

Budget Tax Bills Enacted

by Marc Quaghebeur

Reprinted from *Tax Notes Int'l*, February 6, 2012, p. 419

COUNTRY DIGEST

Budget Tax Bills Enacted

Barely three weeks after Prime Minister Elio Di Rupo was sworn in, the Belgian Parliament on December 28 adopted two bills implementing some of the tax measures announced in the 2012 budget. The bills were signed into law by King Albert II and published in the Belgian State Gazette on December 30. (For prior coverage, see *Tax Notes Int'l*, Dec. 5, 2011, p. 690, *Doc 2011-25028*, or *2011 WTD 231-1*.)

On January 26 the government submitted a new bill to Parliament that would introduce some of the remaining tax measures and correct some provisions in the 2011 laws.

Banking Tax

The first law introduces a “financial stability contribution” and changes existing legislation regarding the deposit fund contribution.

The financial stability contribution will be assessed on all banks beginning January 1, 2012. It is calculated at 0.035 percent on the total amount of liabilities less the bank’s equity and the deposits that are guaranteed by the Belgian National Bank.

The government has taken this opportunity to amend the deposit protection fund contribution. Following the banking crisis in 2008, the Belgian deposit guarantee scheme was organized within the Belgian National Bank. The guarantee scheme compensates private individuals, associations, and small and medium-size enterprises a maximum of €100,000¹ in the event of a financial institution defaulting, in accordance with EU directives 94/19 on deposit guarantee schemes² and 97/9 on investor compensation schemes.³

¹See <http://www.protectionfund.be>.

²Directive 94/19/EC of the European Parliament and of the Council of May 30, 1994, on deposit guarantee schemes, Official Journal, L 135, May 31, 1994, pp. 5-14.

³Directive 97/9/EC of the European Parliament and of the Council of March 3, 1997, on investor compensation schemes, Official Journal L 84, March 26, 1997, pp. 22-31.

The contribution to the deposit guarantee scheme is increased from 0.10 percent to 0.245 percent in 2012 and reduced to 0.15 percent in 2013. The contribution is calculated on the amount of deposits that are guaranteed by the Belgian National Bank. For each bank, the exact contribution will be based on a weighted ratio that corresponds to its risk profile, taking into account the bank’s equity, the quality of its assets, and its current ratio⁴ calculated by the Belgian National Bank.

The second law mostly introduces additional income tax measures.

Corporate Income Tax

The risk capital deduction (better known as the notional interest deduction) was introduced in 2006 as an alternative to the Belgian coordination center regime. In addition to deducting the interest they pay on debt financing, companies could also set off a percentage of their equity against their taxable profit as a form of notional interest. The percentage of the deduction was linked to the interest rate paid by the Belgian Treasury on 10-year linear bonds (3.425 percent in 2011 and 3.925 percent for small and medium-size enterprises). The equity base to be taken into account is the company’s share capital and its retained earnings, with some corrections to prevent abuses of the deduction.

The percentage of the risk capital deduction will still be determined by royal decree, but it will be capped at 3 percent per year (3.5 percent for SMEs). (The budget announced that the carryforward of unused notional interest deductions will be abolished, but that measure has not been enacted yet.)

An amount equal to 17 percent of the value of the fringe benefit calculated as set out below will be disallowed as a corporate expense. An equivalent provision has been introduced for nonprofit associations.

⁴The current ratio is a liquidity ratio that measures a company’s ability to pay short-term obligations.

New Measures for Companies

In the 2012 budget, the government confirmed that it would maintain the current holding regime for Belgian companies — that is, a 95 percent dividends received deduction for dividends received from a subsidiary in which the Belgian parent company holds a minimum participation of 10 percent (or €2.5 million) for at least one year; however, capital gains are tax exempt regardless of the size or the duration of the equity participation.

The bill submitted to Parliament on January 26 proposes to keep capital gains on shareholding tax exempt if the company keeps the participation for at least one year. If the company sells the participation within the first year, the company would pay 25 percent capital gains tax on the entire capital gain, and the company could not deduct past capital losses. Stock trading companies would be excluded. They could deduct capital losses and pay corporate income tax at the normal rates, but only if they are banks or investment companies.

The bill also proposes replacing the 7-1 thin capitalization ratio with a 5-1 ratio; interest on loans would be disallowed for the part of the loan that exceeds five times the company's equity⁵ if the beneficial owner of the loan is established in a tax haven or belongs to the group as the company. For intragroup loans, the term "group" refers to companies that are related in the sense of the company code. If the loan is actually guaranteed or financed by a third party, the latter would be deemed to be the beneficial owner if the main purpose of that guarantee or financing is tax avoidance.

The ratio would not apply to bonds issued by public offering, loans granted by financial institutions, loans taken by leasing and factoring companies, or companies set up for a public-private partnership.

Personal Income Tax

The law amends the taxation of fringe benefits, specifically company cars and free accommodations.

For company cars, the value of the fringe benefit is a coefficient (between 4 and 18 percent) of six-sevenths of the official sales price, including the options and the VAT but disregarding any discounts and reductions. The standard coefficient is 5.5 percent for a diesel car with 95 grams CO₂ emission (115 grams for all other cars). This is adjusted by plus or minus 0.1 percent for each gram of CO₂ more or less to determine the applicable coefficient (4 percent minimum; 18 percent maximum). The minimum value of the fringe benefit is €1,200. As mentioned above, the employer pays tax on

a disallowed expense calculated at 17 percent of the value of the same fringe benefit. The January 26 bill would introduce a discount depending on the age of the car (6 percent per year with a maximum of 30 percent).

Company directors who receive a house or apartment, or heating or electricity, as a benefit will also pay more tax. The fringe benefit for heating and electricity is valued at €1,820 and €910, respectively, and will be linked to the Consumer Price Index. The value of the fringe benefit of free housing has been calculated as a multiple of the cadastral revenue of the property; this value remained well below the real value of the fringe benefit. The new formula will value the fringe benefit as 10 times the cadastral revenue.

The taxable benefit of stock options has been increased by one-fifth. In Belgium, stock options are taxed at grant. Their value will now be calculated as 18 percent of the value of the underlying shares (instead of 15 percent). The value of the shares of a company employing the beneficiary is half that: 9 percent (instead of 7.5 percent).

The withholding tax rate on interest has been increased from 15 percent to 21 percent; in Belgium the withholding tax is also the final tax. Only savings accounts are excepted; the first €1,830 will remain tax exempt, and the bonds that were issued at the end of November will be taxed at 15 percent.

For dividends, the withholding tax rate remains 25 percent. However, all reduced withholding tax rates are increased to 21 percent. That is the case for shares in investment companies or for "VVPR" shares (shares issued after 1994 against a contribution in cash), for which the rate was 15 percent. The withholding tax rate remains 10 percent for *liquidation boni* (that is, any gain the shareholder recovers from a company that has been wound up and liquidated over the company's equity). The rate for a company's redemption of its shares is the same as for ordinary dividends: 21 percent.

Instead of a wealth tax, a special contribution has been introduced for taxpayers with investment income (dividends and interest) in excess of €20,020 (notably excluding tax-exempt interest on savings accounts, *liquidation boni*, and dividends that are taxed at 25 percent). The tax is levied at 4 percent on the investment income over €20,020.

In principle, this contribution is levied with the withholding tax, and the taxpayer has to claim back the contribution if it is not due. The taxpayer has the option to authorize the bank to report his investment income to a centralized department that will list the taxpayers who have investment income in excess of €20,020. In that case, the bank does not have to withhold the extra 4 percent.

Tax-deductible expenses are replaced by limited tax credits of 45 percent (for the deduction of mortgage

⁵That is the company's share capital at the end of the year plus its reserves at the beginning of the year.

payments for one's main residence, for daycare costs, for donations to charities, and so on) or 30 percent (for all other tax credits, including the service checks). Deductions for energy-efficient investments (double glazing, central heating boilers, solar panels, and so on) are abolished. Only the tax credit for roof insulation will be maintained but at a lower rate of 30 percent.

GAAR

As mentioned above, the new thin capitalization rule comes with an antiavoidance rule. The general antiavoidance rule is completely rewritten. The tax authorities may ask the taxpayer to prove that the main purpose of a transaction or a set of transactions is not

tax avoidance. If the taxpayer fails to do so, the tax authorities may recharacterize the transaction or transactions so they may levy the correct tax, even if the legal consequences and effects are not identical or analogous to those of the transaction or transactions agreed between parties.

VAT

The VAT exemption for services by notaries and bailiffs has been lifted. The VAT on pay TV has been increased from 12 percent to 21 percent. ◆

◆ *Marc Quaghebeur, partner, De Broeck Van Laere & Partners, Brussels*