tax notes international
Volume 67, Number 6 ■ August 6, 2012

Pension Regime, Thin Capitalization Rule Amended

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Reprinted from *Tax Notes Int'l*, August 6, 2012, p. 511

COUNTRY DIGEST

Pension Regime, Thin Capitalization Rule Amended

The Belgian State Gazette on June 28 published a June 22 program law containing various direct and indirect tax measures. The bill amends Belgium's new thin capitalization rule and the tax regime for pension contributions and pension income.

Tax Regime for Occupational Pensions

Contributions to (External) Pension Schemes

Contributions to complementary pension schemes (group insurance or pension fund) are disallowed for the employer (but are not considered salary for the employee) if they exceed the 80 percent level. This means that the contributions may only fund a pension reserve that will provide the employee with an occupational pension that will augment his state pension to 80 percent of the employee's final remuneration.

In December 2011 the government announced that the cap would be even more limiting, with the 80 percent applying to the highest state pension paid to a civil servant (the cap was €72,481 in 2011). In other words, the state pension and the occupational pension should not exceed that limit. Faced with protest from multinationals, the government came up with an alternative solution: a special social security levy of 1.5 percent on the employer's contributions to the pension scheme if it exceeds a certain threshold. The levy would be due at the end of the year, along with the regular social security contributions due on the compensation attributed during the fourth quarter of the year. (For prior coverage of pension system reforms, see *Doc 2011-25982* or *2011 WTD 240-5*.)

During a transitory period, from January 1, 2012, until December 31, 2015, at the latest, the threshold is set at €30,000 per year (subject to annual indexation) and is compared with the sole contributions remitted into complementary pension plans.

At the end of the transitory period (January 1, 2016, or earlier, to be determined by royal decree), the threshold will be called a ''pension target''; it will be linked to the maximum amount of pension attributable to the civil servants and will be compared with the aggregate amount of estimated pension income accrued under the first and second pillars.

The rules are identical for self-employed workers, except that during the transitory regime, the amount of the VAPZ/PLCI (supplementary private pension for the self-employed) is not taken into account for the purpose of determining whether the threshold of €30,000 has been exceeded. From January 2016 (at the latest), the 1.5 percent social security levy will be due on the contributions paid in excess of the pension target by the legal entity for which the self-employed worker is active.

(Internal) Pension Provisions

As of 2013, a new condition will apply for the deduction of pension contributions for employers. They will have to disclose these contributions via the Sigedis pension database, which was set up in 2011 to get a complete view of Belgian employees' supplementary pension schemes. It should be fully effective as of January 1, 2013. This pension database must allow the government bodies (the pension control authorities and the tax and social security authorities) to monitor the application of the pension legislation, the 80 percent rule of pension contributions, and the special 8.86 percent contributions on pension contributions. Employers and their pension institutions (insurance companies and pension funds) must report to Sigedis.

The government had expressed its intention to prohibit directors and other self-employed workers from building up internal individual pension commitments (*aanvullendeindividuelepensioentoezeggingen/engagements individuels de pension complémentaire*) from January 2012. These companies would have to transfer existing pension provisions over a period of three years to an external pension scheme with either a pension fund or an insurance company, albeit with a lower premium tax of 1.75 percent instead of 4.4 percent.

Many companies faced financial difficulties when they had to come up with the cash to fund external pension schemes. The measures have been adapted, and the companies now have a choice. They may either transfer the pension reserves to an insurance company or pension fund, with an exemption of the 4.4

percent premium tax, or keep their pension provisions. In that case, they pay 1.75 percent company income tax (instead of premium tax) on the pension provisions, but they can opt to spread that tax over three years at a rate of 0.6 percent per year (totaling 1.8 percent).

Pension Payments

In December 2011 the government announced that it wanted to discourage early retirement with a higher tax on the redemption of pension capital. When a retiree redeems his pension, he will pay 10 percent if he works until 65. Early retirement will become more expensive: The tax will be set at 20 percent at age 60, 18 percent at age 61, and 16.5 percent at ages 62 through 64, and will be calculated on the part of the pension funded by the employer's contributions. These new rates will apply as of July 1, 2013.

While the tax on the part of the pension that was funded by the employer was set at 10 percent in 2006, the tax on the portion that was financed by the employee had been 10 percent since 1993. However, the rate was still 16.5 percent for the part of the pension that had been built up before 1993. The rate will be set at 10 percent irrespective of when the pension was funded, but the pension fund or insurance company will have to pay 6.5 percent of these pension reserves, presumably in October 2012 (to be confirmed by royal decree).

Adaptation of the Thin Capitalization Rule

Until this year, the thin capitalization rule only applied to the payment of interest to a beneficial owner established in a tax haven; a company is deemed to be established in a tax haven if it is not subject to income tax or if it is subject to a substantially more favorable tax regime than the Belgian regime (in practice, this is a tax rate under 15 percent).

This year, Belgium has strengthened its thin capitalization rule (5-1 debt-equity ratio) and extended it to interest paid to group companies. Companies are deemed to belong to the same group if one company has decisive influence over another company or if both companies belong to a consortium. If a loan is guaranteed or financed by a third party, that party will be deemed to be the beneficial owner if the main purpose of that guarantee or financing is tax avoidance. (For prior coverage of the thin capitalization rule, see *Tax Notes Int'l*, Apr. 23, 2012, p. 324, *Doc 2012-7783*, or *2012 WTD 72-3*.)

The deduction of interest paid on debt will be disallowed if, and to the extent of the excess, the total amount of this debt exceeds five times the company's equity — that is, its share capital at the end of the year, plus its reserves at the beginning of the year. The term ''debt'' includes all loans, with the exclusion of bonds; other borrowing instruments that have been issued by public offering; and loans granted by financial institutions.

Extending the thin capitalization rule to group companies had a negative effect on treasury centers, and the program law does not correct this for treasury centers and cash pooling companies by allowing a netting of interest paid and received.

The law does not specifically mention treasury centers or cash pooling companies. Rather, it refers to ''financing transactions in the context of a framework agreement for centralized treasury management within a group,'' meaning the management of daily treasury transactions or the treasury management for the short term, or exceptionally for the long term, to take into account specific circumstances within a normal treasury management.

A framework agreement must be in place between all group companies involved to clarify the financing model used and the activities within the centralized treasury management. That agreement must specify which activities are part of the centralized treasury management, how existing receivables and debts are netted between these group companies and the terms and conditions for the intervention of the centralized treasury management, and the interest rates used.

For treasury centers and cash pooling companies, only the net interest paid is taken into account for the thin capitalization rule — that is, the difference between the interest paid to group companies and the interest received on intragroup loans. However, interest received cannot be taken into account if it is paid by financial institutions or factoring and lease companies that are part of the group and established in the European Economic Area, or if it is paid by group companies established in a tax haven.

Tax on Stock Exchange Transactions

The program law increases the rates of the stock exchange tax levied on the issuance and the transfer of securities (shares, bonds, and other financial instruments). The rate will go up from 0.22 percent to 0.25 percent and from 0.65 percent to 1 percent (for the redemption of capitalization shares in collective investment vehicles).

The maximum tax due per transaction also increases from €650 to €740 and from €975 to €1,500, respectively.

Inheritance Tax

The period for filing inheritance tax returns is shortened by one month. Depending on whether the deceased died in Belgium, in another European country, or outside Europe, the period will be four, five, or six months.

Annual Tax on Savings Deposits

Credit institutions will be liable for a new tax. The tax will be payable by Belgian credit institutions and Belgian branches of credit institutions established in another EEA member state or a third country.

The tax is levied on a percentage of the tax-exempt savings deposits on January 1 of the tax year. The percentage is calculated as the percentage of exempt interest paid on savings deposits and the total amount of interest paid on all savings deposits in the previous year. The first €1,830 of the interest paid on savings accounts is tax exempt (figure for 2012).

The tax will be levied at 0.05 percent multiplied by a coefficient varying between 60 and 240 percent depending on the ratio between the monthly average amount of loans that a credit institution has granted to companies and individuals in Europe during a tax year that are not granted to financial institutions, and the exempt contributions to savings deposits.

Other Measures

The program law also increases the excise duties on tobacco, doubles the fixed VAT penalties (they will range from €500 to €5,000), and increases the bank levy for the guarantee of savings deposits. ◆

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