

## Tax Alert – December 8, 2011

### 2012 BUDGET - TAX MEASURES

At the end of November, the negotiating political parties have reached an agreement on the 2012 budget, which includes various new tax measures.

Hereafter, some of the most eye-catching tax measures are described. The actual application modalities and amounts still need to be fixed definitely in the course of the legislative process.

Hence, the final measures could still slightly deviate. It would be the intention to implement most of the proposed measures as from January 1, 2012.

#### Withholding tax

- Interest and dividend income, that is currently subject to a 15% withholding tax rate (e.g. interests on the current account of the company director or the reduced withholding tax rate for certain dividend payments), will be subject to a higher tax rate of 21%.
- An additional solidarity surcharge of 4% will be levied for tax payers with (high) movable income for the part that exceeds the threshold of 20.000 euro. The liquidation boni and the tax exempt bracket of the interest income from regulated savings deposits should not be taken into account for the calculation of the threshold.
- The tax rate of 15% and the current exemption on the first bracket for interest income from regulated savings deposits would be maintained. It is also the intention that the recently issued State bonds would still benefit from the 15% withholding tax.
- The lower withholding tax rate of 10% for liquidation proceeds remains applicable. However, a share buyback would no longer benefit from this favorable tax rate.

#### Individual income tax

- Various taxable benefits in kind that are currently calculated on the basis of attractive lump sum valuation rules, would suffer a significant increase.
  - The most commented adjustment concerns the lump sum valuation of the benefit in kind for the private use of a company car. The benefit will now be calculated based on the car's catalogue price and the CO2-emission level. The employer would bear half of this "tax increase" (cf. infra for the VAT consequences on benefits in kind).
  - The benefit in kind resulting from the free disposal of housing (and free heating, electricity and other utilities) by a (management or real estate) company to company executives will be calculated based on a higher lump sum amount.
  - The lump sum valuation for 'regulated' stock options at the moment of grant will be increased from 15 to 18%.
  - Legal initiatives to determine an increased lump sum value of the related benefit in kind for "usufruct structures" can at this moment not be excluded.
- Certain deductible expenditures such as donations, child care expenses or mortgage loan expenses for the own family dwelling that currently result in a tax benefit at the marginal tax rate will be transformed to a tax reduction against fixed rates (45% for the aforementioned expenditures and 30% for other qualifying expenditures).
- The tax reductions for solar panels, super-isolated glazing, heat pumps and other energy saving measures will be abolished.

### Corporate income tax

- The changes to the Notional Interest Deduction ('NID') regime should substantially beef the expected revenue. Although the application of the NID regime would not be made subject to substantial changes and moreover no additional conditions would be imposed, the NID benefit will be capped:
  - The maxim NID rate will be capped at 3 % until 2014 at least (the 0.5% increase for SME's remains applicable).
  - The current possibility to carry forward the excess NID for 7 years will be abolished for the future.
  - The "stock" of the carry-forward NID can still be carried forward for 7 years, but can only be deducted gradually in function of the annual taxable base.
- Capital gains on shares remain fully tax-exempted provided that a 1-year holding period requirement is satisfied. In case of a sale within 1 year, a capital gain tax at a specific rate of 25% would apply.
- The tax benefits for extra-legal pension schemes will be capped via two new measures:
  - A "wage cap" would be introduced for the calculation of the 80% rule for the deduction of the extralegal pension contributions made by the employer to the group insurance companies.
  - The individual pension accruals for self-employed directors can no longer be set up via an internal pension provision. The existing pension accrual should be outsourced within a period of 3 years, resulting in an additional insurance premium tax.
- The existing 'thin capitalisation' regime will be tightened. Your company will no longer be able to deduct interests on intra-group loans to the extent that a certain debt-to-equity ration would be exceeded (probably 5 to 1).

### Other measures

- In addition, various adjustments are being made in the indirect tax field (increase of the VAT rate on digital TV, subject notary and bailiff fees to VAT, etc.) and measures are taken that impact the financial services industry (increase of stock exchange tax, bank levy, etc.).

- Also the introduction of a tax on the conversion of bearer securities as from 2012 deserves your attention and possibly requires action before year end. A Legal Alert on this matter can be found on our website.

If you require a summary of our additional tables with all measures, please contact us. We will be happy to assist you.

Besides these new tax measures, there have been some recent tax developments which have in the meanwhile been extensively described and commented. Please keep the following in mind in this respect:

### VAT deduction on the private use of company cars?

- Parallel with the government formation negotiations, the Belgian VAT Authorities recently published an administrative decision which would radically change the current VAT principles applicable to benefit in kinds, in particular for the private use of a company car, but also for the private use of a mobile phone, a PC or a laptop.
- The Belgian VAT Authorities no longer seem to be willing to accept the lump sum benefits in kind calculated for income tax purposes.
- Although the implementation of this administrative decision, after intervention from professional organisations, has been temporary suspended, and also the budget does not explicitly make reference to this matter, it is expected that companies should take an additional VAT-impact as from 2012 into account.

### **Risk for secret commissions taxation (309%) on benefits in kind?**

- Each employer is aware of the fact that benefits in kind that constitute professional income for the beneficiaries (such as the private use of company car, interest component on the current account) should be reported on the individual salary slips and summary statements.
- If a company lacks to report these benefits on the salary slips, the Belgian tax authorities can levy a secret commission tax of 309% on these unjustified expenses, unless the employee/director would have spontaneously reported these benefits in the individual income tax return.
- You probably may have learnt that the central tax administration sent an internal instruction at the end of July, whereby they underlined that local tax inspectors can never rectify benefits in kind that have not been reported on individual salary forms and summary pay slips afterwards at the occasion of a tax audit.
- Although the Minister of Finance Reynders promptly afterwards, again after the intervention from the professional organisations, tempered a rigid tax audit approach, and although the government formation agreement made no explicit reference, you should be aware that some tax inspectors, will screen the correct processing of all benefits in kind more in-dept. In case of repeated and willful shortcomings, these tax inspectors could use this severe penalty as an ultimate mean of pressure.
- Please be aware that if certain private investments for a company director are made and paid by the company or if lump sum allowances are granted to personnel or company director(s), for which no suitable reporting has been made on the salary slip,

also these benefits would be eligible for this severe penalty.

### **Changes to the gift and inheritance tax regime for the transfer of family-owned companies in the Flemish Region**

- A draft decree of the Flemish Government contains certain changes regarding the transfer of family-owned companies.
- Currently, family-owned companies can be transferred via a gift inters vivo at a 2% gift tax rate and can be inherited at the moment of death at a 0% inheritance tax rate.
- The gift tax rate for the transfer of family-owned companies will be decreased to 0% (instead of the current rate of 2%). Equally, the inheritance of family-owned companies at the moment of death will no longer be exempt from inheritance tax, but become subject to reduced inheritance tax rates (3% or 7%).
- The application conditions for the tax regime for gifts and inheritance will be aligned.
- The entrepreneur whose company does not meet the foreseen conditions cannot benefit from these advantageous measures and remains subject to the general gift tax rates (3% or 7%) or inheritance tax rates (3% to 27% for straight family line heirs).
- For implementation and tailor-made advice, we recommend waiting until the law will be published.

## Contact

*For further information regarding the impact of these measures on your personal situation, please contact your Mazars contact person. We would be happy to assist you were needed.*

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