



Individual tax alert

Belgium

Important changes to the secret commissions' tax will soon be in force



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The draft Program law of 28 November 2014 foresees an important change to the secret commissions' tax. It should be noted that this is **pending draft legislation** and as such still needs to be confirmed and voted by Parliament.

The new rules are foreseen to apply as of the date of publication of the program law (expected before year-end) as well as to any pending litigation.

General rule

The secret commissions' tax would, as a general rule, remain due when the appropriate forms have not (timely) been filed for certain costs and benefits.

The tax rate, however, would be reduced from 309% to 103% (or to 51.5% for payments made to a legal entity). The secret commissions' tax and the underlying cost or benefit itself would in principle remain tax deductible (subject to the general deductibility conditions of Art. 49 ITC).

The explanatory memorandum mentions that the secret commissions' tax would no longer be applicable when there is no loss of Belgian income taxes, but this not as such included in the draft law.

Non-reported costs and benefits

The secret commissions' tax would become due on non-reported costs and benefits, unless one of two exceptions applies:

- (1) the taxpayer demonstrates that these costs and benefits are included in a tax return filed on time by the beneficiary in Belgium or abroad; or
- (2) the payment's beneficiary is unambiguously identified at the latest within a period of 2 years and 6 months following 1 January of the tax year of payment.

In case the taxpayer demonstrates that the costs and benefits have been reported on time by the beneficiary in an income tax return, no administrative penalty or criminal sanction would apply for lack of disclosure of the costs or benefits on the appropriate forms.

Smaller expenses

According to the explanatory memorandum, the secret commissions' tax would no longer be applicable on certain "smaller" expenses which lack business purpose (e.g. restaurant and reception expenses, small ICT expenses, etc.). These expenses would merely need to be considered as disallowed. Note that this is not as such foreseen in the draft law.

Hidden excess gains

The secret commissions' tax also applies to so-called "hidden excess gains" ("*verdoken meerwinsten/bénéfices dissimulés*") that cannot be found in the company's equity (e.g. non-reported turnover). Such gains would henceforth only be subject to the secret commissions' tax if they do not result from the disallowance of expenses. Similarly, certain taxable reserves (such as those arising from an underestimation of assets or an overestimation of liabilities) would also not trigger the secret commissions' tax.

The secret commissions' tax rate would also be reduced to 103% for hidden gains. However, if there is a spontaneous reintegration of the gains in the accounts, the rate would equal 51.5%.

In addition, reintegration of hidden gains would henceforth also be possible for years other than the one during which the gain is realised. Such reintegration would, however, only be allowed provided that the taxpayer has not been notified in writing of specific investigation acts and that the 3-year assessment term has not yet expired.

Upon such spontaneous reintegration, no tax increase, administrative penalty or criminal sanction would be due.

Contacts

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