Transfer Pricing Expert Is No Longer Being Updated

If you are looking for the 2022 OECD Transfer Pricing Guidelines, you will find them in Tax Notes Transfer Pricing Center.

The OECD guidelines, U.N. manual, and U.S. regulations pages no longer feature the latest information.

The good news? If you liked Transfer Pricing Expert, you'll love Tax Notes Transfer Pricing Center.

The Tax Notes team has created Tax Notes Transfer Pricing Center as a comprehensive research tool featuring unparalleled coverage of the latest OECD, U.S., and international transfer pricing rules, guidance, news, and analysis. With a quick reference comparison table mapping the OECD guidelines to U.S. regulations, plus court opinions and key filings for major U.S. transfer pricing cases, Tax Notes Transfer Pricing Center is your indispensable guide to everything transfer pricing. Learn more!

Belgium: 2012 Year in Review

POSTED ON DEC. 26, 2012

By

MARC QUAGHEBEUR

A constant factor in Belgian politics is the need for compromise. After the June 2010 national elections, it took 540 days of negotiations to form a government and agree on a budget. In 2012, when the budget needed to be rectified with new spending cuts and taxes, the discussions were postponed until after the local elections in October. Only recently, on November 20, did the tax authorities announce new rules aimed at simplifying measures adopted earlier in the year.

Corporate Taxes

The most important development for resident firms is a change in the holding company regime. Companies may claim a 95 percent dividends received deduction for dividends received from a subsidiary in which the Belgian parent holds a participation of at least 10 percent (or €2.5 million) for at least one year. Corporate capital gains remain exempt from tax regardless of the size or the duration of the participation, but a one-year holding period has been introduced. If the corporate shareholder sells the participation within the first year, tax will be due on the capital gain at a rate of 25 percent without any deduction for previous capital losses. An exception applies for stock trading companies. They can deduct capital losses and pay company income tax at the normal rates, but only if they are banks or investment companies. Late in the year it was announced that a special tax of 0.4 percent will apply to all tax-exempt capital gains.

A new thin capitalization rule was introduced in 2012, taking the form of a 5-1 debt-equity ratio. The interest deduction on a loan will be disallowed for that part of the indebtedness exceeding five times the company's equity, if the beneficial owner of the loan is established in a tax haven jurisdiction or belongs to the corporate group. If the loan is guaranteed or financed by a third party, the latter will be deemed the beneficial owner if the main purpose of the guarantee or financing is tax avoidance. The ratio does not apply to bonds issued by public entities, loans granted by financial institutions, loans taken on by leasing and factoring companies, or companies set up for a public-private partnership. (For prior coverage, see *Tax Notes Int'l*, Aug. 6, 2012, p. 511, *Doc 2012-16062*, or *2012 WTD 147-6*.)

There was a change in Belgium's notional interest deduction (NID) rules. The deduction was initially capped at 3 percent of corporate equity but later reduced to 2.74 percent (3.24 percent for small and midsize enterprises). A bill has been submitted to Parliament to limit the carryforward of unused NIDs for future tax years, subject to transition rules for unused NIDs existing on December 31, 2012.

Plans to introduce a cap on pension scheme contributions were abandoned in favor of a special social security levy of 1.5 percent on employer contributions exceeding €30,000 per year. Internal pension schemes (in the form of provisions in the company's accounts) are discouraged with an additional company income tax.

Personal Taxes

The fringe benefits tax on company cars and free accommodation has been raised significantly. For company cars, the value of the fringe benefit is a coefficient of six-sevenths of the official sales price, including options and VAT, but disregarding any discounts and reductions. (For prior coverage, see *Tax Notes Int'l*, Feb. 6, 2012, p. 419, *Doc 2012-1848*, or *2012 WTD 21-4*.) The rule has been revised several times and had to be clarified in a set of frequently asked questions issued by the tax authorities.

The withholding tax on interest and dividends has been set at 25 percent, with the exception of savings accounts for which the first €1,830 is exempt from tax. Interest on savings accounts and government bonds issued in November 2011 is taxed at 15 percent. The tax on most dividends is now 25 percent, with the exception of liquidation *boni* (that is, any gain shareholders recover from a company that has been wound up and liquidated over the company's equity).

The initial plan was to raise withholding taxes to 21 percent and charge a special supplemental contribution of 4 percent on taxpayers with investment income exceeding €20,020 (the so-called rich tax). That proposal proved too complex to implement, especially since taxpayers would have to declare all investment income to comply with the rule. It went against the principle that taxes on investment income should be levied in the form of a final withholding tax, meaning once the tax is withheld at source the taxpayer would not later have to declare the same investment income.

To discourage early retirement, the tax on the redemption of lump sum pension capital was raised. To benefit from the discounted 10 percent rate, the retiree must work until age 65. The tax is set at 20 percent for those retiring at age 60, 18 percent for those retiring at age 61, and 16.5 percent for those retiring at 62, 63, or 64.

Many deductible expenses are being replaced by tax credits, other than alimony and maintenance payments. Some of the new credits are capped at a fixed rate of 45 percent (child care expense or charitable donations), while others are capped at a fixed rate of 30 percent (all other tax credits, including *service cheques*). Plans to replace the deduction of the payment of interest and capital on residences have been abandoned.

Antiabuse Provision

Belgium introduced a new general antiabuse provision in 2012. The new rule applies when the tax authorities can establish there has been tax abuse. (For prior coverage, see *Tax Notes Int'l*, Sept. 10, 2012, p. 1039, *Doc 2012-17585*, or *2012 WTD 175-15*.)

Tax Treaties

Belgium's treaty negotiation process came to a halt when it became clear that all double tax treaties required approval from the regional parliaments and the parliaments of the European Community. For past treaties, an agreement has been reached between the government levels. Treaties and conventions previously negotiated by the federal authorities will be approved by the other parliaments.

Marc Quaghebeur is a partner with De Broeck Van Laere & Partners in Brussels.

DOCUMENT ATTRIBUTES

JURISDICTIONS	BELGIUM
SUBJECT AREAS / TAX TOPICS	BUDGETS CAPITAL GAINS TAXATION CORPORATE TAXATION CREDITS DIVIDENDS INDIVIDUAL INCOME TAXATION TRANSFER PRICING
MAGAZINE CITATION	TAX NOTES INT'L, DEC. 24, 2012, P. 1188 68 TAX NOTES INT'L 1188 (DEC. 24, 2012)
AUTHORS	MARC QUAGHEBEUR
AFFILIATED INSTITUTION	DE BROECK VAN LAERE & PARTNERS
TAX ANALYSTS DOCUMENT NUMBER	DOC 2012-23982