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Briefing note

December 2012

Belgian 2013 Budget: Tax Law voted

On 21 December 2012, the Belgian Parliament adopted a new Law implementing part of the Federal Government's 2013 Budget Plan. The new Law contains a number of important new tax measures most of which will have effect from 1 January 2013.

At the same time, another Law containing a final set of tax measures from the 2012 Budget Plan was published in the Belgian State Gazette.

Below we have summarized the most important new tax measures from both laws.

Key issues

- Increase in withholding tax rate from 21% to 25%
- Introduction of a 0.4% capital gains taxation on share disposals
- Abolishment of the possibility to carry forward excess notional interest deductions

Increase in the withholding tax rate from 21% to 25%

As from 1 January 2013, the general withholding tax rate for interest and dividends will be increased from 21% to 25%, except for the so-called "Leterme state bond" and for interest on regulated saving deposits.

The recently introduced 4% surcharge applicable to Belgian resident individuals who receive interest and dividend income exceeding 20,020 EUR per year will be abolished and the general liberatory character of the withholding tax will be reinstated: *i.e.* Belgian resident individuals receiving interest or dividends subject to Belgian withholding tax which has been withheld at source, will not have to declare the income in their personal income tax return. For income collected in 2012, the 4% surcharge and the non-liberatory character will remain applicable.

Taxation of capital gains on shares

Share capital gains realised by a company, which are currently fully exempt from taxation in Belgium (subject to a 1-year holding period, a minimum holding threshold and a taxation requirement), will now become subject to a separate taxation at a rate of 0.4%.

Capital losses on shares remain in principle fully non-tax deductible and prior or current year tax losses as well as certain other deductions such as the notional interest deduction may not be used to offset the 0.4% tax.

The separate tax will not apply to capital gains on shares realised by small and medium-sized companies.

The new 0.4% tax will be due for transactions realised as from assessment year 2014, *i.e.* for financial years ending on or after 31 December 2013. A company with a year-end on 30 June, for example, will therefore only be subject to the 0.4% tax for transactions carried out as from 1 July 2013 onwards. Changes to financial years carried out after 21 November 2012 are, however, not opposable vis-à-vis the tax authorities.

Changes to the notional interest deduction (NID) regime

As of assessment year 2013 (financial years ending on or after 31 December 2012), the possibility to carry-forward excess NID for seven years will be abolished. The amount of allowable NID for a given year which exceeds the taxable income for that year (before deduction of the tax losses carried forward) will hence be lost.

A transitional regime for existing excess NID (excess NID for financial years closed on or before 30 December 2012) has been put into place. Under the transitional regime, existing excess NID carried forward can continue to be used, but only after the deduction of all the tax losses carried forward. In addition, any taxable amount above EUR 1 million can only be offset by up to 60%. Under this new 60% limitation, the existing NID carried forward can be used even after the original seven years utilisation period, just so long as to allow the taxpayer to use the NID it would otherwise have used if the new 60% limitation was not applicable. Contrary to the original proposals, the extension of the seven year period does not apply if a company cannot use its existing NID carried forward because it has too much tax losses carried forward (which under the new regime needs to be used prior to the existing stock of NID carried forward). As a result, companies with substantial amounts of tax losses carried forward might eventually lose (part of) their existing excess NID.

As part of the 2013 Budget Plan, the calculation method of the NID rate would also be slightly amended, resulting in a lower effective NID rate in principle as of 2013.

Other important changes

Dividends distributed by so-called "residential" real estate investment companies *("vastgoedbevaks/sicafis")* will no longer benefit from a withholding tax exemption, but will instead be subject to a 15% withholding tax. In addition, the conditions for qualifying as a "residential" real estate investment company are also amended slightly.

The scope of the withholding tax on redemptions of units in certain fixed income investment funds (article 19bis of the Belgian Income Taxation Code) is expanded, and withholding tax will now be levied as soon as the fund invests more than 25% of its assets in fixed income securities or cash (previously the threshold was 40%).

For premiums paid on individual life insurance contracts, the insurance premium tax as of 1 January 2013 will increase from 1.1% to 2%. Insurance contracts concluded by legal entities will remain subject to the 4.4% rate.

Finally, the government is also envisaging to relax the currently applicable 309% secret commissions tax, to introduce a new tax amnesty regime and to amend certain existing withholding tax rules in order to bring those in line with the recent case law of the European Court of Justice.

Contacts

Thierry Blockerye
Partner

T: +32 2 533 5061
E: thierry.blockerye@cliffordchance.com

Alexandre Ooms
Senior Associate

T: +32 2 533 5073
E: alexandre.ooms@cliffordchance.com

Pierre-Olivier van Caubergh
Associate

T: +32 2 533 5910

E: pierreolivier.vancaubergh@cliffordchance.com

Valerie Oyen
Associate

T: +32 2 533 5066
E: valerie.oyen@cliffordchance.com

Clifford Chance, Avenue Louise 65, Box 2, 1050 Brussels, Belgium

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Registered office: 10 Upper Bank Street, London, E14 5JJ

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