Belgian Tax Bill updates the 1999 stock option regime

After it approved the bill that will cut the average corporate income tax from 40.17 percent to 33.99 percent, the Belgian Senate on 23 December approved another general bill (so-called "Loi Programme"). This bill which has not less than 1000 provisions has been chased through Parliament. Understandably so in view of the 2003 elections ; a lot of its provisions must attract votes from the electorate

Some of these provisions are of a fiscal nature:

1. The stock option regime is updated

In 1999 Belgian adopted new legislation, which introduced a new tax regime for options granted under an employee stock option, plans (ESOP). Rather than assessing the capital gain realised once the employee exercised the option, the tax would now be levied on the value of the stock option when it was granted and this would be taxed on a favourable basis, in particular if the beneficiary could not exercise his option for at least three years.

Over 60 % of all listed companies have set up employee stock option plans (ESOP). The employees were taxed immediately on the value of the benefit, and most of them paid the tax due in the expectation that they would soon realise a capital gain on which they would not have to pay any taxes.

Time has proven these hopes false. This tax regime did not take account of the possibility that the economic climate might deteriorate and render the stock options worthless. In order to minimise the tax due, most ESOPs were drafted in such a way that the beneficiaries could exercise their options as of the four years and would automatically end after five years. Most ESOPs have been set up in 1999 and 2000, and will expire in 2004 or 2005. Unless the stock exchange picks up drastically, most options will become entirely worthless.

Employees have tried to get out of these ESOPs by claiming that they had not accepted them and some have turned against their employers to recover the loss they have incurred. Some companies have tried to adapt the conditions of their ESOP, but as the Tax Authorities consider any changes to an existing ESOP to be the granting of a new plan, this would mean that the tax would be levied again.

It was suggested to give the employee the choice between paying tax either on the value of the option at the time the option is granted or on the capital gain he realises when he exercises his option. This idea was abandoned, and the legislation is now being patched up to give some (temporary) solace to the beneficiaries of ES OPs).

First of all, for ESOPs launched between 1 January 1999 and 31 December 2002, parties can agree, before 30 June 2003, that the period for exercising the option can be extended for a period of up to three years to give the stock market time to recover. This will not be considered to be the granting of a new stock option.

Secondly, stock options will have to be accepted in writing by the beneficiary. This will avoid any confusion for the future and prevent employees from claiming they have been tricked into a tax trap. This may create a problem for ESOPs which do not simply grant the employee an option without giving them the option to refuse. Irrelevant of the contractual consequences of the ESOP, if the employee has not accepted the stock option in writing, for tax purposes he will be deemed to have refused it.

Finally, verbal offers of stock options are simply excluded.

2. PC purchase plans

In order to encourage employees to acquire computers privately, a new measure is introduced to whereby the employer can pay back to his employees up to 60 percent of the price (net off VAT) which they have paid to purchase a pc, accessories, a printer, the internet connection and the subscription fee for internet access, as well as business software (as opposed to games).

This intervention will be a tax deductible cost for the employer with a maximum of 60% of 1.250 EUR (1.470 EUR after indexation), but it is not a taxable benefit for the employee.

The employer will have to set up a "private PC" plan for all the staff. However, an inconvenient of the system is that the employer can never own or have owned the equipment he finances, but this should be changed in the near future. If the employer gives the employee the right to use a computer, the value of this fringe benefit would be taxed on a lump sum basis of 180 euro per year.

These measures would enter into force with effect from tax year 2003.

3. Gifts

The VAT on any presents offered to business relations cannot be set off against the VAT due, unless it relates to gifts of little value, except for spirits. 12,50 EUR was the limit for gifts of little value but this limit will now be increased to 50 EUR with effect to 1 January 2002.

Gifts to staff, be they in kind, in cash or in coupons or cheques, have always been tax deductible for the employer if they were given to all employees, did not exceed 25 EUR per year and are given at the time of special occasions (Christmas, New Year, etc...). The limit will now be 35 EUR. Moreover at the occasion of St Nicholas, an additional 35 EUR can be granted per child.

4. Academic staff and fishermen at sea

To encourage the employment of researchers and to attract foreign researchers to Belgium, Belgian universities and high schools will only have to withhold half the withholding while the researchers will be able to continue to set of the full amount of the withholding tax against their tax liability. This will allow universities and high schools to use the reinvest the other half for their own investments.

A similar measure will apply for fishermen at sea.

5. Tax audit period

Finally, the bill also puts an end to an idiosyncrasy in the income tax code, which meant that companies which closed their accounts before 31 December could benefit from a shorter time bar for tax audits. If the year end is 31 December 2002, tax audits can be held until 31 December 2005 ; if, however, the company decided to have its year end one day earlier, the time bar was 31 December 2004.

The audit period will now be three years uniformly for all companies.

Marc Quaghebeur, 20 December 2002

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