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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 per cent 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 per cent 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 per cent 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 per cent 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 per cent tax would be levied on companies that distribute dividends but do not pay corporate income tax due to tax loss carry-forwards 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.

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CYPRUS

Clarification regarding the five-year restriction on carry-forward of losses

Taxable income and tax losses

The Cyprus Department of Inland Revenue has issued a circular (Circular 2013/8 dated May 30, 2013) clarifying the practical application of the new five-year limit for carry-forward of losses by companies for relief against future profits. The limit was introduced by Article 13 of the Income Tax (Amendment) (No 2) Law 188(I) of 2012 ("the amendment law"), which entered into force on December 21, 2012.

Prior to that date, tax losses could be carried-forward indefinitely for relief against future taxable income, that is income acquired from the ordinary activities of a company or income acquired from activities closely connected with the ordinary activities of the company.

For the 2012 tax year and subsequent years, the carry-forward period is limited to five years. Accordingly, only losses incurred in the tax year 2007 and subsequent years are available for relief against taxable income of 2012. Relief is no longer available for unutilised losses relating to 2006 and earlier years.

Taxation on a temporary assessment basis for the year 2012

Under the provisions of the Assessment and Collection of Taxes Law, companies must submit a provisional self-assessment of taxes for the current year no later than July 31 and pay the estimated tax liability by instalments before the end of the year. Circular 2013/8 deals with the situation where a company had calculated the provisional tax payable for 2012 on the basis of the old rules, which were the rules in force at July 31, 2012, the deadline for submission of provisional assessments for that year, and had consequently underpaid tax on the basis of the new rules, as a result of the disallowance of losses of 2006 and earlier tax years. In general, the Assessment and Collection of Taxes Law provides for imposition of a surcharge of 10 per cent on underestimations of tax payable, but Circular 2013/8 makes clear that no surcharge will be imposed if the underestimation is the result of the inclusion in the provisional assessment of losses relating to 2006 or earlier years.

Losses of permanent establishment overseas

The five-year limit also applies to carry-forward of losses incurred by an overseas permanent establishment. Article 36(3) of the Income Tax Law provides

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that profits of an overseas permanent establishment are exempt from tax, but losses of an overseas permanent establishment may be offset firstly against profits of the same year derived from other overseas permanent establishments, and then against taxable income of the same year. Such losses are available for group relief. Any unrelieved losses are carried forward to be offset in the same way. However, if the overseas permanent establishment subsequently earns taxable income, the loss relief is clawed back by adding the amount of loss relief obtained in previous years to taxable income for the current year. The circular makes it clear that this clawback applies only to relief that has been obtained, and does not extend to losses that have been claimed but have not been set off due to the lapse of the five year limitation period.

In contrast to Cyprus-resident trading companies, the amendment law has no implications for holding companies, which usually incur small tax losses consisting of administration costs as annual fees, audit and other expenses, but whose income in the form of dividends and profits from the disposal of securities is exempt from tax in Cyprus.

Group relief

Although they do not allow for carry-forward of losses to future accounting periods, Cyprus's group relief rules are highly beneficial, allowing tax losses of one company to be offset against profits of others in the same group. Two companies are considered to be part of a group for group relief purposes if either is a 75 per cent subsidiary of the other, or both are 75 per cent subsidiaries of a third company. Previously, group relief was available only if all relevant companies were members of the same group for the entire financial year for which tax relief was sought. With effect from January 1, 2012, a subsidiary formed (but not one acquired) during a tax year is treated as a member of the group for the entire year, and therefore eligible for group relief.

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HUNGARY

ECHR finds Hungarian tax legislation in breach of right to private property

The European Court of Human Rights ("ECHR") finds Hungarian legislation providing for a 98 per cent tax over payments to employees of the public sector for termination of employment in breach of the right to private property (*N.K.M. v Republic of Hungary*)

On May 14, 2013, the ECHR issued its judgement in the case, *N.K.M. v Republic of Hungary* (Application No. 66529/11). The case refers to the Hungarian rules which impose a 98 per cent tax on the upper bracket of severance payments for employees dismissed from the public sector.

Ms N.K.M. was a civil servant for 30 years. On May 2011, she was dismissed with effect from July 28, 2011. On dismissal, she received two months' salary for June and July 2011, during which time she was exempted from work. In addition, she was to receive severance pay amounting to eight months' salary as well as to an unspecified sum corresponding to her unused leave of absence. Those benefits were subsequently taxed at 98 per cent in their part exceeding 3.5 million Hungarian forints. This represented an overall tax burden of approximately 52 per cent on the entire amount of severance pay, as opposed to the general personal income tax rate of 16 per cent in the relevant period.

Ms N.K.M. complained under Article 1 of Protocol No.1 -read alone and in conjunction with Article 13 - that the imposition of a 98 per cent tax on the upper bracket of her severance constituted, an unjustified deprivation of property or alternatively, taxation at an excessively disproportionate rate, with no remedy available. She also considered that Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1 had been violated because only those dismissed from the public sector were subjected to the tax and because a preferential threshold was applicable to only a group of those concerned.

Article 1 of Protocol no. 1 of the Convention provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The ECHR went on to analyse the several elements of Article 1 of Protocol 1. It first started by analysing whether the severance pay received constituted 'possessions' within the meaning of the referred Article, as Ms N.K.M. had actually never possessed the entire payment in question since the special tax applicable had been directly withheld by the tax authorities. The ECHR observed that the concept of 'possessions' in the first paragraph of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to the ownership of material goods and is independent from the formal classification in domestic law. It stated that 'possessions' within the meaning of Article 1 of Protocol No. 1 can be either 'existing possessions' or assets, including claims, in respect of which an applicant can argue that he has at least a 'legitimate expectation' that they will be realised. Thus, it considered that a 'legitimate expectation' of obtaining an asset may also enjoy the protection of Article 1 of Protocol No. 1.

The second element analysed by the ECHR was whether there was an interference with the possessions of the individual. It concluded that a legislative amendment which removes a legitimate expectation may amount, in its own right, to an interference with 'possessions'. In other words, the taxation at stake represented an interference with the right to peaceful enjoyment of possessions by Ms N.K.M.