

26 August 2016

The proposal for a corporate income tax reform in Belgium.

The Belgian Federal Finance Minister is finalising a proposal for a major reform of the **corporate income tax ("CIT") system** which he will submit to the Government in the course of September 2016.

The proposal is not yet finalised but the Finance Minister has indicated in the press that it would provide for a major reduction in the CIT rate to 20% (by 2019) coupled with a simplification of the CIT system. The reform is intended to be budgetary neutral through a broadening of the CIT base, an increase of the dividend withholding tax and other measures.

This alert provides you with an overview of the measures contained in the proposal as it currently stands and as far as they are relevant to large companies. Discussions within the Government are likely to lead to modifications of the proposed reform, if it is adopted.

1 Reduction in the CIT rate to 20%

The ordinary CIT rate of 33.99% would be reduced to 28% in financial year ("FY") 2017, 24% in FY 2018 and 20% in FY 2019.

The 3% crisis surcharge would be abolished.

This rate reduction may trigger a revision of specific tax rates. For instance, as of 2018, short-term capital gains would no longer be subject to 25.75% but subject instead to the ordinary tax rate. Additionally, the exit tax rate upon conversion of a company into a real estate investment vehicles (SIR/FIIS) may be reduced from 16.5% to 15%.

2 Further tax measures that will render Belgium more attractive

The plan foresees important measures that would simplify the CIT system and render Belgium more attractive, such as:

- > the abolition of the 0.412% tax on capital gains on shares;
- > a 100% dividend received deduction (instead of the actual rate of 95%); and
- > a favourable CIT rate to convert tax-free reserves into tax reserves (20% for FY 2017-2018 and 15% as of FY 2019).

The Finance Minister expects the European Court of Justice to rule that the “fairness tax” is incompatible with EU law and will be abolished.

A new BEPS-compliant **innovation income deduction regime** will be introduced by the end of this year.

3 Compensatory measures to achieve budget neutrality

In order to achieve budget neutrality, various measures are being proposed. The measures that are relevant to large companies would include:

- > **the abolition of the notional interest deduction (as of FY 2017):** the possibility to deduct excess notional interest deduction incurred up to FY 2011 would not be affected;
- > **the phasing-out of the investment deduction regime:** the use of carried-forward investment deductions would remain unaffected. The R&D tax credit would be maintained;
- > **the limitation of the use of carried-forward tax losses (as of FY 2017):** the deduction of carried-forward tax losses (above €1,000,000) would be limited on an annual basis to 60% of taxable income. Unused tax losses would be carried forward without time limitation;

As an example, if a company has a taxable income of €2,000,000 and the same amount of carried-forward tax losses, it will pay corporate tax on €400,000, and carry forward €400,000 of unused tax losses to the following years;

- > **the limitation of the use of excess dividend received deductions (as of FY 2017):** limitation to deduct excess dividend received deductions in a given year to €1,000,000 (on an annual basis). In our opinion, it is uncertain whether such limitation would be compliant with the EU Parent Subsidiary Directive;
- > **the limitation of the deductibility of interest (as of FY 2018):** tax deductibility of interest would be limited to 30% of the EBITDA in accordance with the EU Anti-Tax Abuse Directive (“ATAD”). There would be a grandfathering for loans contracted before 31 December 2017;

At this stage, it is unclear whether Belgium will make use of the possibility under ATAD to provide for some derogations to the interest limitation (e.g. no limitation for the first €3,000,000 of interest);

- > **the progressive increase of the withholding tax on dividends (from 27% to 28% in FY 2017, 29% in FY 2018 and 30% in FY 2019);**
- > **the abolition of the “excess profit rulings” regime;**
- > **the abolition of the declining-balance depreciation method (as of 2017);**

- > **the abolition of certain tax deductions:** such as the tax deductibility of (i) social benefits, business gifts, advertising items, reception costs and restaurant expenses if the total exceeds 5% of the annual turnover (ii) gifts to social, cultural or scientific organisations and (iii) payments made with “the sole purpose of obtaining a fiscal advantage” (other than the costs of tax compliance). The exact scope of this provision remains unclear; and
- > **amendments to certain disallowed expenses and costs proper to the employer.**

In the draft plan, it is indicated that the introduction in the hands of private shareholders of a capital gain on substantial shareholdings may be envisaged as the CIT rate reduction will lead to an increase in share value.

This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the editors.

© Linklaters LLP. All Rights reserved 2016

Linklaters LLP is a limited liability partnership registered in England and Wales with registered number OC326345. It is a law firm authorised and regulated by the Solicitors Regulation Authority. The term partner in relation to Linklaters LLP is used to refer to a member of the LLP or an independent consultant or, outside of Belgium, an employee of Linklaters LLP or any of its affiliated firms or entities with equivalent standing and qualifications. A list of the names of the members of Linklaters LLP and of the non-members who are designated as partners and their professional qualifications is open to inspection at its registered office, One Silk Street, London EC2Y 8HQ, England, or on www.linklaters.com.

Please refer to www.linklaters.com/regulation for important information on Linklaters LLP's regulatory position.

We currently hold your contact details, which we use to send you newsletters such as this and for other marketing and business communications.

We use your contact details for our own internal purposes only. This information is available to our offices worldwide and to those of our associated firms.

If any of your details are incorrect or have recently changed, or if you no longer wish to receive this newsletter or other marketing communications, please let us know by emailing us at marketing.database@linklaters.com.

Contacts

For further information please contact:

Henk Vanhulle

Partner, Brussels
+32 2 501 91 58

henk.vanhulle@linklaters.com

Nicolas Lippens

Partner, Brussels
+32 2 501 90 94

nicolas.lippens@linklaters.com

Linklaters LLP
Rue Brederode 13
B - 1000 Brussels

Telephone (+32) 2 501 94 11
Facsimile (+32) 2 501 94 94

Linklaters.com