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Real Estate tax alert
Belgium

Draft Repair Law amending the Corporate Tax Reform Law – Relevance for the Belgian Real Estate Industry?

During the parliamentary discussions of the Corporate Tax Reform Law of 25 December 2017 ("Corporate Tax Reform Law"), the Minister of Finance announced that a new legislative act would be drafted in order to supplement and adjust the corporate tax reform. On 11 June 2018, the federal government submitted a draft Law on Various Income Tax Provisions (the "Repair Law") at the Chamber of Representatives (Dutch | French). The government is aiming for a parliamentary vote on the final Law before the summer break.

Several of the measures included in the Repair Law are particularly relevant for the Belgian Real Estate sector. This newsletter will highlight some of the most relevant measures. The below should be read with sufficient prudence as some measures may still change during the parliamentary approval process.

Most relevant measures of the Repair Law

Exit tax

The Corporate Tax Reform Law lowered the exit tax rate from 16.995% to 12.75% as from tax year 2019 (taxable periods starting on or after 1 January 2018). In practice, certain corporate restructurings that occurred after 1 January 2018 could not benefit from the lower exit tax rate because they relate to tax year 2018.

The Repair Law amends the entry into force of the new exit tax rate and states that this lower rate is applicable as of 1 January 2018 (without any reference to a tax year). Hence, all transactions that occur after 1 January 2018 are subject to the lowered exit tax rate.

The Corporate Tax Reform Law foresees that the exit tax rate would increase to 15% as from tax year 2021 (taxable periods starting on or after 1 January 2020). The entry into force of this rate increase is accordingly adjusted. Transactions that will occur as of 1 January 2020 are subject to this higher exit tax rate.

30% EBITDA rule

The Corporate Tax Reform Law enacted a new 30% EBITDA interest limitation, based on the EU Anti-Tax Avoidance Directive (ATAD). According to this rule, the 'exceeding borrowing costs' (i.e. net financings costs) are deductible up to the higher of maximum 30% of the EBITDA or EUR 3,000,000. This '30% EBITDA rule' will take effect as of 1 January 2020 (tax year 2021).

The Repair Law introduces a number of amendments to this rule, such as a new exception for companies whose sole or predominant activity is financing real property by issuing real estate certificates. Such companies will thus not be subject to the new interest limitation.

Furthermore, the Repair Law provides that Belgian REITs are *de facto* excluded from the '30% EBITDA rule'. This is because the exceeding borrowing costs will not qualify as disallowed expenses, and are consequently not included in the taxable base of such companies. It should be noted that Belgian (specialised) Real Estate Investment Funds ('REIFs') were already excluded here, as they qualify as an Alternative Investment Fund (AIF).

Anti-incorporation tax

The Corporate Tax Reform Law introduced a minimum remuneration requirement, according to which companies are required to pay at least one individual who is a company director an annual remuneration of at least EUR 45,000. Non-compliance will be penalised with a new separate 'anti-incorporation tax'. The rate of this anti-incorporation tax was initially set at 5.10% (tax year 2019) and was to be increased to 10% in tax year 2020. The Repair Law however, abolishes this rate increase. As from tax 2021, the rate of the anti-incorporation tax will be reduced to 5% following the abolishment of the crisis tax.

In practice, there were discussions on whether a company without any individuals serving as company directors are also subject to the anti-incorporation tax. The draft Repair Law now confirms that this is indeed the case.

Group contribution regime

Further to the Corporate Tax Reform Law, a limited form of group taxation will be introduced to Belgian tax law as from tax year 2019 (tax years starting on or after 1 January 2018). Through the so-called ‘deduction for group contribution’, a Belgian company could transfer taxable profits to a Belgian affiliated, loss-making company that can offset its current year tax loss against the group contribution received. Various conditions and formalities should be fulfilled, such as a minimum 90% capital affiliation requirement, which should be met during five consecutive taxable periods.

The Repair Law contains various technical amendments. An important new provision determines the consequences of corporate restructurings that occurred during the five-year affiliation period.

Contacts

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