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More details on minimum company tax (“fairness tax”)

Additional details on the fairness tax have surfaced and are outlined below. The following information may be subject to changes.

Taxable base

The fairness tax would apply if, for the same taxable period, (i) a company distributes dividends and (ii) the taxable base after the so-called "first operation" is reduced with previous year tax losses and current year NID.

Apparently, liquidation dividends would not be caught by the fairness tax.

The fairness tax would have to be calculated as follows:

1. The amount of distributed dividends is reduced by the final taxable base; this amount is the basis for the second step in the calculation;

2. The amount of distributed dividends originating from previously taxed reserves is deducted from the amount resulting from the first step; to avoid "manipulations", only taxed profits reserved until tax year 2014 will be out of the fairness tax’s scope. Moreover, to identify the origin of reserves distributed, the LIFO (last in, first out)-method is used;

3. The amount resulting from step 2 is limited according to a percentage expressing the proportion between, on the one hand the taxable base increased with the previous year tax losses and current year NID that have been effectively used and, on the other, the taxable result after the "first operation";

4. The fairness tax is calculated on the balance remaining after applying the formula discussed in the third step.

Tax rate

The 5% tax would have to be increased with the crisis contribution, leading to an effective tax rate of 5.15%.

Tentative example

The following is a tentative example to clarify how the four step rule would work (tax year 2014):

A company has 200 previously taxed reserves and a current year taxable base after the "first operation" of 1,000 from which it deducts 1,000 current year NID, resulting in a zero taxable base. It distributes a dividend of 1,200

Previously taxed reserves	= 200
Taxable result after “first operation”	= 1,000
Current year NID	= 1,000
Taxable base	= 0
Distributed dividend	= 1,200

Four-step calculation

1. Gross dividend distribution – taxable base
   1,200 – 0 = 1,200

2. Result of 1 – dividend distribution originating from previously taxed reserves
   1,200 – 200 = 1,000

3. Result of 2 x (taxable base + used TLCF and used CY NID) / taxable result after “first operation”
   1,000 x (0 + 0 + 1,000) / 1,000 = 1,000

4. Result of 3 x 5.15% = fairness tax
   1,000 x 5.15% = 51.5

Disallowed expense

The tax would not be tax deductible.

Non-resident companies

According to the latest rumours, the rule would also apply to non-resident companies. The amount of profit brought back to the head office would probably be assimilated to a dividend.

Entry into force

The fairness tax would be due as of tax year 2014.

Compliance with European law

One of the main debates is whether the new tax complies with European law, specifically whether the fairness tax qualifies as a prohibited withholding tax under the EU Parent-Subsidiary Directive. Reference is made in this respect to the EU Court of Justice jurisprudence in the cases Athinaiki (2001, C-294/99) and Burda (2008, C-284/06).

It would be considered by the Government to notify the European Commission of this measure.

SME's

The fairness tax would not apply to SME's as defined by Art. 15 of the Companies Code (i.e. SME status to be determined on a consolidated basis).

Contact

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