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Belgium Announces New Tax Measures for 2005

by Marc Quaghebeur and Ruth De Baere

Belgian Prime Minister Guy Verhofstadt on October 12 gave his State of the Union address in the Chamber of Deputies, the lower house of the Parliament. Several new taxes to be introduced in 2005 are expected to yield substantial funds for the government coffers.

For the fifth consecutive year, the federal government has managed to balance the budget for 2005. However, a number of measures that were approved during the past few months will be postponed, resulting in a savings of €130 million. The postponements should not endanger social measures to fight poverty or increase jobs, and an increase in pensions and benefits will proceed as planned, Verhofstadt said. The most important new fiscal measures are described in more detail below.

Company Car Benefits

Company cars are one of the most popular employment benefits in Belgium, and under the current tax regime, employees are not taxed on the cost of the car, or on the actual value of its use. The value of the benefit is the number of kilometers the employee travels while using the company car privately (for example, when commuting between home and work, and during use on weekends, holidays, and so on). Depending on whether the commute between home and work is less or more than 25 kilometers, the minimum number of kilometers taken into account is either 5,000 or 7,500 a year.

Since 1997, the company car benefit has been subject to a solidarity (Social Security) contribution of 33 percent, which is paid by the employer. However, that contribution is not paid on a large percentage of company cars. Indeed, employers commonly avoid the contribution by withholding from the employee's salary an amount equal to the value of the fringe benefit, thereby canceling out its taxable value. In addition, the contribution does not apply to cars used in car pools that are solely for business purposes, or to cars used by employees who are not subject to the Social Security contribution in Belgium. It is estimated that there are about 500,000 company cars on the roads in Belgium, and that more than 60 percent of them escape the 33 percent solidarity contribution.

The government intends to charge a contribution on all company cars, and to that end, proposes changing the legal basis of the contribution to the car's horsepower and carbon dioxide emissions. The new contribution would vary between €250 and €1,320.

Supplementary Unemployment Benefit Plans

Supplementary unemployment benefit plans would be subject to a Social Security contribution that is expected to net approximately €18 million to €22 million.

Early retirement plans were very popular in the 1980s and 1990s. Employees qualifying for early retirement received unemployment benefits and a statutory supplement paid by the employer. However, successive governments have continually restricted the conditions for qualifying for early retirement plans. In particular, the minimum age was raised to 58.

To circumvent those limitations, employers' organizations and trade unions agreed on voluntary supplementary unemployment benefit plans outside the legal framework of the early retirement plans. The voluntary supplementary plans — commonly known as Canada Dry systems — were not subject to the special Social Security contributions due on early retirement plans. Those contributions include a 3.5 percent payment to fund the pension system and a 3 percent payment for the unemployment benefit. Under the latest proposals, Canada Dry benefits also would be subject to those contributions.

'Eco' Tax

The eco tax on nonreturnable packaging (cans in particular) would increase by 50 percent, for an expected yield of €139 million.

The eco tax was introduced on April 1 after about 12 years of negotiations. The goal was to persuade customers to use recyclable (glass) packaging. However, the tax appears to have missed its mark.

Stock Exchange Tax

Belgium used to levy a stock exchange tax for any remittance of securities to the subscriber of shares or bonds related to Belgian or foreign public securities after a solicitation of funds from the public by way of issue, offer, or public sale, as well as on the transfer of existing securities.

On July 15, the European Court of Justice in *Commission of the European Communities v. Kingdom of Belgium* (C-415/02) declared that the Belgian stock exchange tax on the remittance of newly issued securities to subscribers was contrary to Council Directive 69/335/EC concerning indirect taxes on the raising of capital. (For the ECJ judgment, see *2004 WTD 138-10* or *Doc 2004-14611*.) However, that decision did not affect the stock exchange tax on the transfer of existing securities.

Generally speaking, the tax is 0.07 percent of the purchase price of bonds and units in investment funds, with a maximum of €250 per transaction. For capitalization or accumulation shares in an investment company, the tax is levied at a rate of 0.5 percent on the purchase, sale, or redemption of accumulation shares, with a maximum of €375 per transaction.

The federal government wants to generate €55 million by canceling the limits of €250 and €375 on the stock exchange tax on the delivery of existing securities, and by making the real estate SICAF (investment fund) more attractive.

REITs and SICAFs

Real estate investment trusts and SICAFs are fiscally transparent, closed-end undertakings for collective investment in real property. To make them more attractive, the exit tax would be reduced from 19.5 percent to 16.5 percent. The exit tax is the reduced capital gains tax payable by companies that convert to a REIT, or that contribute real property to an existing REIT.

Other Measures

Other proposed measures include an additional charge of €0.50 on service checks, Social Security contributions on remunerations paid to the directors of public institutions and state-owned companies, and further measures to combat tax and Social Security fraud.

The government's proposal to outsource the recovery of outstanding tax bills raised a few eyebrows. It is estimated that about €22 billion in taxes is outstanding, and that approximately half of that is either irrecoverable or could be recovered only with great difficulty. The government is looking for financial institutions that are interested in a pilot project, whereby a bank would recover €345 million in back taxes, pay €260 million, and provide another €40 million in information technology facilities and other services, such as consulting services, to tax authorities. Finance Minister Didier Reynders reportedly will consult with his Portuguese counterpart, Antonio Bagao Felix, about the success of a similar operation in that country.

Verhofstadt also mentioned that the government is still taking account of a considerable increase in income from the tax amnesty. The government is encouraged by the fact that the Flemish government has agreed to abide by the tax amnesty, even though it has not ratified the legislation, as the Walloon and Brussels regional governments have. In particular, the doubling of penalties for undeclared income should act as a deterrent.

At a press luncheon on September 14, Reynders announced that while the government collected only €17.5 million during the first six months of the tax amnesty, it raised an additional €60 million to €70 million in the period from July to September. Reynders said that while there are no plans to extend the tax amnesty after December 31, he might consider an extension for technical reasons; the banks have indicated that they will not be able to process all the tax amnesty requests by the end of December. In particular, they might have to reject requests filed in December, as the process takes six to eight weeks. The banks anticipate total receipts of €100 million to €250 million. ✦

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