Government Michel I: tax policy

IFA

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Overview

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1. Governmental Agreement

Governmental Agreement – *general principles*

- Taxation must not hinder economic growth, i.e. by supporting entrepreneurship and private job creation
- The government will limit expenditures and introduce a tax shift
  - in order to fund a sufficiently large tax cut in the burden on labour
  - taking into account national and international recommendations on the matter.

Governmental Agreement – *principles of the tax reform*

- The government continues managing its public finances responsibly
- Is committed to reforming our tax system:
  - With a view to a decline in the overall fiscal pressure
  - But without deteriorating the budgetary situation
  - While encouraging growth with an enterprise-friendly environment and an improved competitiveness for our enterprises
- Current tax shift of 2 billion EUR
  - 960 mio EUR reduction of wage costs
  - 900 mio EUR reduction of personal income taxation through increase of the lump-sum deductible expenses

Governmental Agreement – *principles of the tax reform*

- Is committed to reforming our tax system (ct’d):
  - Unabated fight against tax fraud and ensuring a loyal tax competition, including between the private sector and the public sector
  - Stability and legal certainty for citizens and businesses
  - A tax reform introduced towards the end of the legislative term that further reduces the tax burden on labour and production

2. Selected Tax Topics

Personal Income Tax

Personal income tax – *Transparency Tax*

- As of assessment year 2016
- Not yet in Programme Law – the below is for discussion purposes
- Introducing a legal presumption that applies to
    - income from immoveable goods
    - income from moveable goods
    - miscellaneous income
- Such income is taxed as if it is earned directly by the individual or by the (non-corporate) entity

Personal income tax – *Transparency Tax*

- No application of the Transparency Tax if subject-to-tax requirement is fulfilled
- Tax credit for effective income taxes if subject-to-tax requirement is not fulfilled
- Exemptions for:
  - Liquidation of a 'legal structure' to the extent that they have been subject to the transparency tax
  - Pension funds
- Legal presumptions as under the current 'legal structure' reporting requirements
- Anti-avoidance clause for 'discretionary trusts'

Personal income tax – *Housing Bonus*

- Competence is transferred to the regional level (for the own dwelling)
- Exclusive competency for the regions
  - Walloon region: tax reduction of 45% within current framework
  - Flemish region
    - New framework for contracts as from 1 January 2015
    - Reduction of the floor amount and a reduction of the increased amounts
    - Tax reduction at 40%
  - Brussels region: nothing in governmental agreement on this issue

2. Selected Tax Topics

Corporate Income Tax

Corporate income tax – *Fiscal Pact*

- Need for more regulatory stability
  - Limited modifications of tax legislation
  - Clear position of the tax authorities – uniform application
- Fiscal Pact
  - No fundamental legislative reforms in the coming years
    - Evaluation of current rules
    - Remove uncertainties, loopholes and/or inefficiencies
    - E.g. catch-all provision, clarifications on certain types of exemption of wage tax payments
  - Increased information for taxpayers
    - Administrative Circulars
    - Strengthen practice of publishing FAQs on the occasion of legislative amendments

Corporate income tax – *NID*

- Where do we come from?
  - Controversial as from its introduction
  - Numerous legislative changes, such as
    - Decreasing maximum rate to 3.8% (TY 2011/2012) and to 3% (as from TY 2013)
    - Abolishment of carry-forward of excess NID (tax year 2013; special regime for stock)
    - No more NID for shares (non-financial fixed assets) qualifying for participation exemption (tax year 2014)
    - NID rate based on government bond rate of third quarter instead of full year (tax year 2014)
    - Modification NID for foreign permanent establishments and real estate, following ECJ decision in *Argenta Spaarbank*

Corporate income tax – *NID*

- Where do we come from (ct'd) ?
  - Constantly decreasing rate
    - 4.473% (TY 2010), 3.8%% (TY 2011), 3.425 (TY 2012), 3% (TY 2013), 2.742% (TY 2014), 2.630% (TY 2015), 1.630% (TY 2016)
- What now?
  - Re-affirmed belief in the use and the validity of the NID regime
    - Stanford University Study / Introduction by other countries
  - Regulatory stability (cf. tax pact)
    - Exception: (part of the) NID (basis) for financial institutions and insurance companies may be excluded as of assessment year 2016

Corporate income tax – *Secret Commission Tax*

- Where do we come from?
  - The 'secret commission tax' was originally intended to counter *under the table* payments
  - Throughout the years, the scope has been expanded and the rate has increased to 309%
    - Today, it can apply automatically merely because certain filing obligations are not fulfilled in a timely manner;
    - Independent of any indication of tax avoidance or tax fraud;
    - Sometimes used by certain tax inspectors to obtain an agreement from the taxpayer
  - Legal uncertainty for entrepreneurs
    - Nobody pays the 309% tax voluntarily

Corporate income tax – *Secret Commission Tax*

- What has the government changed?
  - The rate is decreased from 309% to 103% (payments to individuals) or 51,5% (payments to companies)
  - It is made clear – also for pending litigation – that the 103% (or 51,5%) is the indemnificatory part of the tax and that the excess may be characterised as a punitive part.
  - The secret commission tax is not applicable:
    - When the beneficiary of the payment is identified unequivocally within a period of 2,5 years as of January 1 of the assessment year; or,
    - When the payments are included in a valid tax return by the beneficiary, even if it is a foreign tax return

Corporate income tax – *Secret Commission Tax*

- What has the government changed (ct'd) ?
  - Because of the significantly reduced rates and OECD recommendations, it was necessary to abolish the *automatic* deductibility of the payment that is subject to the secret commission tax
    - E.g. non-deductible payment to other company of 100 EUR → secret commission tax = 51,5 EUR
      - If **disallowed** expense: tax burden of 34 EUR
      - If 'secret commission tax payment' would still be deductible: 51,5 EUR – (151,5 x 34%) = almost zero → more beneficial than disallowed expense
      - Hence, 100 EUR only deductible if general tax conditions are satisfied, 51,5 EUR secret commission tax remains deductible → net tax cost of about 68 EUR (34 EUR + 51,5 EUR – (51,5 x 34%))

Corporate income tax – *Fairness tax*

- Aim was to have a minimum level of taxation in case of dividend distribution when using tax loss carry-forward or NID
- Complex measure
  - Different issues in application
  - Unpredictable impact on tax situation
  - Request to tax authorities for an updated additional administrative circular and FAQ
- Annulment procedure (Constitutional Court)
  - Issues relating to EU law raised by EU Commission, including compliance with the EU Parent-Subsidiary Directive
  - Possibility of a reference to the EU Court of Justice

Corporate income tax – *Catch-All provision*

- Not yet in Programme Law – the below is for discussion purposes
- Aim: restore the original intention of the legislator
  - Opinion *Conseil d'état* (historical) has perhaps overly influenced the current provision
  - Example: port payments to pass the Panama Canal
- Replace by a kind of '*least* favoured nation clause'
  - If a Double Tax Treaty applies → apply the applicable Treaty provision
  - If no Double Tax Treaty applies → apply the least favourable Treaty provision that could apply under any of the existing treaties with Belgium

2. Selected Tax Topics

VAT

Value added tax

- Similar suggestions from international bodies
- EU Commission
  - VAT system is too costly because of reduced rates and exemption (too many deviations from standardized rate system)
  - Suggestion to reduce number of VAT exemptions and application of reduced rates
- IMF: pleads in favour of domestic harmonization towards standard VAT rate
- To be investigated further by the current government

Value added tax

- Planned amendments
  - Abolishment of VAT exemption for plastic surgery (as from 1 July 2015)
  - Reduced rate for renovation of dwellings: extension of age requirement from 5 years to 10 years (as from 1 January 2016)
  - VAT on electronic services, broadcasting and telecommunications: VAT in country of customer in B2C context (as from 1 January 2015)
- VAT for management companies
  - EU Commission decision under the ‘Pilot’ projects
  - Postponed until January 1, 2016

3. International Developments

Increased focus on tax avoidance

- International tax avoidance is to be countered on an international level
  - Belgium supports OECD and EU Commission initiatives (GAAR in Parent-Subsidiary Directive / GAAR in Interest-Royalty Directive / BEPS initiatives)
  - Belgium will promote the consistency, clarity and applicability of anti-avoidance measures

Transparency & Tax Rulings

- Distinction between transparency and harmonisation
- Transparency
  - Public: Belgium publishes the large majority of its rulings on a freely accessible website. Non-publication is warranted by professional secrecy rules of the tax authorities.
  - Internal: (final) tax rulings are added to the taxpayers' file
  - External (international):
    - Belgium shares its rulings with other Member States upon request
    - Belgium supports the initiative of Germany, Italy and France for an automatic exchange of rulings

EU Harmonisation

- EU tax harmonisation has already brought significant benefits for taxpayers and for the internal market
- Belgium remains open to further tax harmonisation (FTT, CCCTB, etc.)
- With respect for the equilibrium between harmonisation and remaining policy tools for Member States
  - Monetary policy tools have been completely harmonized;
  - Member States' bear an important responsibility for their budget within the Stability Pact framework
  - Initiatives to attract FDI's, increase employment and enlarge the domestic tax base are important tools to manage the budget
  - These should remain possible within the ambit of a loyal tax competition and EU state aid rules