. These provisions confirm that copyrighted software shares the fundamental characteristics of patents, since such software is novel, non-obvious and useful[37] and it is unlikely that core software developments will be outsourced to unrelated parties. This statement has been welcomed by most Netherlands software companies that typically have to rely on R&D declarations, but may now also rely on copyrights to support their innovation box position. Interestingly, the Netherlands has used the term "programmatuur" to define software in the consultation paper. At first glance, and based on the wording, this definition seems to limit the software definition to R&D development activities. This is, however, somewhat unclear. In addition, and although this term is mentioned in the WBSO (and limits the qualifying R&D activities) its explanation is not necessarily limited to the WBSO definition.

3.7. Joint venture application?

In the Netherlands, knowledge institutes, research centres and companies actively cooperate with one another (as public-private partnerships) in R&D projects. These R&D projects require an integrated approach, pursuant to which science and industry, supported by government, share their knowledge and expertise. The IP developed through these projects is governed by project agreements. Generally, several participants have taken steps regarding the invention at issue (i.e. for patents) and have an equal undivided ownership interest in the IP developed. These joint

31. Consultation paper, *supra* n. 28, article 12ba, 1, b, 1.
32. OECD, *Countering Harmful Tax Practices More Effectively – Action 5: 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, para. 34 in relation to footnote 5 of para. 34 (5 Oct. 2015), International Organizations' Documentation IBFD.
33. Id., para. 35.
34. This amount seems to be derived from the UK RDA, which contains a cap on the total "R&D aid" available to a company attributable to a particular R&D project. Broadly, the total R&D aid may not exceed EUR 7.5 million.
35. *Supra* n. 32, at para. 37.
36. Utility models are beneficial to SMEs, as obtaining them is less expensive and less time consuming than obtaining patents. Protection, however, in comparison with patents, is relatively limited, with the result that utility models have less economic value.
37. *Supra* n. 32, at para. 36.

IP owners typically agree amongst themselves on the relative allocation and related rights of the IP developed. Generally, this is contractually regulated via exclusive rights to use the IP assets. If these R&D projects are set up as jointly owned companies that are recognized as non-transparent entities for tax purposes, the owners of these exclusive rights are not able to enjoy the benefits of the innovation box in respect of income earned via these exclusive rights. At best, only the lead partner that has coordinated all activities regarding the IP developed and has applied for the patent in its name can (at least) try to apply the innovation box to its proportionate income share.[38] Based on paragraph 34 of the OECD Plan on Action 5 it is expected, however, that exclusive rights may also qualify for the benefits of the innovation box.[39] In this respect, paragraph 34 of the OECD Plan on Action 5, in footnote 5, mentions that "legally protected" also includes exclusive rights to use IP assets. This conclusion (although the reasoning was not published) has also been expressed by the Netherlands Ministry of Finance.[40] It should be noted, however, that the OECD Plan on Action 5 is not 100% clear. Footnote 5 actually clarifies the concept of legally protectable and, at first glance, does not add another category of functionally equivalent IP to paragraph 34. In the consultation paper, the exclusive rights to use IP have indeed been mentioned, as well as some other provisions that should benefit R&D joint ventures and cost contribution arrangements.[41]

3.8. Qualifying income

Under the envisaged revised Netherlands innovation box regime, qualifying income is determined per qualifying intangible asset or per coherent group of qualifying intangible assets (tracking-and-tracing). If it is not possible to apply the tracking and-tracing method, the method for determining the qualifying income will be established by taking into account the nature of the business enterprise and the R&D activities of the taxpayer. It is expected that the main methods used under the current innovation box regime to determine qualifying income will remain applicable to a certain extent. This includes, in particular, the commonly used profit split method. Although the Consultation paper does not shed much light on this, it is expected that this will increase the administrative burden to companies, as well as the Netherlands tax authorities.

3.9. What's ahead?

It is expected that the new rules for the Netherlands innovation box regime will enter into force as of 1 January 2017 and apply to fiscal years commencing on or after 1 January 2017. A grandfathering period will be applicable to qualifying intangible assets developed before 30 June 2016. The current Netherlands innovation box regime, in principle, continues to apply to these assets.[42] The grandfathering period will end as of fiscal years commencing on or after 1 January 2022. More clarity on this is expected in the months leading up to the 2017 Tax Budget. With regard to the remarks in respect of qualifying IP there is, however, limited room to manoeuvre. The innovation box benefits of large Netherlands companies that do not have qualifying IP rights may, in particular, be in jeopardy.[43]

38. Discussions concerning economic ownership of IP and concerning the degree of coordinating activities where the lead partner applies for the innovation box are, however, expected.
39. In addition, if the R&D projects are set up as transparent projects it is assumed that the quantitative and qualitative restrictions, as mentioned in paragraph 37 of the OECD Plan on Action 5 (*see supra* n. 20) would still limit the use of the innovation box to R&D partnerships. In this respect, paragraph 34 of the OECD Plan on Action 5 might also be welcomed by transparent partnerships.
40. This position has also been expressed by the Netherlands Ministry of Finance. *See supra* n. 6, item 23.
41. Consultation paper, *supra* n. 28, article 12ba, 4 and article 12bb, 6.
42. It is not yet clear how the grandfathering period will, in practice, affect taxpayers that currently apply the Netherlands innovation.
43. *Supra* n. 40.