Belgium Ends 2013 With Flurry of Tax Amendments

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Several new Belgian tax laws were published in the last official gazette of 2013.

The Act of December 21, 2013

This Act introduced measures to simplify and harmonize the tax rules and bring them into line with recent EU case law.

It implements the judgment of the European Court of Justice in *Argenta Spaarbank v. Belgium* (C-350/11). The issue before the ECJ was whether Belgium, when determining the basis for calculating the notional interest deduction (NID), was authorized to exclude from the company's equity capital the net worth of its permanent establishment in another EU member state (that has an income tax treaty with Belgium) because the income of the PE is tax exempt in Belgium. The ECJ found that the exclusion was incompatible with the freedom of establishment. (Prior coverage.)

The government accepts that it cannot exclude from the calculation basis for the NID the net value of establishments or real estate with income that is exempt in a country with which Belgium has concluded a tax treaty if the country is within the European Economic Area. However, it will continue to exclude the net value of establishments or real estate outside the EEA.

Under the new rules, the net value of establishments or real estate in a country within the EEA will be excluded only to the extent it does not exceed the profit attributable to the establishment or real estate. Consequently, a company will no longer lose the part of the NID that is attributable to establishments or real estate in an EEA treaty country if they are in a loss position.

An example may help to explain this. Assume that a Belgian company with a French PE is entitled to an NID of 100, 20 of which relates to the French PE. Under the old rules, the company was only entitled to an NID of 80. Under the new rules, the actual NID depends on the situation of the French PE. If the PE has a profit of 7, that sum must be deducted from the total NID of 100. However, if the PE is making a loss, the company can deduct the full NID.

These changes are retroactive for tax year 2014 (which corresponds to accounting years ending on December 31, 2013, or at any time before December 31, 2014).

The law also introduces some tax measures that clarify and simplify existing regulations and taxes.

When calculating the fringe benefit value of a company car, the referenced emission of carbon dioxide is determined on the basis of a 12-month period ending on September 30 instead of on December 31. The advantage is that the information will be available before the start of a new year so the payroll can be correctly computed from the first month.

The €5 tax on patent applications has been abolished, the administrative cost of intracommunity acquisitions has been reduced, and the "e-notariat" system, the automated exchange of information between notaries and the tax administration, has been finalized.

From a procedural standpoint, taxpayers who have forgotten to request specific tax exemptions can claim those exemptions for a period of five years, starting on January 1 of the tax year (normally the year following the year in which they received the income).

For income tax purposes, tax officials now are authorized to take and retain taxpayers' books and records, including those for closed financial years (a power they already had for VAT purposes). Previously, tax officials could only ask the taxpayer to present his books and records during an audit. Moreover, the tax authorities now can request and retain records and documentation concerning foreign life insurance policies.

Another measure has been approved in light of a May 16, 2013, decision of the Constitutional Court, which held that a taxpayer had to be notified if an overseas tax administration requested information about his bank information. The new rules do not require the Belgian tax administration to notify a taxpayer immediately if the requesting tax administration proves that it has already notified the taxpayer or if it has expressly stated that the rights of its Treasury are in danger. In that event, the Belgian tax administration has 90 days to notify the taxpayer by registered mail. The taxpayer must be notified no later than 90 days after the request for information is sent to the financial institution, but not before 60 days from the date that the information is sent to the overseas tax administration.

Finance Act I of December 26, 2013

This Act contains several tax measures approved as part of the 2013-2014 budget. These new rules entered into force on January 1.

The Finance Act reintroduced the standard investment deduction of 4 percent for small and medium-size enterprises. The investment deduction had been suspended in 2006 to compensate for the introduction of the NID. The investment deduction is available only for investments made during 2014 or 2015 for the company's actual activity or for an activity it plans to develop. The investment deduction cannot be combined with the NID.

Self-employed individuals who offer internships to young people who work part-time as part of their education have benefited from an exemption equal to 20 percent of the remuneration they pay. That exemption has been increased to 40 percent.

Workers who are paid for overtime were previously eligible for a tax reduction on their remuneration for up to 130 hours of overtime. That number has been raised to 180 hours for workers in hotels, restaurants, and bars that use a registered cash machine and for construction workers whose employers use an electronic time and attendance system for temporary or mobile building sites. These machines have been introduced to combat work done off the books. For construction workers, the machines will become obligatory on April 1.

Employers who pay a shift premium to employees who work at night or in shifts previously were exempted from paying the wage withholding tax on 15.6 percent of the premium. That percentage has been raised by 2.2 percentage points.

Low-paid employees previously were entitled to a tax credit of 8.95 percent of the reduction of their social security contributions, up to €130. That tax credit has been increased to 14.4 percent but the ceiling is maintained at €130.

The Law of December 21, 2013

This law amends provisions of the Income Tax Code 1992 concerning the deductibility of regional taxes, levies, and duties, and it ensures that the road tax and the Eurovignette[1] (and eventually the road toll that replaces the Eurovignette) continue to be deductible. Currently, regional taxes, levies, and duties are disallowed business expenses for companies, with the exception of the road tax. The road tax and the Eurovignette are tax deductible because they were federal taxes to start with.

In the meantime, the regions have agreed to introduce a road toll to replace the Eurovignette. The road toll will be a kilometer-based levy for cargo trucks and will be an actual regional tax, making it a nondeductible expense. To avoid that, the Parliament has amended article 198 of the Income Tax Code 1992 to make the regional road tax an allowed expense. This law will enter into force when the Eurovignette is abolished -- no earlier than January 1, 2016.

Law of December 26, 2013

The fourth law that was published in the final official gazette of 2013 contains various measures relating specific loans to individuals. The purpose of the law is to promote the financing of projects that have a socioeconomic or socially justified purpose, such as the building of hospitals, retirement homes, libraries, schools, and even soccer stadiums; the research and development of renewable energy; or investments in SMEs; a list will be drawn up by royal decree. The government hopes to mobilize some of the €250 billion that Belgians are currently holding in savings accounts.

Financial institutions that provide cash bonds and term deposits must comply with specific conditions for these purposes. For example, cash bonds and term deposits must have a minimum duration of five years and cannot be redeemed early except in the case of death. The minimum investment must be €200, they must be sufficiently accessible for individual investors, and so on.

Insurance companies can also collect investment funds through branch-21 (whole life) insurance policies with a minimum duration of 10 years and a minimum premium of €200. The insurance premium tax is 1.1 percent instead of 2 percent.

The government will guarantee citizens' loans up to €100,000, as it does now for savings accounts.

Interest from qualifying investments will be taxed at a reduced rate of 15 percent instead of 25 percent. If the financial institution does not use the investments for an eligible project, the investor will still be eligible for the advantageous tax regime; in that event, the financial institution will pay the difference.

Future Developments

The threshold for the VAT exemption will be raised from €5,850 to €15,000; the threshold for filing monthly VAT returns, which is currently €1 million, will be raised to €2.5 million; and the threshold for an investment to qualify as a capital good for VAT purposes will go from €250 to €1,000. These changes will be made by royal decree, probably with retroactive effect from January 1, 2014.

The VAT on electricity for households will be reduced from 21 percent to 6 percent with effect from April 1.

Stricter measures targeting professionals who rely on legal confidentiality rules to hinder tax audits have also been announced.

Fiscal Transparency for Trusts and Legal Arrangements

Finally, as discussed previously, the government is preparing legislation that would allow the tax authorities to look through offshore entities and legal arrangements (such as trusts) and tax the income in the hands of the founder or beneficiary. Early texts have been circulated but did not make it into any of these acts.

The government intends to look through these legal arrangements and entities and tax the income in the hands of the founder, and after his death, in the hands of his direct and indirect heirs, unless they can prove they will never obtain any benefit from the legal arrangement. "Third-party beneficiaries" (who are not the founder or his heirs) will be subject to a fixed income tax rate of 25 percent on any distribution obtained from the legal arrangement

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FOOTNOTE

[1] The Eurovignette is a toll introduced by Council Directive 93/89/EEC of Oct. 25, 1993, on the application by EU member states of taxes on specific vehicles used for the carriage of goods by road, and tolls and charges for the use of some infrastructures.

END OF FOOTNOTE