Belgian Government Reaches Agreement on Budget-Balancing Tax Measures

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The Belgian government recently reached an agreement on new fiscal measures needed to balance the budget for 2013. The more notable measures include a new withholding tax for liquidations and a reduced withholding tax rate for small and medium-size enterprises, as well as a significant increase of the registration fee for long-term leases and leaseholds.

Liquidations Will Become More Expensive

When a company is wound up, withholding tax is due on the liquidation surplus (that is, everything that is paid out over the company's share capital). During the last budget rounds, the withholding tax was uniformly raised to 25 percent, except for the 10 percent withholding tax rate on liquidation surpluses, which was spared. (Prior coverage.) As of October 1, 2014, that rate would also be raised to 25 percent, just like for the ordinary dividends. The rate would also apply when a company redeems its own shares.

The government hopes that over the next 18 months, shareholders will take the opportunity to wind up companies at the reduced rate of 10 percent, which will help the treasury. Indirectly, shareholders can continue to benefit from the reduced rate if they convert taxed reserves into the company's share capital.

Measures to Strengthen Equity

To encourage SMEs to strengthen their equity, a reduced withholding tax rate has been introduced for dividends distributed by an SME for new shares. During the first two years, the rate would be maintained at 25 percent, but in the third year after the shares are issued, the rate would be reduced to 20 percent. In the fourth year, the withholding tax on the dividends would be further reduced to a final rate of 15 percent. That rate would also apply to dividends paid out after four years, even if the company grows and does not qualify as an SME anymore, or when it is wound up.

New shares are shares subscribed with new capital, in cash, starting in 2013. The shares must be nominative and must be held without interruption throughout the whole period of three or four years by the shareholder who made the contribution.

Until September 30, 2014, companies could also strengthen their equity by incorporating taxed reserves into their capital. This would trigger a 10 percent tax (the current rate for liquidation surpluses). Because the reserves would then be share capital, they could later be distributed tax free, but only after five years. If the company reduces its capital before the five-year deadline, withholding tax would be due at 15 percent the first two years, 10 percent as of the third year, and 5 percent as of the fourth year following the incorporation.

A New Anti-Abuse Provision for the Notional Interest Deduction

A company could have a double tax advantage through the combined application of the notional interest deduction (the deduction for risk capital) and the participation exemption (Belgium's 95 percent dividends received deduction). Dividends from shares held as investment could be eligible for the dividends received deduction, meaning that only 5 percent would be included in the company's taxable base. The shares would not be excluded from the basis for calculating the notional interest deduction.

Henceforth, shares held as investment would be excluded for the calculation of the deduction for risk capital if the dividends from those shares are eligible for the dividends received deduction. The dividends received deduction would be applied by priority; it is only when the shares do not meet the requirements for the dividends received deduction that they would be included in the basis for calculating the notional interest deduction.

Other Measures

The general fixed registration tax (for example, for a will or marriage contract) would double from €25 to €50, and the registration fee for the establishment or transfer of a long-term lease or leasehold would be raised from 0.2 percent to 2 percent (or to 0.5 percent for nonprofit organizations). Excise duties on tobacco would also be increased.

The Parliament is expected to approve the measures in the next couple of months.

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