Belgium to Amend Corporate and Personal Tax Regimes in 2013

Posted on Dec. 19, 2012

Two pieces of tax legislation scheduled for enactment this month will make some significant changes to Belgium's corporate and personal income tax regimes in 2013.

The Belgian Senate (upper chamber of Parliament) adopted Bill 53/2458 on December 6, and Bill 53/2561, which contains additional tax measures to be included in the 2013 budget, was submitted to Parliament on December 13. Bill 53/2458 will be signed into law by the king and published in the official gazette in the next few days. The proposals in Bill 53/2561 are expected to be approved and enacted by year-end. Here is what to expect in 2013:

Personal Income Tax

Interest and Dividends

The tax on most dividends will be set at 25 percent, with the exception of liquidation boni (the part of the proceeds that the shareholder recovers when a company is wound up and liquidated that is in excess of the company's equity), for which the tax rate will remain at 10 percent.

Dividends paid by real estate investment companies (REICs) will be subject to a withholding tax of 15 percent. Bill 53/2561 clarifies that the 15 percent rate will apply only to REICs that invest at least 80 percent of the dividends thereafter in real estate used or that are intended to be used for private accommodation in a European Economic Area member state (for 2013 and 2014, the investment threshold is only 60 percent). Dividends from REICs that do not meet the investment threshold or that are invested in commercial or logistics real estate would remain subject to the 25 percent withholding tax.

The withholding tax rate on interest from current accounts, term accounts, cash bonds, and general bonds will be aligned with the general tax rate on dividends at 25 percent. That rate will apply to interest from annuities, to royalties, and to income from the rental of movable property that is assimilated into investment income. The main exception is savings accounts; the first €1,880 will remain tax exempt, while the rest of the interest will be taxed at 15 percent. Government bonds issued between November 24, 2011, and December 2, 2011, will also be taxed at 15 percent.

In 2012 the tax on interest (and on some dividend payments) was raised to 21 percent, but a 4 percent surtax (wealth tax) was introduced for taxpayers who received investment income (dividends or interest) in excess of €20,020. That tax proved to be very complex to implement, however, because it required all taxpayers to log their Belgian and foreign bank accounts with a central office within the tax administration and then declare all their investment income in their tax returns just to allow the tax authorities to check whether they have more than €20,020 in dividends and interest.

That went against the principle that in Belgium, the tax on investment income is levied in the form of a withholding tax; if the tax has been withheld, the taxpayer does not have to declare his investment income. It is only when he has income in a foreign bank account (and no Belgian withholding tax has been deducted) that he must declare his investment income and pay income tax at the same rate as the withholding tax. The wealth tax will be abandoned in 2013, as will the reporting obligations for investment income. The withholding tax will be a final levy again, and for 2012 income, a statement by the taxpayer confirming that he does not have investment income in excess of €20,020 will be accepted.

Tax Relief Measures

Personal tax relief for payments of interest and capital on mortgage loans and for alimony payments, certain donations, and child care is currently in the form of a tax deduction. In 2013 that deduction will be replaced with a system of tax credits, except for alimony payments. The tax credits will be calculated at a fixed rate of 30 percent (or 45 percent for some donations and child care). The tax credit for contributions is calculated at the average tax rate, rather than a fixed rate of 30 percent.

The deduction for alimony will remain in force, and the same rules will apply to alimony paid or received on the basis of foreign law as for alimony paid or received under Belgian law. That means that 80 percent of alimony paid is tax deductible, and 80 percent of alimony received is taxable at progressive rates.

Finance Minister Steven Vanackere recently announced that the deduction for payments of interest and capital on mortgage loans for a taxpayer's main residence will be maintained.

Municipal Surtax on Interest and Dividends

In *Dijkman v. Belgische Staat* (C-233/09), the European Court of Justice held that Belgium's municipal surtax violates the free movement of capital because it applies only when residents receive foreign-source investment income from their foreign bank accounts and no Belgian withholding tax is deducted so the income must be reported on their Belgian tax returns. Belgian residents who receive investment income from domestic bank accounts pay withholding tax on the income but are not subject to the municipal surtax. (For the judgment, see *Doc 2010-14612* or *2010 WTD 127-11* .) Belgium's initial implementation of that judgment created problems of discriminatory treatment of domestic investments, which remained subject to the surtax in some cases. The new legislation provides that neither domestic nor foreign interest and dividends will be subject to the municipal surcharge.

Bill 53/2561 contains a new provision that requires a taxpayer to declare life insurance contracts signed with a foreign insurance company by the taxpayer, his spouse, or his children. Insurance bonds and insurance wrappers will remain tax exempt under some conditions, but to compensate, the tax on the insurance premium will be raised from the current 1.1 percent to 2 percent.

Corporate Income Tax

Notional Interest Deduction

The notional interest deduction allows Belgian corporate taxpayers and Belgian permanent establishments to benefit from a tax deduction corresponding to a percentage calculated on their adjusted net equity. That notional interest is, in principle, based on the average interest rate on 10-year Belgian government bonds over the past year.

The interest rate was initially capped at 6.5 percent and is now capped at 3 percent (3.5 percent for small and medium-size enterprises). That cap will be maintained, but the notional interest rate will be calculated on the average interest rate on government bonds for three recent consecutive months rather than for the past year. In 2014 the effective rate will be 2.74 percent (3.24 percent for SMEs).

As of tax year 2013, the unused notional interest deduction can no longer be carried forward. However, unused notional interest deductions available on December 31, 2011, or in a tax year ending in 2012, can continue to be carried forward for seven years. If the unused deduction exceeds €1 million, the carryforward will be restricted to 60 percent for the excess part. The carryforward period for unused deductions up to €1 million will be extended.

Undertakings for Collective Investments in Transferable Securities (UCITS)

In *Commission v. Belgium* (C-370/11), the ECJ held that the Belgian rules for share buybacks of foreign collective investment funds infringe the free movement of capital under the EEA Agreement. (For the judgment, see *Doc 2011-20035* or *2011 WTD 184-18*.)

The law will be adapted to exempt capital gains realized on share buybacks derived by collective investment funds established in Iceland and Norway that invest more than 40 percent of their portfolio in debt claims and are not authorized as a UCITS under UCITS Directive 85/611/EEC.

Moreover, the 40 percent debt investment threshold will be reduced to 25 percent. Consequently, no information will be exchanged for interest paid by UCITS on investments in debt claims that do not exceed 25 percent of their portfolio.

Tax-Exempt Contributions, Conversions of Legal Forms, Mergers, and Split-Ups

A provision is being introduced to confirm that taxable gains on contributions, split-ups, and mergers remain tax exempt for shareholders or partners. To determine whether the one-year holding condition has been met, the shares are deemed to be received on the date they are received in an exchange of shares or a conversion, merger, or split.

Nonresidents

To extend the scope of the Belgian tax law, the concept of service permanent establishment has been introduced into the income tax code. A service PE is a fixed place of business through which the professional activities of a foreign company are fully or partially carried out in Belgium. Services provided by one or more individuals for a period or periods exceeding 30 days in any 12-month period will be regarded as a PE.

Moreover, the Income Tax Code will provide that Belgium can tax any income for which the right to tax is allocated to Belgium under an income tax treaty, as well as income derived in Belgium that is not taxed in the residence state of the nonresident. This income will be subject to a withholding tax, but the nonresident will have the option to declare the income in his tax return if the tax calculated on the tax return is less than the withholding tax, and to recover the difference.

Nonresidents will be allowed to deduct alimony paid in Belgium if they have a home in Belgium for the entire year and derive at least 75 percent of their worldwide income from Belgium.

Marc Quaghebeur, De Broeck Van Laere & Partners, Brussels