RSM InterTax
Tax Insights February 2018

Belgian corporate income tax reform

Most of the measures announced by the 2017 Belgian summer agreement were finally adopted in the Law of 25 December 2017 on the reform of corporation income tax (as published in the Belgian Gazette on 29 December 2017).

According to the explanatory memorandum of the draft law, the government's objective was "to aim for a simplified system with a higher level of fairness and legal certainty".

This reform, which aims to be budget neutral, focuses on two main elements: the lowering of the nominal corporate tax rate and the broadening of the tax base.

The law of 25 December 2017 was also an opportunity for the government to transpose into Belgian law the tax rules adopted within the ATAD Directive I & II.

The reform comes into force in three phases.

The first new measures (Phase I) entered into force on 1 January 2018 and are applicable as from tax year 2019 relating to a taxable period which begins at the earliest on 1 January 2018 at least.

Other measures (Phase II) will enter into force on 1 January 2019 and will be applicable as from tax year 2020 relating to a taxable period which begins at the earliest on 1 January 2019. These measures include introducing a limited tax consolidation.

Finally, the last measures (Phase III) are planned to enter into force on 1 January 2020 and will be applicable as from tax year 2021 for a taxable period which begins at the earliest on 1 January 2020.

Phase I

1. Corporate tax rate

The nominal rate of 33,99% will be lowered to 29% in 2018 and to 25% in 2020.

For SME's, the rate will be lowered to 20% on the first EUR 100.000 of income.

The crisis tax will also be lowered to 2% in 2018. As from 2020, crisis tax will be abolished.

In order to qualify for the reduced rate, the company will need to satisfy the definition of a "small company" as defined in Article 15, §§ 1 to 6 of the Belgian Companies Code and to pay out one director remuneration of at least EUR 45.000 per year or at least equal to the taxable profit (not for start-up SME's during the first four taxable periods as from their incorporation).

The exclusion from the reduced rate when distributing a dividend that exceeds 13% of the paid-up capital will be abolished.

Comparative table

	Current regime	2018-2019	2020
Ordinary rate	33,99%*	29,58%*	25%
Reduced rate	progressive	20,40%*	20%

** Crisis tax included*

2. Participation Exemption Deduction

Currently, qualifying dividends received by a Belgian company are entitled to a deduction regime limited to 95% of the amount of qualifying dividends received.

As from 2018, the percentage of deduction will be increased up to 100%**.**

3. Investment Deduction

SME's as defined in Article 15, §§ 1 to 6 of the Companies Code are allowed to offset from their taxable profits 8% of the acquisition value of assets exclusively devoted to the exercise of the professional activity.

For investments made in 2018 and 2019, the investment deduction would temporary be increased up to 20%.

4. Wage withholding tax exemption

Belgian companies active in scientific research could benefit an 80% tax exemption of wage withholding tax. In practice, only 20% of the wage withholding due must be paid to the tax authorities.

Up to the end of 2017, this measure was limited to researchers holding a specific master degree, engaged in R&D.

As of 2018, this measure is being extended gradually to all holders of a scientific bachelor's degree. From 40% in 2018 and 2019, the wage withholding tax exemption will increase to 80% in 2020.

It should be noted that the total amount of wage withholding tax exemption for bachelors is limited to 25% of the exemption for Master degrees (50% in SME's).

Summary table

Wage withholding tax exemption	2018-2019	2020
Rate	40%	80%

5. Notional Interest Deduction (NID)

Belgian companies are entitled to a NID, under which they are authorized to offset against their taxable base a notional rate of interest based on their adjusted prior year equity.

The actual NID is calculated as a percentage of the company's accounting equity as reflected in the annual accounts of the prior financial year.

As from 2018, rather than on the total equity, the NID will be calculated on incremental five-year average equity. In short, the incremental equity will be equal to one fifth of the positive difference between the equity at the end of the taxable period and the equity at the end of taxable period five years earlier.

The other rules remain unchanged. The reduced rate for SME's will be maintained. For financial year 2018 (tax year 2019), the NID rate will be equal to 0,746% for large companies and 1,246% for SME's.

Example

Financial years	12/2013	2014	2015	2016	2017	12/2018
Equity	1.000K	1.000K	1.000K	1.100K	1.150K	1.600K

Based on the above data, the new methodology is the following:

First phase: 1.600.000 – 1.000.000 = 600.000;
Second phase: 600.000/5 = 120.000 (incremental equity).

In this example, the NID, for tax year 2019 (financial year 2018) will be: 120.000 x 0,746% = EUR 895,20.

6. Investment Reserve

The investment reserve regime will be abolished. However, the regime will be maintained for reserves constituted for taxable periods ending at the latest on 30 December 2018.

7. Basket of deductions – minimum tax base

Currently, there is no limitation regarding the amount of tax deductions companies can claim against income (except carried forward NID, which is subject to a 7 year limitation).

As from 2018, the deduction of certain existing tax attributes will be limited to an amount equal to EUR 1 million + 70% of the portion of income exceeding EUR 1 million (in the order as listed below). As a result, the remaining 30% will constitute a minimum tax base.

During the first four taxable periods as from their incorporation, start-up SME's as defined in Article 15, §§ 1 to 6 of the Companies Code will be able to offset carried forward losses without any limitation.

Non-taxable items	
Current-year Participation Exemption Deduction	
Patent Income Deduction (transitional measure)	
Current-year Innovation Income Deduction	**Unlimited** tax deduction
Current-year and carried forward Investment Deduction	
« Group contribution » (as of 2020)	
Current-year Notional Interest Deduction	
Carried forward Participation Exemption Deduction	
Carried forward Innovation Deduction	**Limited** tax deduction
Carried forward losses	
Carried forward Notional Interest Deduction (unlimited)	
Carried forward Notional Interest Deduction (7 years)	

International comparison

Luxembourg	France	Netherlands	Germany
CF losses	CF losses	CF losses	CF losses
17 years (based on announced reform)	EUR 1m+ 50% of the taxable result	9 years	EUR 1m + 60% of the taxable result
No minimum tax base	Minimum tax base	No minimum tax base	Minimum tax base

Example

	Unlimited	Limited	
<u>Case</u> :	/	**1st million**	**70%**
– Taxable profit: 10.000K – Innovation Income Deduction: 3.000K – Carried forward losses: 8.000K	10.000K – 3.000K	7.000K – 1.000K	6.000K – 4.200K
	= 7.000K	= 6.000K	Minimum tax base[1] : 1.800K Tax due: **532K (29,58%)**

[1] At this stage, 7.000K of carried forward losses still remain, limited to 70% of the portion of income remaining after step 2 (6.000K x 70% = 4.200K)

8. Minimum remuneration requirement – Separate contribution

8.1. Minimum remuneration

In order to benefit from the reduced rate, it is currently required to pay a minimum remuneration of EUR 36.000 to at least one company director (physical person).

As from 1 January 2018, this amount will be increased to EUR 45.000. To the extent that the remuneration is lower than EUR 45.000, the minimum remuneration will have to be equal to the taxable income.

The minimum remuneration requirement does not apply to start-up SME’s during the first four taxable periods as from their incorporation.

8.2. Separate contribution

Non-compliance with the new minimum remuneration requirement will be sanctioned by a new separate contribution at the rate of 5% (10% as of 2020) with the exception for start-up SME’s during the first four taxable periods as from their incorporation. In case of associated companies as defined in Article 11 of the Company Code managed by one manager, the total amount of the minimum remuneration is fixed at EUR 75.000.

The separate contribution, which is tax deductible, will be equal to the positive difference between the minimum remuneration requirement and the highest remuneration paid by the company to its company director.

9. Capital reductions

Currently, capital reductions carried out according to the Company Code, which correspond to the reimbursement of the fiscal paid-up capital, are not considered as dividend. Any payment exceeding the fiscal paid-up capital is considered as a dividend payment, subject to a withholding tax of 30%.

As from 1January 2018, capital reductions will be subject to withholding tax of 30% calculated on a pro-rata allocation. Part of the capital reimbursement will be deemed originating from fiscal paid-up capital and part will be deemed originating from taxed reserves and exempted reserves incorporated into the capital, on a pro-rata basis.

The portion of the capital reduction that, based on the pro-rata, is allocated to the fiscal paid-up capital will remain exempt from taxation. The remaining portion of the capital reduction is allocated to the reserves and will be regarded as a dividend distribution on which withholding tax will be due. The allocation to fiscal paid-up capital is based on the following formula:

$$\frac{\textit{Fiscal paid-up capital}}{\textit{Taxed reserves + Exempted reserves incorporated into capital + Numerator}}$$

Some elements such as certain exempted reserves, provisions for liabilities and charges, legal reserve, unavailable reserves, etc. are not taken into account to calculate the pro-rata.

Example

Equity	**EUR**
Fiscal paid-up capital	700
Exempted reserves incorporated into capital	300
Taxed reserves	600
Exempted reserves	400
Total	2000

Assuming that the shareholder's meeting has decided for a EUR 800 capital reduction, the new methodology is the following:

First step: pro-rata calculation	**Second step: imputation**	
$\frac{700}{600 + 300 + 700}$ = **0,4375**	Allocated to the fiscal paid-up capital Allocated to the taxed reserves Withholding tax (30%)	800 x 0,4375 = EUR 350 800 x 0,5625 = EUR 450 **EUR 135**

10. Capital gains on shares

Currently, if the subject-to-tax condition is fulfilled, capital gains realized by large Belgian companies on shares held for more than a year are subject to a special tax of 0,412% (crisis tax included).

As from 2018, the minimum shareholding condition already applicable to the Participation Exemption Deduction will be extended to capital gains on shares. Thus, capital gains will only be tax exempted in case of a shareholding of at least 10% or an acquisition value of at least EUR 2.500.000.

The flat 0,412% corporate income tax due on capital gains by large Belgian companies will be abolished.

The separate rate of 25,75% will continue to be due in case the one-year holding period condition is not satisfied, except in case of SME's reduce tax rate application.

As of 2020, capital gains on shares realized within one year will be taxed at the ordinary rate of 25%.

Summary table: capital gains on shares – Tax years 2019 and 2020

	Shareholding & Subject-to-tax conditions are met	Shareholding or/and Subject-to-tax conditions are not met
< 1 year	25,50% 20,40%*	29,58% 20,40%*
≥ 1 year	0%	

***On the first EUR 100.000 (SME's)**

Summary table: capital gains on shares – Tax year 2021

	Shareholding & Subject-to-tax conditions are met	Shareholding or/and Subject-to-tax conditions are not met
< 1 year	25% 20%*	25% 20%*
≥ 1 year	0%	

***On the first EUR 100.000 (SME's)**

11. Moratorium and late payments interest

Moratorium interest is due by the Belgian government while late payment interest is due by the taxpayer.

As of 2018, moratorium and late payments interest rates will be updated yearly (linked to the OLO interest rate).

The late payment interest rate will amount to minimum 4% and maximum 10%. The late payment interest will always be 2% higher than the moratorium interests. For 2018, the late payment interest is set at 4% and moratorium interest at 2%.

Summary table

Moratorium interest	Late payments interest
Due by the government	Due by the taxpayer
Updated yearly (OLO 10 years – as published in the Belgian Gazette)	Updated yearly (OLO 10 years – as published in the Belgian Gazette)
Currently: 7%	Currently: 7%
2018 (TY 2019) : 2%	2018 (TY 2019) : 4%

12. Lump-sum minimum tax base

Currently, in the event of a late filing of the corporate income tax return, tax authorities are authorized to establish the tax due by the taxpayer based on a lump-sum tax base.

In 2018 and 2019, that lump-sum will increase from 19.000 to EUR 34.000. As of 2020, this minimum will be further increased to EUR 40.000. As from 2021, the amount will be indexed annually.

Summary table

	TY 2019-2020	TY 2021	As of TY 2022
Minimum tax base	EUR 34.000 (EUR 19.000)	EUR 40.000	Annually indexed
Tax due	EUR 10.057,20	EUR 10.000	EUR > 10.000

13. Advance tax payments

The base rate for insufficient tax prepayments will increase from 1% to at least 3%.

For financial year 2018 (tax year 2019), the rate will be 6,75% (compared to 2,25% for TY 2018).

Furthermore, dispensation from the tax increase in case the amount is lower than EUR 80 or 0,5% of the tax due, will no longer apply.

14. Tax audit

Currently, Belgian companies can offset tax deductions in case of tax supplements resulting from a tax audit.

For tax audits relating to financial year 2018 and following, it will no longer be possible to offset tax deductions, such as current-year tax losses against these supplements. It would remain possible to claim the current-year Participation Exemption Deduction.

That new minimum taxable base will only apply in case where effective tax increases equal to or higher than 10% are applied by the tax authorities.

15. Provisions for liabilities and charges

Currently, to the extent that they comply with the strict conditions set out in the Belgian ITC, provisions for liabilities and charges are tax exempt.

As from 2018, provisions for liabilities and charges will only be tax exempt if they relate to contractual, legal or regulatory obligations existing at the end of the financial year.

The new regime will be applicable for provisions created as of 2018. In case of reversal, the Belgian government has decided to implement an anti-abuse measure: provisions will be taxable at the rate applicable at the time they were accounted.

16. Matching principle

Currently, expenses are in principle fully tax deductible in the year of payment. Thus, for example, pre-paid rent paid in December for the month of December 2017 and January 2018 was until now fully deductible in the year of payment (i.e. financial year 2017).

Belgian tax law will introduce a “matching principle”, under which expenses will only be deductible in the tax year to which they belong. In our previous example, the sole rent of December will be tax deductible for the taxable period of 2017. The part relating to January 2018 will only be tax deductible in 2018.

17. Re-invoicing of car expenses

The limitation of the deduction of professional expenses related to the use of a vehicle does not apply to costs which are passed on to third parties, provided that these costs are explicitly and separately mentioned on the invoice.

Phase II

1. Transposition of the ATAD Directive I & II

1.1. Controlled foreign companies

As from tax year 2020, implementing Article 7 of the EU Anti-Tax Avoidance Directive I, some non-distributed income of CFC would become taxable in Belgium in the hands of the Belgian controlling taxpayer.

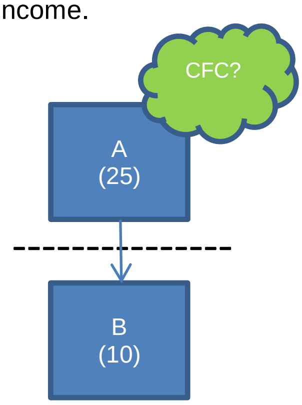
A CFC is a foreign company or foreign permanent establishment of which a Belgian taxpayer, itself or together with its associated companies, holds a direct or indirect shareholding of more than 50% of the voting rights, or owns directly or indirectly more than 50% of capital or is entitled to receive more than 50% of the profits of that entity.

The CFC rule will be applicable only if the foreign company would not be subject to income tax under the applicable corporate tax system of its residence state or is subject to income tax which is less than half of the corporate income tax of the CFC as computed according to the Belgian rules.

The CFC rule applies to the non-distributed income of the entity or permanent establishment arising from non-genuine arrangements which have been put in place for the sole purpose of obtaining a tax advantage.

An arrangement or a series thereof shall be regarded as non-genuine to the extent that the entity or permanent establishment would not own the assets or would not have undertaken the risks which generate all, or part of, its income if it were not controlled by a company where the significant people functions, which are relevant to those assets and risks, are carried out and are instrumental in generating the controlled company's income.

Foreign corporate income tax	**10**
Belgian corporate income tax	25
CFC rule application	25/2 = 12,5
CFC rule?	**YES** (10<12,5)



1.2. Hybrid mismatch

As from tax year 2020, implementing the EU Anti-Tax Avoidance Directive II, definitions of hybrid mismatch, hybrid entity and hybrid transfer as well as a series of rules are introduced in Belgian tax legislation to tackle hybrid mismatches.

2. Tax consolidation

At this time, there is no tax consolidation regime in Belgium: each company is a sole corporate taxpayer.

As from 2020, a limited tax consolidation, based on the Scandinavian model, will be introduced.

A group entity will continue to be treated as a single taxpayer (each company needs to fill separate corporate tax returns) with a mechanism of "group contribution" between companies which are member of the group. The group contribution will imply a transfer of taxable profits from one Belgian company to another Belgian company in order to offset these profits against tax losses.

The "group contribution" will be deductible in the hands of the contributing group company and taxable in the hands of the receiving group company. The amount of the group contribution will be limited to the current-year tax losses.

The scope of the tax consolidation regime will be limited to the following companies:

- A minimum shareholding of 90% between the companies during the entire taxable period will be required;
- Limited to the parent, the subsidiaries or the sister company of the taxpayer or the Belgian permanent establishment;
- The minimal shareholding of 90% should be maintained for an uninterrupted period of at least 5 years;
- Certain companies such as some investment companies will be excluded from the regime.

A group contribution agreement will need to be concluded between companies. In particular, the following information must be mentioned:

- The receiving group company's commitment to report the amount of the group contribution in its tax return;
- The contributing group company's commitment to pay a compensation equal to the additional tax that would have been due if the group contribution has not been deducted from the profits of the taxable period;
- The group contribution agreement can be related to only one taxable period;
- The group contribution amount and the compensation amount.

It should be noted that some of these measures enter into force in 2019 (tax year 2020) and others in 2020 (tax year 2021).

Phase III

1. Transposition of the ATAD Directive I

1.1. Interest deduction limitation

As from 2021, a new interest deduction limitation rule will be introduced, implementing Article 4 of the Anti-Tax Avoidance Directive I (Council Directive (EU) 2016/1164 of 12 July 2016).

Under that new limitation rule, exceeding borrowing costs will be deductible only up to 30% of the EBITDA.

The EBITDA will be calculated based on the result of the taxable period after the first operation, increased by deductible amortization and depreciation and by the exceeding borrowing cost, and decreased by a taxable group contribution, the current-year dividends received deduction, innovation deduction, patent income deduction, exempted treaty income.

Operations taking place within a group (Belgian companies and/or Belgian permanent establishment) would not be taken into account for the application of the interest limitation deduction rule.

Exceeding borrowing cost incurred on loans used to fund a long-term public infrastructure project, loans which were concluded before 17 June 2016, financial undertakings and stand-alone entities will be excluded from the scope.

The 5:1 debt equity thin cap rule will still remain applicable for exceeding borrowing cost related to loans concluded before 17 June 2016.

Exceeding borrowing cost up to a threshold of EUR 3 million would remain deductible, but subject to the 5:1 debt equity thin cap rule for interest payments to tax havens.

The exceeding borrowing costs which cannot be deducted in a certain tax year may be carried forward without time limitation.

1.2. Exit taxation and inbound transfers

As from tax year 2020, implementing Article 5 of the EU Anti-Tax Avoidance Directive I, Belgian exit taxation rules would be completed. For transfers as from 2020, outbound transfers exit tax would cover unrealized capital gain on assets in case of transfers of assets from a Belgian head office to its foreign permanent establishment.

Regarding inbound transfers, current exit tax rules are based on accounting value of assets.
For transfers as from 2020, a step-up would be introduced in order to take into account the market value of assets, in case of transfers from another Member State or from third countries, provided that the capital gain has been subject to tax in the exit state and Belgium has concluded a bilateral treaty or a bilateral or multilateral instrument with the exit state that allows for an exchange of information.

2. Permanent establishment

In accordance with BEPS Action 7 and in line with the new OECD guidelines, the Belgian permanent establishment definition will be modified to the extent that it will include commissionaire or similar companies that act in their own name but that are closely connected with a foreign company.

3. Foreign losses

Currently, Belgian companies can offset foreign losses incurred by a permanent establishment. A recapture rule allows the tax administration to add foreign losses that were previously deducted from the current Belgian profits if these foreign losses were set off against previous foreign profits under the application of a foreign loss carry-back rule.

As from assessment year 2021, Belgian companies will only be able to offset foreign losses incurred in a permanent establishment in the EEA only if, in the country of the permanent establishment, the compensation of the losses is final.

Foreign losses are considered as “final” when activities abroad are permanently terminated and to the extent that losses are no longer deductible under the foreign legislation.

If the foreign establishment restarts activities within 3 years following the termination of the PE, a recapture rule will be applied.

4. Depreciations

Currently, SME’s are entitled to apply a full year of depreciation in the year of the acquisition of an asset.

For assets acquired as of 1 January 2020, a pro-rata depreciation in the year of acquisition will also apply to SME’s.

The double declining balance method would be abolished.

5. Car expenses

As from assessment year 2021, all car expenses, including fuel expenses, will be deductible based on their CO_2 emission rate.

Summary table

Fuel type	Current regime	Reform
Petrol	50 – 100% depending on CO_2 emission	40%* or 50 – 100% depending on formula: 120% - (0,5 x coefficient** x CO_2)
Diesel	50 – 100% depending on CO_2 emission	40%* or 50 – 100% depending on formula: 120% - (0,5 x coefficient** x CO_2)
Electric	120%	100%
Fake hybrid	In general 90 – 100%	Petrol/Diesel counterpart for hybrid cars purchased after 1st January 2018
Fuel	75%	40 – 100% depending on the new formula

** If CO2 exceeds 200 g/km*
***Diesel: 1; others fuel type: 0.95;   natural gas: 0.90*

6. Fines

Currently, only some fines are considered as disallowed expenses.

As of 2020, all administrative fines imposed by public authorities can no longer constitute professional expenses (registration duties fines, proportionate VAT fines, additional social security contributions, etc.).

7. Secret commissions tax

Currently, the distinct tax charge on secret commissions is fully deductible.

As of 2020, the secret commission tax will no longer be deductible and the 50% secret commission tax rate on hidden profits reintegrated in the corporate accounting would be abolished.

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