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FSI tax alert

Belgium

Simplified Belgian Banking Tax adopted by Parliament

A draft Law "*establishing a new annual tax on credit institutions replacing the existing annual taxes, deduction limitation measures within corporate income taxes, and the contribution for financial stability*" has been submitted to the Belgian Parliament on 4 July 2016, further to a consultation of the financial sector (link). The draft Law was approved by the Finance Committee on 13 July 2016 (link), and adopted by Parliament on 20 July 2016.

Context

In the current state of the Belgian tax legislation, credit institutions are liable to several (in-)direct taxes and contributions. In a nutshell, these can be summarized as follows:

- The annual tax on undertakings for collective investment, on credit institutions and on insurance companies, provided for in Book II*bis* of Inheritance Tax Code (the so-called "annual subscription tax");
- The annual tax on credit institutions, as laid down in Title XI of the Code of Miscellaneous Duties and Taxes ("CMDT");
- The limitation of the deduction of corporate tax attributes - *i.e.* tax losses carried forward ("TLCF"), dividends received deduction ("DRD"), and notional interest deduction ("NID") - in the hands of (non-)resident credit institutions, as provided for in Article 207, 4th to 8th indent of the Belgian Income Tax Code ("ITC");

- Various contributions that are levied from credit institutions, *i.e.* (1) the contribution to the EU Single Resolution Fund ("SRF"), (2) the contribution to the Belgian warranty fund for financial services and (3) the contribution to the financial stability fund.

Pursuant to the draft Law, the aforementioned taxes and contributions are to be replaced (exception made for the SRF and the Belgian warranty fund contributions) by one single and homogeneous Banking Tax.

Revamped Banking Tax

The revamped Banking Tax is modelled on the existing annual tax on credit institutions, as laid down in Title XI of the CMDT (see above).

The *taxable basis* would be based on the average amount of "debt towards clients" (as mentioned on Line 229 in table 00.20 of Scheme A – territorial base) in the year preceding the tax year. The government opted for this taxable basis, amongst others, because it reflects the market share of the credit institutions in scope. This approach is also not new, given that the concept of "debts towards clients" was already used in the context of the limitation of NID for credit institutions (see *supra*).

The *tax rate* of the revamped Banking Tax will be determined annually on the basis of an expected annual contribution of the banking sector to the federal budget of (maximum) 805 million EUR (which is 55 million EUR higher than the current annual contribution). The draft Law currently includes a rate of 0.13231%.

The *scope of application* of the Banking Tax is limited to credit institutions. Recognized central depositories are explicitly excluded. The simplification of the tax framework in the hands of insurance companies and undertakings for collective investment will, as per the Explanatory Memorandum, be further scrutinized in a later stage.

The new Banking Tax would be introduced in the CMDT, under Chapter XI of the Book II (Articles 49 to 59). Since the draft Law aims to abolish a number of taxes and contributions, it also contains a number of provisions amending or revoking articles embedded in the ITC and the Inheritance Tax Code. No changes are proposed in relation to the legislation governing various contributions, as these would be amended as a consequence of other Belgian legislation implementing EU directives.

Entry into force

According to the draft Law, the revamped Banking Tax will in principle be due on 1 January – and for the first time on 1 January 2016 - and payable by 1 July of each year.

However, for tax year 2016, some transitory measures are proposed:

- The revamped Banking Tax is to be calculated on the basis of the amount of "debt towards clients" on 31 December 2015;
- The revamped Banking Tax amount for 2016 will only be payable by 15 November 2016 at the latest, instead of 1 July 2016;
- Credit institutions are allowed to deduct, from the amount to be paid in 2016 as computed under the revamped

Banking Tax regime, the taxes paid under the former regime (in particular the taxes in the Inheritance Tax Code and the CMDT, as well as the contribution to the financial stability) for 2016.

The changes to the ITC apply as from tax year 2017. Other provisions will enter into force 10 days after the publication in the Belgian State Gazette.

Next steps

The draft Banking Tax Law is now submitted to the King for ratification and proclamation, and will be published in the Belgian State Gazette afterwards.

Contacts

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