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INTERNATIONAL DEVELOPMENTS

1. WHAT ARE RECENT TAX DEVELOPMENTS IN YOUR COUNTRY WHICH ARE RELEVANT FOR M&A DEALS AND PRIVATE EQUITY?

A major corporate income 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 aimed 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.

Following the corporate income tax reform, 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%.

2. WHAT IS THE GENERAL APPROACH OF YOUR JURISDICTION REGARDING THE IMPLEMENTATION OF OECD BEPS ACTIONS (ACTION PLANS 6 AND 15 SPECIFICALLY) AND, IF APPLICABLE, THE AMENDMENTS TO THE EU PARENT-SUBSIDIARY DIRECTIVE AND ANTI-TAX AVOIDANCE DIRECTIVES?

The Minister of Finance has announced – concerning the introduction into Belgian tax law of the BEPS Actions 6 and 15 – that any modifications of existing tax treaties or conclusion of new tax treaties will be subject to the inclusion of additional anti-abuse rules based on the BEPS guidelines.

Please note that the Belgian standard double tax treaty model already includes a subject-to-tax clause for the prevention of double taxation.

Belgium has implemented the anti-hybrid provision of Directive 2014/86/EU of 8 July 2014 in its internal tax law. Indeed, no "dividends received deduction" is allowed for dividends paid by a company to the extent that such income has been or can be deducted from the profits of the latter company.

Furthermore, a new general anti-abuse rule has also been introduced into Belgian tax law. The dividends received deduction or the withholding tax exemption will not be granted where there is a legal act or a series of legal acts which have been carried out purely for tax purposes and which are not motivated by any business reasons.

The recent corporate income tax reform provides for the implementation of the European Anti-Tax Avoidance Directives I and II. The CFC, exit taxation and hybrid mismatches measures will take effect in 2019 and the interest limitation deduction will enter into force in 2020.

GENERAL

3. WHAT ARE THE MAIN DIFFERENCES BETWEEN AN ACQUISITION OF SHARES AND AN ASSET DEAL IN YOUR COUNTRY?

A) Share deal

In the case of a stock acquisition, the acquiring company is not entitled to depreciate the assets of the target company, nor the acquired shares in the target company, which might lead him to prefer an asset deal instead.

In most cases, however, the seller will prefer to carry out the transaction by means of a sale of stock, as capital gains on shares are in principle 100% tax exempt, where certain conditions are met (see also question n° 20).

Individual sellers in principle also still benefit from an exemption from tax on the capital gain (when the capital gain is realised as a result of the 'normal management' of the seller's private portfolio and does not concern a substantial shareholding sold to a buyer established outside the European Economic Area).

As of 1 January 2017, new rules on contributed capital gains have been introduced, including a new definition of fiscal capital. As a result, if an individual taxpayer contributes shares into a company and if the capital gain realised upon such contribution is tax exempt, the acquiring company will only enjoy an increase of its fiscal capital in an amount equal to the acquisition value the shares had in the hands of the individual. The excess part of the contribution will be considered to be a taxable reserve.

B) Asset deal

In the case of an acquisition of business assets, the acquiring company is in principle authorised to depreciate the acquired assets and goodwill or clientele on the basis of the acquisition value. This means that the acquiring company will benefit from a fiscal step-up that reflects the difference between the sale price of the transfer of assets and liabilities and the fiscal value of these assets and liabilities prior to the sale. As a result, the acquiring company usually prefers an asset deal.

On the contrary, upon a sale of business assets, the seller will in principle be taxed on all capital gains realised. It should be noted that capital gains realised on business assets may however benefit from a deferred taxation regime (see also question n° 21).

BUY-SIDE

4. WHAT STRATEGIES ARE IN PLACE, IF ANY, TO STEP UP THE VALUE OF THE TANGIBLE AND INTANGIBLE ASSETS IN CASE OF SHARE DEALS?

A stock acquisition does not change the fiscal identity of the target company. As such, the company's assets and liabilities will not acquire a different tax status. The target company will continue to depreciate or evaluate its assets as it did before the acquisition.

Often, a taxable merger can be considered to unite the target company and the acquiring company into one single company. Such taxable merger leads to a taxation of the absorbed target company's assets, but it may be possible to use the existing carried forward losses in the target company to offset against the profits or capital gains realised by the target company upon the taxable merger, and at the same time realise a step-up on the assets transferred by the target company into the acquiring company.

5. WHAT ARE THE PARTICULAR RULES OF AMORTIZATION OF GOODWILL AND SIMILAR INTANGIBLE ASSETS IN YOUR COUNTRY?

A buyer who has acquired goodwill is entitled to a fiscal step-up. This is because the Belgian Income Tax Code allows the acquiring company to depreciate all acquired assets in accordance with their acquisition value, including the value attributable to goodwill. Additional costs incurred on the asset can be depreciated as well, either in the year in which these costs have been incurred, or on a pro rata basis. This is also in accordance with the depreciation method applied to the assets to which these additional costs relate.

To determine the depreciation methods, tax law in general refers to the principles of accountancy law. As a result, the depreciation period is in principle determined by the normal economic life expectancy of the assets concerned. However Belgian tax law specifically provides for a minimum depreciation period of five years for intangible fixed assets (such as goodwill and clientele). Often tax authorities attempt to impose a depreciation period of 10 to 12 years for depreciations on clientele. In practice, and to avoid any dispute with the tax authorities, taxpayers will need to demonstrate that their clientele is of a more 'dynamic' nature and that the depreciation period should therefore be shorter than 10 or 12 years.

6. WHAT ARE THE LIMITATIONS ON THE DEDUCTIBILITY OF INTEREST EXPENSE? ARE THERE SPECIAL INTEREST LIMITATIONS IN THE CASES OF ACQUISITION OF SHARES AND ASSETS?

As a general rule, taxpayers are allowed to 'deduct all costs incurred to acquire or to maintain taxable income'. This rule also applies to interest or financing costs incurred to acquire stock or assets. Therefore there is no difference in tax treatment between a share or an asset deal.

Belgian tax law however provides some general provisions that limit the tax deduction of financing costs. Interest is not tax deductible when the interest rate is not set in accordance with normal market conditions, taking into account the specific transaction risk and the financial position of the debtor. Also interest is not tax deductible when paid to a foreign taxpayer or to a foreign establishment that is not subject to income taxation in the foreign jurisdiction. This is also the case if it is subject to a much more favourable tax regime than the Belgian income tax regime unless the taxpayer can prove that the interest payments relate to true and sincere transactions and do not exceed normal market limits.

A special 'thin capitalisation' rule also applies for corporate taxpayers (who also remain subject to the above restriction rules) regarding interest payments made to beneficiaries not subject to income taxation or subject to a much more favourable tax regime than the Belgian tax regime or related companies. Such interest payments cannot be deducted by the corporate taxpayer if and insofar as the total loan amount exceeds five times the total sum of the taxed reserves at the beginning of the taxable period plus the amount of paid-in capital at the end of this period (this is the so-called 5:1 debt-equity ratio). Furthermore, the same debt-equity ratio of 5:1 also applies to loans granted by related parties.

Furthermore, a debt-equity ratio of 1:1 applies if the lender is a non-European based company acting as a member of the board of directors, a liquidator, or a person exercising similar functions in the Belgian company. Belgian tax law states that interest payments on loans which are granted by a member of the board of directors, the liquidator, or a person exercising similar functions in the company will, for tax purposes, be re-characterised as "dividends" to the extent that the interest payments exceed a certain threshold. The threshold is exceeded when the interest rate is higher than the market interest rate, or, when the amount of the loan is higher than the sum of the taxed reserves at the beginning of the taxable period and the paid up capital at the end of the taxable period. In such case, the amount of interest exceeding the thresholds will be considered a dividend and will not be deductible from the taxable income of the Belgian company.

7. WHAT ARE COMMON STRATEGIES TO PUSH-DOWN DEBT ON ACQUISITIONS?

Performing a debt push-down in general is often considered to be a fiscal 'necessity' due to the absence of a fiscal unity for Belgian income tax purposes. Such debt push-down is achieved by consolidating the financial costs of the acquiring company with the profits of the target company, often by means of a national or cross-border merger. However, in order to perform a tax neutral merger, the merger needs to pass a business test and cannot be solely inspired by tax motives (which in many cases are the only real motives for the merger). The latter condition may jeopardise the potential to perform the merger in a tax neutral manner.

However, a merger between the buyer's (intermediary holding) company and the target company may offer a solution that can result in an effective debt push-down. This is because the merger will result in the profits and costs of both companies remaining taxable and deductible within the one single taxable entity, i.e. the company resulting from the merger operation.

Other debt push-down strategies may be to charge management fees to the target company or perform a debt push-down by putting in place intra-group loans. A dividend distribution or capital decrease may also be considered as an alternative. Please note that such alternative strategies will need to comply with economical substance rules and transfer pricing regulations.

Please note that as part of the recent corporate income tax reform, a tax consolidation regime will be introduced as of 1 January 2019.

8. ARE THERE ANY TAX INCENTIVES FOR EQUITY FINANCING?

The most applied tax incentive is the notional interest deduction. By applying the notional interest deduction, Belgium aims for equal treatment between finance raised through venture capital and finance raised through debt funding. Due to several modifications of the notional interest deduction, the regime has become less attractive. In this respect, the method of calculating the notional interest deduction has recently been changed. As from 1 January 2018, the notional interest deduction is calculated based on the incremental equity (over a period of 5 years) (instead of on the total amount of the company's qualifying equity), meaning that only the average increase of the qualifying equity will qualify for the application of the notional interest deduction. On this amount a specific percentage is applied; for tax year 2019 this percentage equals 0.746% (1.246 for SMEs).

9. ARE LOSSES OF A TARGET COMPANY AVAILABLE AFTER AN ACQUISITION IS MADE? ARE THERE ANY RESTRICTIONS ON THE USE OF SUCH LOSSES?

Following an acquisition, tax losses carried forward are in principle lost due to the change of control of the company. That is unless the company can show that the acquisition was performed in accordance with 'legitimate financial or economic needs'.

Many disputes and court cases have resulted from the fact that the events or circumstances that represent a 'legitimate financial or economic need' are not specified in the text of the law. Recent jurisprudence has confirmed that a takeover designed to prolong the existence of the company (even in cases where new activities are carried out by the company after the change of control) can constitute such legitimate financial or economical motive. In order to obtain certainty on the possibility to maintain the available tax losses, the parties can request an advance tax ruling.

10. ARE THERE ANY ITEMS THAT SHOULD BE INCLUDED IN THE SCOPE OF A TAX DUE DILIGENCE THAT ARE VERY SPECIFIC TO YOUR COUNTRY?

The tax authorities have been showing an increased interest in transfer pricing topics during tax inspections. Also, with effect from the 2017 tax year, transfer pricing documentation obligations have been introduced in Belgium. The Belgian rules are based on international transfer pricing documentation guidelines and more specifically on Action 13 of the OECD's BEPS action plan. The rules comply to a large extent with the three-tier transfer pricing documentation requirements imposed on multinational enterprises by the OECD guidelines: master file, local file and country-by-country reporting.

11. IS THERE ANY INDIRECT TAX ON TRANSFER OF SHARES (STAMP DUTY, TRANSFER TAX, ETC.)?

Transfer taxes are due when immovable property (houses, land, industrial facilities, etc.) is involved. The registration duties amount to 10% when the property is located in the Flemish region. In this respect, please note that as of 1 June 2018 (expected date) the registration duties will amount to 7% when the property is located in the Flemish region, it is a first house and the buyer will live in it within 2 years. An additional discount will apply for modest houses. Where the conditions to benefit from the 7% rate are not fulfilled, the 10% rate will apply. The registration duties amount to 12.5% when the property is located in the Brussels or the Walloon region.

However, 'new' buildings can be transferred under the VAT regime instead of incurring registration duties, in which case the sale is subject to VAT at 21%. When the acquiring company is entitled to deduct VAT, such a 'VAT-sale' may be more advantageous. Indeed, when the acquiring company is entitled to deduct input VAT and uses the acquired immovable property for activities subject to VAT, the paid input VAT can be recovered by reclaiming it in the VAT return relating to the period in which the transfer took place.

In principle, the transfer of all other – movable – assets will be subject to VAT. However, an exemption applies when the assets form a 'universality of goods' or 'branch of activities'.

Share deals are in principle not subject to any transfer tax, except for the 'stock exchange tax' (various rates apply, depending on the nature of the security concerned). However various exemptions apply.

12. ARE THERE ANY RESTRICTIONS ON THE CORPORATE TAX DEDUCTIBILITY OF ACQUISITION COSTS?

Acquisition costs are, as any other cost, deductible provided the taxpayer can establish that said expenses or costs were incurred during the taxable period in order to acquire or at least preserve taxable income. Also, the reality and the amount of the expense needs to be justified as being "reasonable" (the taxpayer may deliver this proof by all means of law). An expense will however not qualify as tax deductible if the sole purpose of the expense is transferring taxable profits from one company to another.

13. CAN VAT (IF APPLICABLE) BE RECOVERED ON ACQUISITION COSTS?

For asset deals, the normal VAT deductions apply. When the acquiring company is entitled to deduct input VAT and uses the acquired assets and services for activities subject to VAT, the paid input VAT can be recovered by reclaiming it in the VAT return relating to the period in which the transfer took place.

For share deals, the answer is less certain. In general, however, if the acquisition costs are part of the company's general business costs and are as such incorporated in the general turnover rendered by that company to third parties or other group companies, the input VAT on these costs will be deductible (depending on the company's overall right to deduct input VAT). If these costs however relate to an isolated purchase and sale of shares or participation, the input VAT incurred on these costs may not be deductible since it will be considered as a financial transaction for which no input VAT recovery is granted.

Recent jurisprudence has confirmed the right to deduct VAT on costs related to the acquisition of shares when it could be established that there is a direct link between the acquisition and the taxpayer's economic activities.

14. ARE THERE ANY PARTICULAR TAX ISSUES TO CONSIDER IN THE ACQUISITION OF A DOMESTIC COMPANY BY A FOREIGN COMPANY?

When a foreign company acquires a Belgian company, the main tax consequences thereof will of course need to be verified in its own country of residence.

However, from a Belgian perspective there are a few elements to take into account, such as the aforementioned debt-equity ratios and loss limitation rule.

In addition, it will in any event be important to make sure that the Belgian company has sufficient substance following the take-over so that arguments cannot be raised to the effect that the company is no longer Belgian resident. In that respect, we usually recommend that all shareholder's and board meetings are physically held in Belgium and that all important decisions are taken from the Belgian offices.

The acquiring company itself should in principle not be afraid of becoming subject to Belgian taxation, unless of course a Belgian permanent establishment would be created upon or following the acquisition.

15. CAN THE GROUP REORGANISE AFTER THE ACQUISITION IN A TAX NEUTRAL MANNER THROUGH MERGERS OR A TAX GROUPING?

A common post-acquisition restructuring is the merger of the acquiring company and the Belgian target company, certainly when a Belgian intermediary holding company (SPV) has been used by a foreign buyer to acquire the Belgian target company.

A tax neutral merger between two companies is possible if certain conditions are fulfilled:

- The acquiring company must be a Belgian or a European resident company
- The merger is carried out in accordance with the Belgian Code of Companies or similar corporate rules applying to the acquiring company
- Tax fraud or tax evasion cannot be the main reason or one of the main reasons for the merger. It is therefore necessary to establish that business motives (other than tax motives), such as restructuring, simplification of the group structure or rationalisation of activities have motivated the merger operation

The burden of proof in principle lies with the tax authorities: the tax authorities have to prove that tax fraud or evasion is the main objective or one of the main objectives in order to deny the tax neutral character of the merger. However, tax fraud or evasion is deemed to exist if the tax authorities can prove the absence of business motives. The taxpayer may refute this presumption by giving considerations, other than tax-inspired ones.

If the acquiring company is a non-Belgian company resident in another EU Member State, the tax exemption only applies to assets that remain allocated to a 'Belgian establishment' that the foreign company avails of after the merger operation.

Various other alternative reorganisations may be considered (such as the transfer of activities), but many of these alternatives are often complicated to implement from a commercial point of view. Please note that these alternatives also need to comply with economical substance rules and transfer pricing regulations.

16. ARE THERE ANY PARTICULAR ISSUES TO CONSIDER IN THE CASE OF A TARGET COMPANY THAT HAS SIGNIFICANT REAL ESTATE ASSETS?

When real estate is included in the transaction a transfer of shares may be a more tax-advantageous way to proceed since a transfer of real estate is subject to registration duties (the rate depends on the location of the real estate in Belgium) or VAT where a new building is concerned (21%). A transfer of shares in general can be effectuated without any transfer tax being due (also see question n° 11).

17. IS FISCAL UNITY/TAX GROUPING ALLOWED IN YOUR JURISDICTION AND IF SO, WHAT BENEFITS DOES IT GRANT?

For direct income tax purposes, Belgium tax law does not yet provide the possibility of creating a fiscal unity. Please note that as part of the recent corporate income tax reform, a tax consolidation regime will be introduced as of 1 January 2019. 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.

For VAT purposes, it is possible to enter into a VAT unity. The latter is often elected in order to avoid or reduce intra-group invoicing or to optimize the deduction of VAT paid on costs or investments.

18. DOES YOUR COUNTRY HAVE ANY SPECIAL TAX STATUS SUCH AS A PATENT BOX FOR COMPANIES THAT HOLD INTANGIBLE ASSETS?

On 2 February 2017, the Chamber of Representatives approved the Innovation Deduction ("ID") bill proposed by the Belgian Government.

The new ID regime allows an 85% corporate income tax deduction of the net income resulting from innovation investments.

More specifically, the new ID regime applies retroactively and as of July 2016 on, amongst other items, patent income and on supplementary protection certificates.

The new ID regime applies on the obtained or received net income. The net income needs to be calculated for each separate tax year and for each intellectual property right.

The ID regime only applies on intellectual property rights which are the result of R&D efforts and investments that the corporate taxpayers committed to, either by themselves, or by engaging non-related companies or third parties (such as universities or independent research centers). In order to quantify this tax deduction limitation, the law provides for a corrective fraction or "Nexus ratio" to be calculated on the qualifying net income.

The ID amounts which cannot be deducted from the corporate taxable income of a specific tax year can be transferred to subsequent tax years

19. DOES YOUR COUNTRY IMPOSE ADVERSE TAX CONSEQUENCES IF OWNERSHIP OF INTANGIBLES IS TRANSFERRED OUT OF THE COUNTRY?

The general anti-abuse rule should be kept in mind. This rule makes a (series of) legal acts not opposable to the tax authorities when the tax authorities can prove, based on objective circumstances, that tax abuse exists. Tax abuse is present in cases where taxpayers carry out a transaction that allows the taxpayer to avoid tax or claim a benefit that is contrary to the purpose/legislative intent of the provision of the law. The taxpayer can demonstrate that his choice is mainly motivated by non-tax reasons.

Furthermore, the general transfer pricing rules should be respected, i.e. the price and conditions of the transfer should be at arm's length.

SELL-SIDE

20. HOW ARE CAPITAL GAINS TAXED IN YOUR COUNTRY? WHAT, IF ANY, GAINS ARISING IN AN M&A CONTEXT ARE ELIGIBLE FOR SPECIAL TREATMENT?

Capital gains realised by a corporate taxpayer are in principle deemed profit and are therefore taxable at the normal corporate income tax rate of 29.58%. However, capital gains on shares are in principle tax exempt.

Capital gains on shares are (as a general rule) fully exempt if the following conditions are met:

- The shares must have been issued by companies subject to a normal tax regime (the taxation condition)
- The shares must have been held in full ownership during an uninterrupted period of one year (the holding condition)
- The parent company should 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 (the minimum participation condition)

The current tax regime of capital gains realised by corporate taxpayers can be summarised as follows:

- Full exemption of capital gains on shares if the taxation condition, the holding condition and the minimum participation condition are met
- Taxation at 25.50% of capital gains on shares when only the taxation and the minimum participation condition are met, but not the holding condition - the rate of 25.50% does not apply if and to the extent that the capital gains are eligible for taxation at the reduced rate of 20.40% for SMEs (as defined in the Belgian Company Code)

- Taxation at the standard corporate income tax rate of 29.58% of capital gains on shares when the taxation condition and/or the minimum participation condition are not met (regardless of the holding condition) – for SMEs, the 20.40% rate may also apply

Capital gains on shares realised by individuals are fully tax exempt, unless they qualify as professional or diverse income.

Therefore capital gains on shares realised in the course of a professional activity are taxable as ordinary professional income at the normal (progressive) tax rates.

Capital gains realised within the normal management of the person's private estate are in principle fully exempt. That is, unless the shares represent a 'substantial shareholding' of more than 25% of the share capital of a Belgian company and they are transferred to an acquirer outside the European Economic Area. The latter gains are taxed at 16.5%.

Capital gains falling outside the scope of 'normal management' are taxed as speculative income at a separate rate of 33%.

21. IS THERE ANY FISCAL ADVANTAGE IF THE PROCEEDS FROM THE SALE OF SHARES OR ASSETS ARE REINVESTED?

For capital gains realised on shares, Belgian tax law does not provide for any specific method to defer or avoid taxation – if applicable.

By contrast, when a capital gain is realised on business assets, Belgian tax law does provide for a deferred taxation regime whereby the capital gain is not taxed immediately, but on a future pro rata basis. When the capital gain is realised on tangible or intangible fixed assets included in the vendor's balance sheet for more than five years, the capital gain will be taxed on a deferred basis following the depreciation of the reinvestment assets. However this is provided that the purchase price of the assets is fully reinvested in depreciable fixed assets used within a Member State of the European Economic Area for the carrying out of the vendor's business activity. Please note that this reinvestment needs to be carried out within a certain period of time (in principle within three years, but extended to five years for reinvestments in buildings, vessels or airplanes).

22. ARE THERE ANY LOCAL SUBSTANCE REQUIREMENTS FOR HOLDING COMPANIES?

In order to qualify as a Belgian tax resident company, a company will need to comply with the substance requirements of Belgian tax law: the company must have its registered seat, principal establishment or seat of management or administration in Belgium. As a result, when you wish to set up a Belgian tax resident company, it will be important not only to incorporate the company in accordance with Belgian company law provisions and have the seat of the company registered in Belgium, but also to make sure that the company is effectively managed in Belgium (e.g. board of directors' meeting is held in Belgium physically, all management decisions are effectively decided upon out of the Belgian office…). In an international context, also the tax residency rules included in the Double Tax Treaties to which Belgium is a party, will also come into play. These Double Tax Treaties mainly provide the 'place of effective management' as the main criterion to determine a company's tax residency.

23. ARE THERE ANY SPECIAL TAX CONSIDERATIONS REGARDING MERGERS/SPIN-OFFS?

As previously mentioned, a merger can be performed in a tax neutral manner when the following conditions are met:

- The absorbing company is a Belgian resident or "intra-European" company
- The transaction is performed in accordance with Belgian company law provisions or –if applicable– the corresponding provisions applicable to the absorbing intra-European company

- The transaction does not have tax fraud or tax evasion as (one of) its main objective(s) (this is the so-called anti-abuse provision of article 183bis ITC)
- The transaction must be performed solely for newly issued shares

The business purpose test is the most important. As a result of this, tax motives may not be the main purpose of the merger, but valid business purposes need to be demonstrated.

Please note that it is possible to ask for a ruling decision with regards to the fulfillment of the business purpose test.

MANAGEMENT INCENTIVES

24. WHAT ARE THE TAX CONSIDERATIONS IN YOUR JURISDICTION FOR MANAGEMENT INCENTIVES IN CONNECTION WITH SELLING OR BUYING A COMPANY?

Special and favourable rules on stock options and share option schemes are included in Belgian law (Law of 26 March 1999). As a result, the options concerned will become taxable at the moment they are granted to and accepted by the beneficiary, even if the options cannot be realised or vested at such moment.

Article 42 of the Law of 26 March 1999 provides for a legal assumption that the options are deemed to be granted 60 days after the moment the options were offered to the beneficiary, provided the beneficiary formally accepts the offer within a period of 60 days (even if the offer is subject to the fulfillment of certain conditions). Where the beneficiary did not communicate his acceptance of the offer within the 60-days period, the offer is deemed to be declined for tax purposes and the favorable tax regime will not apply.

Article 43 of the law of 26 March 1999 provides for specific valuation principles. For instance, *options that are traded on the stock exchange are valued* at the last closing price of the option prior to the day of the offer. For all other options, the taxable amount equals a lump sum percentage of the underlying shares:

- The fixed percentage referred to above amounts to 18%
- The percentage may however even be reduced by half if certain conditions are met

In this respect, please also note that the Belgian tax authorities have recently clarified the tax regime applicable to share options which are granted to the director of a management company by a company to which the management company renders services.

At the end of 2016, the Minister of Finance created some doubt on this issue by questioning whether the favorable tax regime on share options could be applied in cases where the manager personally did not render the services, but instead supplied the services through a management company. In the latter case, it has not complied with the legal condition that the options must refer to the "shares of the company to which the professional activity is performed". Indeed, it is not the beneficiary / director who supplies services to the company granting the share options, but instead the management company.

The Circular Letter clarifies the administrative position in this respect, and confirms that the favorable tax regime also applies in cases where the share options are directly granted to the director of the management company. In such a case, the fiscal value of the advantage in kind which is granted to the director of the management company is deemed to be equal to 18% of the value of the underlying shares and to that extent constitutes a taxable income to the director.

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