The Belgian ‘Summer Agreement 2017’ aided the tax competitiveness of the corporate income tax regime with a decrease of the corporate income tax rate to 25% as of 2020. This decrease was much needed, but the tax rate is still relatively high in comparison to other countries such as amongst others the UK and the Netherlands. Foreign investors and enterprises regularly ask us for legitimate ways to reduce the corporate tax rate for their Belgian establishments. This factsheet therefor provides them with an overview of regularly applied Belgian income tax incentives for enterprises and their employees.

1. Corporate Income Tax

a. Corporate Income Tax: rate

End of December 2017 the Belgian Parliament approved a major corporate tax reform. One of the major pillars to that matter is, as mentioned, the decrease in the combined corporate tax rate which amounted to 33.99% until assessment year 2018.

For large companies, as of assessment year 2019 the corporate tax rate is reduced to 29,58%. As of assessment year 2021 the rate will further be reduced to 25%.

For SME’s, as of assessment year 2019 the rate goes down to 20,4% on the first tranche of 100.000 EUR and to 20% for assessment year 2021.

SME’s would have to meet certain requirements in order to qualify for the reduced rate of 20,40% such as satisfying the amount of minimum remuneration to be paid out to a company manager.

b. Notional interest deduction computation

Notional interest deduction (NID) has been introduced in 2005 and is enabling all companies subject to Belgian corporate tax to deduct from their taxable income a fictitious interest calculated on the basis of their shareholder’s equity. In this way, the tax discrimination between debt financing and equity financing is reduced and the effective corporate tax rate for companies is lowered.

Notwithstanding the major 2017 corporate tax reform, the NID has been maintained. However, the calculation basis has been changed rendering the regime less advantageous than when it was introduced back in 2005. The NID will, following the summer agreement, only be calculated on the so-called “incremental” equity, which equals one-fifth of the positive difference between the equity at the end of the taxable period and the fifth preceding taxable period. This means that as of 2018 only the average increase of the qualifying equity will qualify for the application of the NID.

c. Investment deduction

The investment deduction allows for a certain percentage of the acquisition value of an investment to be deducted from taxable profits.

The qualifying “basic” assets concern tangible assets that are newly acquired or achieved and used in Belgium solely for professional activities and depreciable within at least three years. There are special investment deductions on qualifying patents, environmentally friendly R&D investments, and energy-saving investments (see below). Percentages for the deduction vary from 3 to 20,5%. Noteworthy is the increase for

SME's of the 8% rate taken for ordinary investments to 20% for ordinary investments made in the period 1 January 2018 to 31 December 2019. As an alternative to the investment deduction, Belgian also grants tax credits in relation to R&D investments.

d. Innovation Income Deduction

With the Innovation Income Deduction regime (IDD), Belgium has another key asset in its hands to attract foreign corporate investments. This new tax regimes replaces the previous Patent Income Deduction.

In short it allows Belgian companies and establishments of foreign companies to deduct 85% of the net income they derive from certain qualifying intellectual property income from their Belgian corporate tax base. By doing so the effective tax rate on qualifying income can drop to 3.75%.

For further information about this topic please check our May 2018 factsheet about the IID.

e. Treaty network and tax ruling practice

Belgium has an extensive network of treaties for the prevention of double taxation with almost 90 countries, with most treaties following the OECD model treaty. Belgium foresees an exemption for profit taxed abroad. For particular types of income (royalty, interest), a credit is available under the so-called FBB-regime.

Belgium keeps concluding new tax treaties or protocols to existing tax treaties, thereby including new transparency and anti-abuse standards inspired by a.o. BEPS. Belgium will also be a party to the Multilateral Instrument (MLI).

Besides that, Belgium has a broad ruling practice which results in the fact that companies can get legal certainty on the tax treatment of their business. More information on this procedure can be found in the factsheet on our website.

f. Competitive holding regime

Due to the corporate tax reform a 100% dividend received deduction is applicable for dividends received by a Belgian company from another Belgian or foreign company (for taxable periods starting on or after 1 January 2018 and ending no earlier than 31 December 2018,), i.e. the so-called participation exemption. Since the corporate tax reform, conditions to benefit from the full exemption for capital gains on shares are aligned with the conditions for the participation exemption.

To qualify, the following conditions must be met:

- the shareholder company must hold at least 10% of the share capital of the dividend distributing company or the participation must have an acquisition value of at least 2.500.000 EUR;

- the company distributing the dividends must be subject to corporate income tax on the profits out of which the distribution is made;

- the shareholder company must continuously have (had) full ownership of the qualifying shares for an uninterrupted period of at least one year.

Subject to conditions, there is no withholding tax on dividends paid by Belgian resident subsidiaries to their parent companies resident in EU Member States. The exemption from withholding tax has been extended to dividends paid by Belgium resident subsidiaries to their parent companies resident in countries with which Belgium has an effective tax treaty providing for exchange of information.

g. Carry forward of losses

In Belgium tax losses can, in principle, be carried forward unlimited in time. They may not be carried forward if there is a change of control of the company unless this change of control is justified by legitimate financial and economic reasons.

Due to the corporate tax reform, as of tax year 2019 (i.e. for taxable periods starting on or after 1 January 2018 and ending no earlier than 31 December 2018), the offset of the tax loss carryforward (and certain other tax deductions) is limited to 70% of the taxable amount exceeding 1.000.000 EUR.

This means that the taxable basis up till 1.000.000 EUR can be fully offset against certain tax deductions (like a tax loss carry forward). As for the part of the taxable basis that exceeds 1.000.000 EUR (after some first deductions), maximum 70% can be offset. The remaining 30% will be fully taxable at the Corporate Income Tax rate.

2. Personal income tax / HR Tax

Like for corporate income tax, Belgium has rather high personal income tax rates. The impact of these rates is narrowed down by individualized measures, with an aim to attract skilled workers to Belgium or aiding start-up companies.

a. Expat regime

Belgium has a special tax regime for foreign executives and specialists, also known as the expat status or expat regime.

The regime is crucial to reduce the tax burden on employment income in Belgium. The expat status ensures that expats are taxed on a lower income base and hence the attraction of Belgium as a location for highly skilled workers and the companies employing them. By lowering the taxable base for the expats, the gross net ratio becomes higher and thus the Belgian employers need less budget to grant attractive salary packages to these expats with specialized profiles (or the expat receives more net for the same gross).

In order to qualify for the special regime, some conditions should be met:

- One can not have the Belgian nationality;
- The expat must be an executive or expert with an expertise that usually can not be found on the Belgian labor market;
- The assignment to Belgium should be temporarily;
- The employer should be part of an international group or should be assigned to a Belgian entity of an international group.

The benefits of the expat regime are:

- The expat is regarded in Belgium as a non-resident, which means that he is only taxable on the income related to the Belgian activities and on other Belgian source income;
- Income related to days worked outside of Belgium will be excluded from the total taxable base. This is the so-called travel exclusion;
- Some allowances granted to the expat by the Belgian employer, are considered to be costs proper to the employer which are tax exempt.

More information about this expat regime can be found in our factsheet of September 2018.

b. Stock options and warrants

In Belgium, bonuses are often granted in the form of stock options or warrants. A stock option is the right to buy or purchase a defined number of shares at a defined price during a defined period. A warrant is also an option to buy shares, but relates to new shares, whereas stock options relates to existing shares.

Both have however the same tax treatment in Belgium, which is set out in the law of March 26, 1999. In principle, regulated stock options are exempted from social security contributions (i.e. 13,07% employees contribution and +/- 27% employers contribution).

Moreover, those options are taxed at the time of grant (which takes place 60 days following the date of the written offer in case of written acceptance by the employee). In case options are late or oral accepted, it concerns non-regulated stock options. Any capital gain realized related to the alienation or exercise of the option or alienation of the underlying shares, is normally tax exempt.

The taxable value amounts to the real value if the options are listed. However non-listed options are valued at a percentage of the value of the underlying shares at the time of the grant:

- 18% to be increased by 1% per year or part of the year beyond the 5th year when the offer is made for a period exceeding 5 years;
- 9%, to be increased by 0,5% when the following conditions are met:
    - Exercise price determined with certainty at the time of the grant;
    - Exercise neither before the expiration of the 3rd calendar year following the year of the grant nor after the 10th year;
    - No transfer inter vivos;
    - No risk cover of decrease of the value of the shares;
    - The option relates to shares of the employer company or a related company.

The taxable value is taxed at the normal progressive tax rate. However, due to the lump sum valuation of non-listed options and due to the social security exemption, options and warrants are very attractive benefits.

Note that, like the taxation of stock options and warrants Belgian tax law provides for a number of favorably taxed or exempted benefits in kinds (company car, meal vouchers,…). These are not further addressed in this factsheet.

c. Partial exemption of wage withholding tax

In Belgium, the wage withholding tax exemptions are an important part of the tax incentives granted to employers.

Withholding taxes should be withheld on the salaries paid to the employees. These withholding taxes should afterwards be transmitted by the employer to the Belgian tax authorities. The withholding taxes are thus an advanced payment on the final taxes due by the employee.

However, in some cases, the employer can keep part of these withheld taxes. If so, the employer should thus only transmit part of the withholding taxes to the Belgian tax authorities.

Most common situations in which an exemption of withholding tax is granted, are as follows:

- Research and development

A company employing researchers can retain 80% of the taxes withheld on the salary of the eligible employees with a Masters degree and 40% of the eligible employees with a Bachelors degree (this will increase to 80% as of 1/01/2020).

By this incentive, Belgium tries to motivate companies to invest more in research and development.

In order to be a qualifying employee, one should have a Bachelor or Master degree in one of the study fields mentioned in the Belgian tax law (such as sciences, medicines, architecture,…)

The partial exemption of withholding tax for the bachelors is rather new, as until 1/01/2018 only employees with a Master degree where eligible. Regarding the employees with a Bachelor degree, a cap is applied as the tax exemption is limited at 25% (or 50% for small companies) of the total withholding tax exemption applied for masters and doctors.

In order to profit from this incentive, the company should register the R&D project upfront with Belspo (Science Policy Office).

If requested, Belspo can deliver a binding advice in which she decides whether the registered project qualifies indeed as an R&D project (and thus whether the company can indeed profit of the partial exemption of withholding tax).

- Night work and shift work

If employees are working during the night and/or are working in shifts, the employer can retain 22,8% (or 25% in case of fully continuous shift work) of the recurring salary of eligible employees (including the shift or night premium).

In order to able to be profit of this incentive, the employees should either work in shifts, either work during the night.

Shift work is described as:

- At least 2 shifts of at least 2 employees that succeed each other in the course of the day without interruption;
- Without their work is overlapping more than a quarter of their daily job;
- Which perform the same kind of work as far as content and extent are concerned.

Night work is described as:
- Working between 8 PM and 6 AM (except for workers who only work between 6 AM and midnight and workers who begin working at 5 AM).

The employer should pay a shift or night premium. Employees should work at least 1/3th of the working time in shifts and/or at night.

- Overtime

If employees are working overtime, an overtime premium is due by the employer, which makes overtime more expensive. However, for the first 130 hours of overtime, the employer can profit of an exemption of withholding taxes of an amount of 41,25% calculated on the gross salary which is used to calculate the overtime premium.

Note that start-up companies can also qualify for the exemption upon conditions.

d. Copyrights

Income received by an author for the transfer of the copyright of his work, are in Belgium taxed as movable income. Up to EUR 59.970,00, these revenues are taxed at 15%, with favorable lump sum deduction for costs. Above this amount, the revenues of the author are assumed to be professional income which are taxable at the normal progressive tax rates (refutable assumption). Important to mention is that a.o. copyrights on software also qualify for the regime, which aids the competitiveness of software companies and their employees.

The tax authorities states that the transfer of the copyright should be clearly mentioned in a written contract.