Corporate tax reform - new rules

The new corporate tax reform has been published in the Belgian Official Gazette on 29 December 2017. The decrease of the corporate tax rate is one of the key elements of this reform, along with several other measures aiming at making Belgium more attractive for businesses and investors. At the same time, the tax reform also includes a series of so-called “compensating measures” in order to reduce the cost of the tax reform for the State Treasury.

This newsletter provides a brief overview of the most important new tax measures and modifications. The majority of the new tax rules enter into force on 1 January 2018, whilst some measures will apply on a later date.

POSITIVE CORPORATE TAX MEASURES

Gradual decrease of the corporate tax rate

As of 2018, the standard corporate tax rate is 29, 58 % (instead of the recently applicable rate of 33,99%). For SMEs (small and medium-sized enterprises) a reduced tax rate of 20,40 % is introduced on the first bracket of 100.000 EUR on taxable profits. The amount of taxable profits exceeding 100.000 EUR, will be subject to the standard corporate tax rate. As of 2020, the standard corporate tax rate will be reduced to 25%.

Increased dividend received deduction

The 95% dividend reduced deduction applying on dividends received from subsidiaries, is increased to 100% as of 2018.

Introduction of tax consolidation

As of 2019, a group tax consolidation will be introduced. This consolidation will however only operate through so-called “group contributions” and will not represent an overall consolidation of all profits and losses. Qualifying companies will be able to transfer group contributions to other qualifying group companies which can offset the profits resulting from these contributions against tax losses. The contributing entity should also make a payment to the receiving entity for an amount equal to the corporate tax saving. This amount is to be exempt by the receiving entity and constitutes a non deductible item for the paying entity.

Abolition separate tax on capital gains on shares

The separate 0,412% capital gains tax on qualifying shares, realised by large companies, is abolished as of 1 January 2018.

Increased investment deduction

SMEs, individual businesses and liberal professions who acquire new assets in 2018 and 2019, can benefit from an increased investment deduction of 20% instead of 8%.

Tax shelter for growth companies

The tax shelter for individuals investing in start-up companies is extended to so-called “growth companies”. A “growth company” is a small company with at least 10 full-time employees. To benefit from this new tax shelter, the turnover of the growth company needs to increase by at least 10% in the last two tax years prior to the investment, or the total amount of staff needs to increase by 10% (on average) during the tax year prior to the investment. The tax credit for growth companies is limited to 25% of the qualifying investment with a maximum of 100.000 EUR per tax year.

COMPENSATING CORPORATE TAX MEASURES

Minimum tax base

A minimum tax base will be imposed on companies with a taxable profit which exceeds 1.000.000 EUR by limiting certain tax deductions. The limitation applies to the tax losses carried forward, dividends received deduction carried forward, the innovation income deduction carried forward and the notional interest deduction (“NID”) carried forward (the latter rule applies to the “old” NID as well as to the new NID – see below).

The above tax deductions will as of 2018 only apply on 70% of the profits exceeding the one million threshold. The amount of deductions that cannot be used as a result of the aforementioned limitation can be carried forward to subsequent tax years. As a result of the new rule, 30% of the taxable profits in excess of 1.000.000 EUR will constitute a minimum taxable base subject to corporate tax, regardless of the amount of i.e. tax losses carried forward by the company.

Incremental notional interest deduction

As of 2018, the rate of the NID has been increased from 0,237% for large companies and 0,737% for SMEs, to 0,746% and 1,246% respectively. However, the NID will be calculated on the average incremental net equity over the last five years, and no longer on the total amount of the qualifying net equity of the preceding year. As a result, even if the NID-rate is slightly increased, the NID-calculation basis is substantially reduced.

Minimum salary requirement increased

To benefit from the reduced corporate income tax rate, SMEs must grant to at least one individual company director a minimum annual salary of 45.000 EUR (instead of the former minimum salary requirement of 36.000 EUR). For companies with a profit below 45.000 EUR, the minimum salary should at least be equal to the taxable result. To the extent that the minimum salary does not comply with the required threshold, a special tax will be imposed at the rate of 5,1 % during 2018 and 2019. This separate tax rate will be increased to 10% as of 2020. The special tax is tax deductible.

For affiliated companies having for the accomplishment of at least half of their directors’ mandates, the same single company director, the sum of the annual salary attributed to that individual by the respective entities should at least amount to 75.000 EUR. In case the separate tax is due, the group entity with the highest taxable base is the one liable for the payment of the tax assessment.

Pro rata allocation of capital reductions

As of 2018, capital reductions will be pro rata allocated to the paid-in capital (not liable to withholding taxes) and the taxed reserves as well as the exempted reserves incorporated into the capital (in principle subject to withholding taxes - unless a specific withholding tax exemption applies, for instance on certain parent-subsidiary dividends).

Additional conditions for the capital gains exemption on shares

In order to benefit from the corporate tax exemption applying on capital gains on shares, the parent company not only needs to hold the shares in full ownership during a non-interrupted period of at least one year, but also needs to comply with a minimum participation threshold of at least 10% in the share capital of the subsidiary, or the shares need to have an acquisition value of at least 2.500.000 EUR.

Would you like to receive more information on the above new tax measures, please do not hesitate to contact us. We will continue to update you as soon as additional information becomes available on these new tax measures or on any other part of relevant tax legislation.

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