Tax Consult

SHORT INFO N°9

1. Company cars: new rules

At present, when a company provides a car to its employees or managers, its non-deductible expenses are increased by 17% of the amount of the benefit in kind which is taxable on the part of the employee or manager. In addition this amount constitutes a minimum tax base.
When this benefit reduces due to the personal intervention of the employee, the basis on which the amount to be rejected must be calculated reduces by the same extent.

The Programme Law[1] amended this rule in the sense that personal intervention will no longer be taken into account for calculating the amount to be rejected on the part of the company.

It should be noted that this percentage of 17% increases to 40% if the fuel costs related to personal use of a car are borne in full or in part by the company.

These new rules shall enter into force on 1 January 2017.

2. Internal capital gains and other changes

Up to now, contributing the shares of a company B that you hold to a new company A allowed the creation in A of capital corresponding to the real value of B including its retained earnings. Subsequently B distributed dividends and A could reverse these dividends in the form of a capital reduction. Except for taxation of the capital gain realised at the time of the contribution, this technique therefore enabled withholding tax on B's profits distributions to be avoided.

Now, except if the capital gain has been taxed, the "paid-up capital" represented by the contributed shares of B will no longer be considered (on the head of A) as capital actually paid-up, only "at the purchase value of the shares or units contributed on the part of the contributing party[2]". In other words, the securities contributed will now be at their historic value.

The contribution exceeding this historic value will be considered as a "taxed reserve", of which the future distribution, at the time of a capital reduction, will in all cases be subject to withholding tax.

In addition to the changes cited above, the Programme Law also stipulates (among others) the following tax measures:

- abolition of the "speculation tax";
- general increase in withholding tax from 27% to 30%. The 5% rate on dividends drawn from the cash reserve after the 5-year period has not changed.

These measures come into force from 1 January 2017.

[1] Programme Law of 25 December 2016 (*Belgian Official Gazette*, 29 December 2016, second edition)
[2] If it is not possible to establish this, the paid-up capital is supposed to correspond to the value of the paid-up capital represented by the shares or units contributed to the total paid-up capital of the company which they represent.

3. Tax Shelter for start-ups – formalities for 2016

As a reminder, to help small start-ups, a tax incentive was provided for from 1 July 2015. Therefore, under certain conditions, taxpayers (individuals) who invest in these companies shall benefit from a tax reduction of 30 or 45% of the amount invested.

In order to benefit from this tax credit, the start-up is required to draw up and provide the taxpayer with a certificate that includes a series of information about the company, the amount invested, etc. This document must be made available to the taxpayer-investor before 31 March of the year which follows that of the shares acquisition.

A certificate template (not mandatory) is available on the following website:

http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&nav=1&id=3f9468be-6a20-45aa-a1ee-c05c0c9adc2c&disableHighlightning=true#findHighlighted

4. Regionalisation: developments in Brussels at 1 January 2017[3]

Abolition of the regional housing bonus ("Bonus lodgement")

The housing bonus is abolished for mortgage deeds signed at a Notary from 1 January 2017. The regional tax reduction for individual life insurance premiums related to mortgages is also abolished for these same deeds.

Single allowance and increase of EUR 175,000[4]

In order to offset this, the Brussels government has increased the allowance of registration fees due on the purchase of a main residence by people who do not own another property in full. This now single allowance amounts at present to EUR 175,000 provided that the value of the property purchased is less than EUR 500,000. This increased allowance shall only apply to deeds of sale signed before a Notary from 1 January 2017.

Transfer of family businesses and companies

In order to guarantee the continuity and transfer of family businesses and companies, the tax regime for registration fees and inheritance tax has been relaxed.

The gifting of the full ownership, bare ownership or usufruct of shares of a family business held by a person resident in Brussels is now exempt from registration fees if certain conditions are met (in particular running a genuine business, maintaining the family nature and the continuation of the business for three years, the absence of capital reduction etc.).

If certain comparable conditions are met, inheritance tax concerning the full ownership, bare ownership or usufruct of shares of a family business is reduced when these are transferred at the time of death of a person resident in Brussels:

- 3% for a transfer to direct descendants or between spouses;
- 7% for a transfer between other people.

Other conditions also need to be met that must be assessed on a case-by-case basis.

[3] Order of 12 December 2016, *Belgian Official Gazette* 29 December 2016, 3rd edition, p.91885
[4] Subject to certain conditions

These regimes apply mutatis mutandis to the assets of a family business run by individuals.

5. VAT: same obligations for directors (natural persons) that are Belgian residents

As a reminder, individuals acting as directors, managers or liquidators of a company are not considered as liable for VAT in Belgium. However, according to the B2B general rule, the service provisions related to such a mandate are located in the country of the company being managed, but when the mandate is exercised in a company established in another Member State this may not be the case.

Certain Member States indeed consider the director, manager or liquidator who is an individual, as taxpayers in their own right. VAT in the country where the company is based is due by the latter for the services related to the mandate. In order to enable its monitoring, there are subsequent formalities in Belgium.

For instance, the director of a German company who is a resident of Belgium must register for VAT in Belgium, issue invoices compliant with VAT legislation and periodically submit a VAT statement listing its intra-Community services for the period; this allows information exchange between Member States. Failure to observe these obligations may lead to hefty fines.

Since 1 January 2017, the same shall apply for mandates exercised within Luxembourg companies.

It is therefore important that the individuals based in Belgium who perform such duties in a European company (but not Belgian) check in the Member State in which the company is run whether or not the services that they deliver in the normal performance of their statutory mission fall within the scope of tax. It is only after this verification that these taxpayers will know the extent of their VAT obligations in Belgium.

6. Benefit in kind: provision of free accommodation

The Ghent and Antwerp Courts of Appeal[5] have recently given two decisions with the same outcome regarding the value of the flat-rate benefit in kind related to the provision of property at no charge, laid down by Article 18, §3, 2° of the Royal Order/Income Tax Code.

This Article actually makes the distinction between the case where a legal entity provides the property[6] and the case where it is an individual who provides the property[7]. According to these two Courts of Appeal, this distinction is not justified and thus violates the principle of equal treatment laid down by the Constitution[8].

The more daring may benefit from this and reduce the amount of their benefit in kind in order to align this with that fixed for the provision of property by a natural person…clearly more advantageous!

A more cautious approach may involve lodging a claim against your own declaration in order to reduce the benefit in kind initially calculated with a coefficient of 3.8[9]. The Antwerp Court of Appeal indeed considers that the fact of having first declared the amount of the benefit in kind according to tax legislation does not prevent the taxpayer from subsequently disputing this valuation.

[5] Ghent, 24 May 2016 and Antwerp, 24 January 2017
[6] Benefit in kind = indexed RC (cadastral revenue) x 3.8 x 5/3
[7] Benefit in kind = indexed RC (cadastral revenue) x 5/3
[8] Article 159 of the Constitution.
[9] In order to be valid, this claim must be lodged within 6 months of receipt of the notice of assessment.

Please do not hesitate to contact us to assess the most suitable approach for your circumstances and closely monitor any development in this respect.

7. New innovation income deduction

The draft law concerning the implementation of the new deduction for innovation was recently approved[10]. Here is a summary of it.

In short, it allows 85% of net income from eligible intellectual property rights (IP rights) to be deducted from the tax base, according to a certain fraction that takes into account the company's own R&D expenditure in relation to all R&D expenditure relating to these IP rights ("nexus fraction"):

Deduction = 85% x Net income from IP x nexus fraction

Where

Net income = income from IP less current AND historical R&D expenditure[11]

Nexus fraction = "own" expenditure: that which taxpayers have incurred for R&D activities that they have carried out themselves, and/or that paid to an unrelated company

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denominator: total expenditure, i.e. in addition to own expenditure, that paid to related companies.

In other words, if the taxpayer does not outsource the R&D to related third parties, the numerator and denominator will be equal.

It should be noted that the Council of State considered that it was selective state aid, which the Belgian legislator denies…. It remains to be seen what the ECJ will make of it.

[10] Effective from 1 July 2016.

[11] That there would be a means of spreading over a 7-year period, and for which a recapture system would be set up in the case where historical costs have not been charged in full as a result of this staggering.
It should also be noted that the historical costs related to the tax years closed before 1 July 2016 will not be taken into account.