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# Belgium proposes a fairness tax on dividend distributions

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## *In brief*

On June 30, 2013 the Belgian government agreed on the 2013-2014 budget. The budget includes new tax measures. The bill implementing part of these measures was introduced into the Chamber on July 8, and the following information is subject to change.

For multinational companies (MNCs) the most important budget announcement was the proposed introduction of a 'fairness tax'.

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## *In detail*

### **Minimum tax or 'fairness tax'**

During the budget negotiations in June 2013, the government announced a so-called 'fairness tax'. Details of the fairness tax were released when the budget bill (dated July 8, 2013) was published on July 10, 2013.

### **Rate**

Effective with tax year 2014 (accounting years ending between December 31, 2013 and December 30, 2014 inclusive), large companies will be subject to a fairness tax on their distributed dividends. The fairness tax is a separate tax of 5.15% (5% increased by a 3% crisis surtax), borne by the company distributing the dividends. As a result, it is not a withholding tax borne by the dividend's beneficiary.

### **Calculation of the taxable basis**

The tax only applies if, during the taxable period, the company has distributed dividends, and (part or all) of the taxable profit has been offset by either (current year) notional interest deductions or tax loss carryforwards. Therefore, the fairness tax does not apply when a company has distributed dividends in a certain year and has not utilized notional interest deductions and / or tax loss carryforwards in that year.

*First step:* The taxable basis of the fairness tax equals the excess (if any) of gross dividends distributed during the taxable period less the taxable profits that are effectively subject to the Belgian nominal corporate tax rate of 33.99%.

"Liquidation boni" (liquidation profits) – which are deemed to

be dividends from a Belgian tax point of view - are not in the scope of the fairness tax.

*Second step:* The excess (as determined by the first step) is reduced by the amount of any dividends that resulted from previously taxed reserves built up during tax year 2014 (at the latest) or prior periods. Taxpayers should apply a LIFO (last-in-first-out) method to identify the dividend's origin.

*Third step:* The above calculation's outcome is limited by a percentage equal to the following fraction:

- The numerator equals the tax loss carryforwards and notional interest deductions that were utilized during the relevant taxable period

- The denominator equals the period's taxable profits, excluding any tax exempt reductions in value, provisions or capital gains.

The fairness tax is not deductible for income tax purposes.

### *Taxpayers in scope*

Large companies are subject to the fairness tax; it does not apply to small and medium-size entities (SMEs).

Besides large companies, Belgian branches are also subject to the fairness tax. For Belgian branches, 'distributed dividends' are defined – for the purposes of the fairness tax – as the amount of gross dividends distributed by the head office multiplied by the ratio of the Belgian branch's financial income to the head office's global financial income.

### *Entry into force*

According to the bill, the fairness tax applies from tax year 2014 (accounting years ending between December 31, 2013 and December 30, 2014 inclusive) onwards. Any change made to a company's accounting reference date on or after June 28, 2013 will be disregarded for the purposes of the fairness tax.

The Council of State (among others) has heavily criticized the fairness tax. The tax will be reported to the European Commission, however it is currently unclear whether the text of the law as set out in the July 8 Bill is compatible with EU law and double tax treaties.

### **Belgian participation exemption**

In order to apply the Belgian participation exemption for dividends (the dividend received deduction), the Belgian shareholder currently has to own at least:

- 10% of the share capital in the distributing entity; or
- shares in the distributing entity with a total acquisition value of at least EUR 2.5 million.

The government may abolish the latter condition, meaning that all shareholders would need to meet the 10% shareholding threshold (in addition to other conditions) in order to apply the dividend received deduction.

### *Entry into force*

The rule will apply from tax year 2014 onwards. Any change made to a company's accounting reference date on or after November 21, 2012 will be disregarded.

### **VAT and lawyers**

Under the budget, lawyers' fees would become subject to VAT at a 21% rate. Currently these fees are not subject to Belgian VAT.

### **Excise duties**

The budget proposes to increase excise duties on tobacco and alcohol.

### **SICAVs/BEVEKs**

The budget would introduce a 25% tax for particular types of investment companies (certain SICAVs/BEVEKs).

A SICAV/BEVEK (Société d'investissement à variable/Beleggingsvennootschap met veranderlijk kapitaal or 'Investment company with variable capital') is an open-ended collective investment fund in which the amount of capital varies according to the number of investors. Shares in the fund are bought and sold based on the fund's current net asset value. SICAV funds are some of the most common investment vehicles in Europe.

### **Notional interest deduction**

No changes were announced to the notional interest deduction (NID) system. However, Belgium might increase the NID rate for SMEs.

### *The takeaway*

Belgium's proposed budget measures would impact US MNCs with Belgian subsidiaries or branches.

The most important measure announced is the new fairness tax on companies distributing dividends. The 5.15% tax would be levied on companies that distribute dividends but do not pay corporate income tax due to tax loss carryforwards or notional interest deductions.

The full details of these measures are not yet available. However, US MNCs with Belgian subsidiaries or branches should consider the potential impact of the new fairness tax, as well as the other proposed tax changes.

***Let's talk***

For a deeper discussion, please contact:

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