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News Alert

Corporate Tax and Accounting Services

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Key tax accounting and reporting considerations of the Belgian corporate tax reform

In summary

On 26 July 2017, the Belgian government reached an agreement on an important tax, economic and social reform package. On 27 October 2017, a press release was published regarding the implementation of the announced corporate income tax reform.

On 22 December 2017, the Belgian Parliament has approved the Belgian tax reform bill. This bill has been published in the Belgian Official Gazette on 29 December 2017 and was signed by the Belgian King on 25 December 2017.

Consequently, the Belgian tax reform has been substantively enacted for IFRS (IAS 12) on 22 December 2017 and enacted for US GAAP (ASC 740) on 25 December 2017.

Outlined below is a brief overview of some of the key changes and their main related tax accounting and reporting considerations[1].

[1] Note that the specific mechanics of some of the Tax reform measures still need to be further detailed trough Royal Decree. Furthermore, it is likely that some of the 2019 and 2020 measures will be further fine-tuned via additional legislative intervention in the coming month(s).

Corporate income tax rate

The government established that the Belgian corporate income tax has a historically high nominal rate and several deductions and systems to lower the effective tax rate. The corporate income tax reform aims towards a simplified system with increased legal certainty and fairness by reducing the nominal rate and broadening the taxable basis.

The standard corporate income tax rate of 33% will be lowered to 29% in 2018 and to 25% as from 2020. The reduced progressive rate for small and medium sized entities ("SMEs") will be replaced by a flat rate of 20% for the first bracket of EUR 100.000 taxable result. The crisis tax, currently amounting to 3%, will be lowered to 2% as from 2018 and abolished in 2020.

Below is a summarizing overview:

	2017	2018	2020
Rate	33%	29%	25%
Crisis tax	3%	2%	0%
Rate incl. crisis tax	33,99%	29,58%	25%
SMEs	**24,25%** 1 – 25 kEUR **31%** 25 kEUR – 90 kEUR **34,5%** 90 kEUR – 322,5 kEUR	**20%** On profit ≤ 100 kEUR **29%** On profit > 100 kEUR	**20%** On profit ≤ 100 kEUR **25%** On profit > 100 kEUR

2018 measures

a) Minimum tax (basket system)

In order to broaden the taxable basis, the system of tax deductions has been revised.

As from 2018, a new sequence of deductions will apply:

Order of deductions	**Limitation**
Non-taxable elements Dividends Received Deduction ("DRD") Patent income deduction ("PID") Innovation Income Deduction ("IID") Investment deduction Group contribution under consolidation regime (see below)	Fully deductible

Incremental notional interest deduction ("NID") (see below) Carried-forward DRD Carried-forward IID Carried-forward tax losses Carried-forward NID	Basket

Certain deductions will be fully deductible, such as the DRD, the IID and the investment deduction. On the other hand, some deductions could only be claimed on 70% of the remaining taxable result exceeding EUR 1 million. The deductions concerned are the incremental NID, carried-forward DRD, carried forward IID, carried-forward tax losses and carried-forward NID. The remaining 30% will be fully taxable at the above-mentioned new rate.

b) Incremental NID

Going forward, the NID will be calculated based on the incremental equity over a period of five years and no longer on the total amount of a company's qualifying equity. Broadly simplified, the incremental equity will equal one fifth of the positive difference between the equity at the end of the taxable period and the fifth preceding taxable period.

c) Capital gains on shares

Currently, capital gains realized on shares are exempt provided that the investment meets a taxation condition and has been held in full ownership during an uninterrupted period of at least one year. For big companies, however, a separate capital gains tax of 0,412% applies without the possibility to offset tax assets.

As from 2018, the separate 0,412% capital gains tax will be abolished and an additional minimum participation threshold of 10% shareholding or at least EUR 2,5 million acquisition value will have to be met in order for the full capital gains exemption to apply.

d) Some other measures

- Capital reductions will be deemed to be derived proportionally from paid-up capital, respectively reserves. The portion of the capital reduction allocated to the reserves will be deemed a dividend for tax purposes and subject to withholding tax, if no exemption applies.

- In addition to the existing conditions, provisions for risks and charges will only be exempt from corporate income tax if they result from a contractual, legal or regulatory obligation at year-end closing committed to by the company during the taxable period or one of the previous taxable periods.

The reversal of tax exempted provisions for risks and charges that have been recognized in a financial year that ends between 1 January 2017 and 30 December 2020 will be taxable at the tax rate applicable in the taxable period at which the exempted provision has been recognized. A FIFO mechanism applies with respect to the reversal of the provision.

- Today, prepaid costs can be deducted in the taxable period in which they are paid, even if they are fully or partially related to future taxable periods. As from 2018, costs will only be deductible in the taxable period in which they are paid or booked as debt, or in the next periods to the extent these costs relate to the concerning period.

- The participation exemption on qualifying dividends will increase from 95% to 100%.

- As a consequence of the enactment of the 100% participation exemption, a dividend withholding tax exemption will be introduced for cases where a shareholder owns a participation of less than 10% capital of which the acquisition value is at least equal to EUR 2,5 million (instead of the current withholding tax of 1,6995%). Following European case law (the so-called 'Tate & Lyle" case), the Belgian withholding tax on dividends distributed to such non-resident shareholders should be aligned with the tax burden of resident companies that could apply the Belgian participation exemption.

- Companies that do not grant a minimum fee of EUR 45.000, or at least equal to the taxable result, to at least one director (private individual), will be subject to a distinct taxation of 5% for 2018 and 2019 and 10% as from 2020 (exceptions exist). This distinct taxation will be calculated on the positive difference between the minimum fee and the highest director's fee remunerated by the company.

- Tax supplements resulting from a tax audit (correction or ex officio assessment) will no longer be offset against tax deductions, including current year losses and tax attributes (like tax losses carry forward and other carry forwards), except for the DRD of the year. This limitation will apply if a tax increase equal to or higher than 10% would be levied.

- A minimum threshold of 3% will be introduced for determining the basic interest rate to calculate the penalty in absence of tax prepayments. As from assessment year 2019, the penalty for insufficient prepayments will be 6,75 %.

2019 measures

a) Group contribution system ("tax consolidation")

Belgian parent companies, subsidiaries, sister companies or their PEs will be able to transfer taxable profit of a given period to a loss making company or PE via a group contribution. The deduction for this intra-group transfer will be fully deductible in the hands of the profit making company (see above). A direct shareholding of at least 90 % for at least the last 5 years is required.

The transfer of taxable profit is limited to the loss of the loss making company (or PE) of the concerning taxable period. The loss making company (or PE) will receive a remuneration for the reduction of its tax losses from the company (or PE) being able to deduct the loss from its taxable basis. In order to safeguard neutrality of the consolidation regime between group companies, the remuneration will be exempt from corporate income tax in the hands of the loss making company (or PE) and shall qualify as a disallowed expense in the hands of the profitable company (or PE). The two companies involved will have to conclude a formal agreement in this respect.

Each company (or PE) involved in the group contribution will still have to file a separate tax return (no consolidated Belgian tax return).

b) the Anti-Tax Avoidance Directives ("ATAD") I and II

- An anti-abuse measure will be introduced to tax undistributed profit realized by a low-tax controlled foreign company ("CFC") in the hands of the controlling parent or head office. The CFC rules will apply where a Belgian company holds a direct or indirect participation of more than 50% of the capital, voting rights or profit of a foreign entity that is either not subject to tax under the applicable rules of its residence state or is subject to income tax which is less than half of the corporate income tax of the CFC computed based on Belgian rules. Non-distributed income arising from non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax advantage are being targeted. The non-genuine character of arrangements will be assessed based on the available economic substance.

- Measures to remedy hybrid mismatch situations will be implemented. Mismatches are arrangements where relief/deduction is granted in the hands of multiple parties or relief/deduction for a payer applies with no taxable inclusion, or inclusion at beneficial rates, for the payee. The measures consist of the inclusion of income in the taxable basis, the denial of deduction of a payment, or a limitation of the foreign tax credit. The measures also include so-called "imported hybrid mismatches".

- Belgian tax law provides for an exit tax in case of a transfer of seat and the withdrawal of assets from a Belgian PE. In accordance with the Directives, the exit rules will be broadened to cover the transfer of assets from a Belgian head office to a foreign PE. The Directives also provide for a step-up where the assets, tax residency of the business of a PE is transferred to another Member State.

2020 measures

a) Permanent establishments ("PE")

Tax deduction of PE losses at the Belgian head office level will only be granted for "final losses" within the EEA. To be considered a "final losses", activities of the PE need to be terminated, no compensation of PE losses with other income in the state of the PE may have occurred or may be available in the future, and the losses may not be transferred to an affiliated entity active in the same state. Should the Belgian head office restart activities in the same state within a period of three years, the "final loss" will be recaptured at Belgian level.

The definition of a Belgian PE will be broadened to include commissionaires that act in their own name but that are closely connected with a foreign company (implementation of some of the BEPS action 7 measures).

b) Anti-Tax Avoidance Directives ("ATAD") I and II

- Net borrowing costs exceeding 30% of the fiscal EBITDA will not be deductible. The exceeding borrowing costs and EBITDA threshold will be computed separately for each entity but without taking into account internal transactions at Belgian level. A "de minimis" rule of EUR 3 million will apply on a consolidated basis. Excess interest could be transferred to a group entity that has EBITDA margin and that pays a remuneration in return (the fiscal treatment of this remuneration will be equally the same as under the consolidation regime). Remaining exceeding borrowing costs and non-deductible interest can be carried forward indefinitely.

c) Some other measures

- The deduction of certain business expenses will be limited. All administrative fines imposed by a public authority can no longer be deducted for tax purposes, and the secret commission tax will no longer be deductible. The current deduction at 120% for e.g. electric cars will be replaced by a 100% deduction. Discounts on long-term interest-free debts or debts carrying an abnormal low interest rate, related to the transfer of non-depreciable assets, will not be deductible anymore if the purchase price is lower than the actual value of the asset increased with the discount.

- The double-declining depreciation method will be abolished for corporate income tax purposes. For the year of investment, SMEs will be obliged to apply a pro rata depreciation (as is the case currently already for large enterprises).

- For assessment years 2021 and 2022, certain exempted reserves can be converted into taxed reserves at a reduced rate of 15% or 10%.

- A new concept of market interest rate linked to the MFI interest rate will be introduced to determine whether interest costs from non-mortgage loans, without fixed duration, are deductible.

Key Tax Accounting considerations

When the impact of the Belgian tax reform should be recognized is different under IFRS and US GAAP. From an IFRS perspective, the impact should be booked at substantive enactment date. The substantive enactment date for IFRS is upon approval by the Belgian Parliament. Under US GAAP, the impact should be booked at enactment date. The enactment date for US GAAP is upon ratification of the bill by the Belgian King.

Consequently, the deferred tax impact of the Belgian tax reform has to be recognized on 22 December 2017 for IFRS reporters and on 25 December 2017 for US GAAP reporters.

The timing of recognition of the current tax impact of the Belgian tax reform depends on the effective date of each of the respective new tax measures.

For US GAAP purposes, the impact of the tax law changes on deferred tax assets and deferred tax liabilities is generally booked entirely through the tax P/L line.

Whereas under IFRS, it should be analyzed whether the effect of the tax law change should be accounted for inside or outside the income statement in the period of change. The so-called "backwards tracing" will need to be applied. In other words, the company will need to trace backwards to analyze how the deferred tax asset/liability has been built up (either via tax P/L, and/or Other Comprehensive Income (OCI) and/or equity).

a) (Re)measurement of deferred taxes

The step-in tax rate reduction (29,58% in 2018 & 2019 and 25% in 2020) can give rise to complexities concerning the accurate computation of deferred taxes.

The Standard under US GAAP and IFRS states: "deferred tax must be provided on temporary differences at the tax rate expected to apply to the reversal of the difference".

As a result, it is necessary to consider when the respective temporary differences (and tax losses as well as tax credits carry forward) are expected to reverse in order to estimate the amount of the reversals that will occur at each respective tax rate.

As a result, some of the temporary differences (and tax losses as well as tax credit carry forwards) may be measured at different rates (for example 33,99 %, 29,58 % or 25%) which will: (i) impact the accounting at (substantive) enactment date, and will; (ii) need to be managed and tracked going forward.

b) Recognition of deferred tax assets

In principle a deferred tax asset is recognized for deductible temporary differences, unused tax losses and unused tax credits to the extent that it is probable (i.e. more likely than not) that taxable profit[2] will be available against which the deductible temporary differences, unused tax losses and/or unused tax credits can be utilized.

The introduction of e.g. a "basket system" can have an impact on the recoverability testing of deferred tax assets since it should be taken into account that some tax attributes can only partly be used to offset the remaining taxable result with. Additionally, the "basket system" may also impact (re) measurement of deferred tax assets.

c) Some other tax accounting considerations:

- Naked credits: some of the new introduced tax measures may give rise to "naked credits" (e.g. the "basket system"), resulting in the fact that some deferred tax liabilities could possibly no longer be a "valid source of future taxable income" and as a consequence it may impact recoverability testing and netting.

- Outside basis differences: some of the new introduced tax measures may have an impact on the tax liabilities or credits that can arise upon repatriation of outside basis differences that are available to the respective shareholders and a direct consequence of presenting consolidated figures (e.g. increase of participation exemption on qualifying dividends from 95 % to 100 %).

- Uncertain Tax Position ("UTPs"): as the effective taxation of tax supplements resulting from a tax audit will only be applicable for tax audits that will take place in relation to the taxable periods starting from 1 January 2018, all UTPs determined per 31 December 2017 will in principle not be affected by this Belgian tax law change. All 'new' UTPs determined as from 1 January 2018 need to consider the effective taxation of tax supplements resulting from a tax audit (and related penalties and interest).

- Companies should consider disclosure in their financial statements of the impact of (each of) these changes in tax law. IFRS also requires disclosure of the allocation of the impact between the income statement, other comprehensive income or equity if this is considered to have a material impact on the financial statements.

  Upon enactment for US GAAP, the current year's reconciliation of the ETR should also include a reconciling item for the effect of the enacted tax law changes if their effect is considered "significant". There is a similar requirement for IFRS accounts once the changes are substantively enacted and if the impact is considered to be a major component of the tax expense.

[2] There exist 4 sources of taxable income: (i) future reversal of existing taxable temporary differences (DTL), (ii) future taxable income (excluding the reversal of temporary differences under i), (iii) tax planning strategies (opportunities – IFRS) and (iv) taxable income in prior years (carryback). Carry back is not possible in Belgium.

Companies should also consider whether enhanced disclosures over and above the required minimums should be made to assist users of financial statements in understanding the implications of the changes.

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