

Global Rewards Update: Belgium — The High Council of Finance disagrees with Minister of Finance's suggestion to change stock option tax regime

April 2013

Background

When the High Council of Finance's (HCF) Taxation and Para-taxation Division was established, the former Minister of Finance presented a list of propositions to simplify the tax legislation established by the tax administration. The current Minister of Finance is continuing this administrative simplification project.

One of the suggestions was to change the point of stock option taxation from grant to exercise (or transfer). Consequently, the current lump sum taxation for stock options would also change. The tax administration proposed taxation on the difference between market value of the underlying shares upon exercise and the exercise price (or amount received at the moment of transfer).

Arguments of the tax administration

According to the tax administration, the change of the taxable base and moment of taxation for stock options is justified by the following arguments:

- Current improper use of stock options (e.g., constructions with over-the-counter options).
- The stock options' actual value mostly exceeds taxable (lump sum) value.
- Value of stock options often cannot be determined unambiguously.
- Not in line with European practice, which is to tax stock options upon exercise.
- Problem of double taxation in an international context.

HCF decision

In its advice of February 2013 (**Dutch | French**), the HCF examined the possible justifications to change the law, such as the neutrality of taxation principle as put forward by the Organisation of Economic Co-operation and Development or the administrative simplification.

The HCF concludes that existing anti-abuse measures should suffice in ensuring correct application of the law and that the risks of double or non-taxation in an international context are limited.

Finally, the HCF points out that the use of stock option legislation to lower the compensation package's tax

burden, for example, by the use of over-the-counter options, reveals a more fundamental problem: the general profile of the Belgian income tax system. The HCF proposes to start from a global vision on the simplification of the income tax system rather than reforming the tax treatment of stock options first.

Deloitte's view

The HCF has only an advisory role. If the government wants to change the point of taxation for stock options, a legislative change would be required. We currently have no indications that the government has concrete plans to initiate this.

People to contact

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