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The 6th State reform: important implications on individual resident and non-resident income taxation

Within the 6th State reform framework, the Belgian federal Government is currently preparing new draft legislation to be deposited with Parliament. This pre-draft legislation modifies the Income Tax Code to take into account the partial regionalisation of individual income taxes and also introduces new rules for the taxation of non-residents. Upcoming legislation changes will impact the current individual income tax legislation when the draft bill is deposited, voted and entered into force (likely in assessment year 2015 – income from the year 2014):

1. The regionalisation of individual income taxation

In executing the most recent State reform, a significant amount of currently federal individual income tax measures would become regional (e.g. tax deductible expenses such as the ‘woonbonus’ / ‘bonus logement’, tax reductions such as energy saving expenses, rebates in case advance payments were made, etc.).

The exact impact brought by the above will depend upon the legislative initiatives to be taken by each of the Regions concerned.

2. Limitation of the categories of non-residents individuals that may fully benefit from the personal deductions

In line with ECJ case law, the pre-draft legislation limits the application of full personal deductions, such as the tax free amount and marital quotient, to one single category of non-residents: those having earned at least 75% of their taxable income in Belgium. In line with this limitation, the category of “non-residents with an abode” (which is currently fully entitled to personal deductions regardless of their Belgian source income proportion) would be abolished.

In practice, most of the expatriates potentially affected by this proposed measure are those living and working in Belgium whilst benefitting from the special tax status for foreign executives (travel exclusion equal or greater to 25%). If the so-called 75%-rule is not respected on their (and where applicable their spouse’s) account, they will lose their entitlement to personal deductions unless they claim an exception through an EU/non-discrimination clause in the tax treaty concluded with their home country. In addition, they may lose their entitlement to the tax measures that have been regionalised (see above).

It appears from the above that the actual impact of both elements in the measure will depend on the actual situation of each individual and will need to be determined on a case-by-case basis.

Presently still with the State Council for advice, this legislation would enter into force as of assessment year 2015, i.e. income year 2014.

Deloitte is closely following up on the legislative process and will release a Tax Alert update when more details become available.

Contact

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