



## Corporate tax alert Belgium

### Draft corporate tax reform repair law filed with Parliament

You will recall that a major reform of Belgium's corporate tax regime was enacted by the law of 25 December 2017. This reform becomes effective in three phases (tax years [2019](#), [2020](#) and [2021](#), starting on or after 1 January 2018, 2019 and 2020 respectively).

On Thursday 14 June 2018, a draft repair law, filed on 11 June 2018 with the House of Representatives, became available on the House's website ([Dutch](#) | [French](#)). Below is a brief summary of the main repair measures, grouped per phase.

#### Phase 1 (tax year 2019 starting on or after 1 January 2018)

- **Anti-incorporation tax:** the draft repair law clarifies that the minimum remuneration (EUR 45,000 in principle) needs to be paid to a company manager / physical person; the current text may erroneously give the impression that the tax would not be due if a company only has company managers / legal entities
- **Fairness tax:** the explanatory memorandum to the draft law confirms the Constitutional Court's decision to abolish the fairness tax as of tax year 2019 (except with violations of the EU Parent-Subsidiary Directive where the abolition is retroactive)

- **NID:** the NID equity will be determined at the beginning of the year rather than at year-end, and a new “double dip” exclusion will be added to the list of elements to be excluded from the NID equity. This exclusion concerns capital that has been directly or indirectly funded by the contributing company with a loan for which interest expenses are deducted

## Phase 2 (tax year 2020 starting on or after 1 January 2019)

- **Group contribution regime:** certain technical modifications are made to the group contribution regime, including the calculation of the 5-year “direct affiliation” requirement, which should now be calculated as of 1 January of the 4th calendar year before the calendar year linked to the tax year. For example, if the regime is to be applied for tax year 2020, a direct affiliation must have existed since 1 January 2016). There are also new rules governing the calculation of this 5-year period in case one of the entities was involved in a restructuring
- **CFC rule:** the CFC rule, currently only applicable to subsidiaries, is expanded to also include permanent establishments (PEs). Profits from a PE qualifying as CFC will be added to the Belgian taxable result (instead of being exempted). In addition, double taxation will not only be avoided for income that has already been taxed as CFC income in Belgium and is subsequently received by the Belgian shareholder as dividend income; it will also apply to capital gains. Finally, a new reporting obligation is introduced for taxpayers reporting CFC income

## Phase 3 (tax year 2021 starting on or after 1 January 2020)

- **Anti-incorporation tax:** the initially foreseen increase of this tax from 5% to 10% will be abolished. The tax will remain at 5% for tax year 2021 onwards
- **EBITDA interest limitation rule:** next to the correction of a few technical flaws, an important content change is made regarding the intra-group transfer of interest. While the law initially authorised the transfer of excess interest deductions, the repair law now authorises the transfer of interest deduction capacity by a company that does not make full use of this capacity. Furthermore, two groups of companies are added to the list of companies excluded from the EBITDA rule, i.e. companies financing real estate through real estate certificates as well as certain finance lease and factoring companies
- **Super deductions:** the 120% deductions for security and bike costs will be abolished

Through the above outlined measures, the newly submitted draft aims to fine-tune the 2017 corporate tax reform.

## Contacts

If you have any questions concerning the items in this alert, please contact your usual tax consultant at our Deloitte office in Belgium.

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