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Corporate tax alert
Belgium

New law containing tax provisions deposited

On 27 September 2016, the Government deposited the draft law implementing the amended Parent-Subsidiary Directive and the option to defer exit tax payment.

Implementation of changes to EU Parent-Subsidiary Directive

The EU Parent-Subsidiary Directive was amended in 2014 and 2015 to include (1) an anti-hybrid rule (countering the exemption in the Member State of the parent company of the return on certain "hybrid instruments") and (2) a general anti-avoidance rule (GAAR), respectively. The Member States were in principle required to implement these changes 31 December 2015 at the latest.

Draft legislation implementing these provisions has eventually been deposited last week with Parliament and can in essence be summarised as follows.

Firstly, in order to implement the anti-hybrid rule, the subject-to-tax conditions of the dividends received deduction (DRD) regime will be expanded to include a provision stipulating that DRD would not be available for dividends distributed by a company insofar as that company can deduct or has deducted the income from its profits.

Secondly, in order to implement the GAAR, both (1) the subject-to-tax conditions of the DRD regime and (2) the provisions related to withholding taxes (WHT) will be amended. This blocks the application of DRD or a WHT exemption for dividends that are, in essence, related to a legal act or a series thereof for which the tax authorities deem that:

- It is artificial, i.e. not set up for valid business reasons reflecting economic reality; and
- It is set up with one of the main purposes being to obtain the DRD or the WHT exemption, or obtain one of the benefits of the EU Parent-Subsidiary Directive in another EU Member State.

The draft legislation provides for a retroactive entry-into-force of these rules. The new DRD rules apply to dividends distributed or attributed from 1 January 2016, unless the financial year of distribution or attribution has been closed before the first date of the month following the publication of the new law. The new WHT GAAR applies to dividends paid or attributed from the first day of the month following the new law’s publication.

Deferral regime for payment of exit tax

In a formal notice letter of September 2014, the European Commission requested Belgium to bring its “exit tax” legislation (on the basis of which companies transferring their seat or assets from Belgium to another Member State are subjected to an immediate taxation) in line with the freedom of establishment.

The draft legislation (which does not create any additional taxable events in which “exit tax” would be due) is the Belgian government’s response to this notice. Its main features are as follows:

- The general rule remains that an immediate and final exit tax will be levied in case of outbound reorganisations or transfers of seat, in case assets are not maintained in a Belgian permanent establishment (PE);
- Through an exception, taxpayers would be given the option to pay the exit tax either immediately or in equal instalments over a period of 5 years. However, the option to defer the payment of exit tax is only available with (1) certain listed outbound reorganisations or transfers of seat (2) to an EU member state or an EEA member state with which an agreement on mutual assistance in the recovery of taxes has been concluded (currently, only Norway and Iceland);
- If a taxpayer opts for the deferral, the draft legislation also specifies, among others, the calculation of the exit tax due, whether a guarantee must be provided, and the circumstances in which the deferral regime expires.

According to the draft legislation, the above regime would apply from tax year 2017 to transactions occurring from the law’s publication date.

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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