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Laga Newsflash

Tax Shift and Budget 2016 Agreement – Detailed overview of measures

This newsflash provides an in-depth overview of the measures in the Tax Shift and Budget 2016 Agreement reached by the Belgian Federal Government on 23 July 2015. The below information should be treated with caution, as many questions remain open. In addition, for some of the measures, conflicting information circulates in the (financial) press.

Tax Shift

Measures to reinforce the competitivity of Belgium

Decrease of employer social security contribution

- Gradual decrease of the employer social security contributions from 33% to 25%;

- Applicable to the profit and non-profit sector;
- The decrease would be implemented in three phases:
  - A first decrease would be operated as of 1 January 2016, resulting in a budgetary cost of 620 million per year;
  - A second further decrease would take place as of 1 January 2018, resulting in an additional budgetary cost of 700 million Euro per year;
  - A third further decrease would be applicable as of 1 January 2020, resulting in an additional budgetary cost of 700 million Euro per year.

SME specific measures

1. Further decrease of the employer social security contributions for the first three employees hired by small and medium sized enterprises or by self-employed entrepreneurs. This measure would apply as of 1 January 2016.

2. Investment deduction for SMEs for "productive" investments
   - Implementation of a one-off investment deduction for "productive" investments, i.e. "investments (allocated to the professional activity) in depreciable tangible or intangible fixed assets";
   - For small companies (article 15 of the Company Code) and self-employed entrepreneurs who satisfy the same conditions, the deduction would amount to 13.5%;
   - For micro-companies (article 15/1 of the Company Code) and self-employed entrepreneurs who satisfy the same conditions, the deduction would amount to 20.5%;
   - The deduction can be cumulated with the notional interest deduction but not with other already existing investment deductions for the same assets;
   - Excess investment deduction (in case of insufficient profit) can be carried forward to subsequent tax years;
   - A ceiling would be introduced determining the maximum amount of the annual deduction and the maximum amount that can be carried forward;
   - It is unclear as of when this measure will take effect.

3. Accelerated depreciation
   - SMEs would be allowed to apply accelerated depreciation for tangible fixed assets;
   - This measure would apply as of 1 January 2016 (without retro-active effect).

Night and shift work

- Further extension of the exemption to pay wage tax on night and shift work;
- This measure would apply as of 2016;
- The budgetary cost is estimated at 150 Million Euro (recurring).

High-tech sectors

1. Investments in means of production
   - Introduction of an investment deduction / tax credit for investments in means of production for future-oriented products, services and technologies;
   - The deduction would amount to 13.5% (one-off) or 20.5% (spread);
   - The qualifying sectors would be defined by Royal Decree;
   - This measure would apply as of 2016.

2. Wage tax exemption
    - The wage tax exemption for continuous work schedules (“volcontinue arbeidssystemen” | “systèmes de travail en continu”) would be extended to high-tech sectors;
    - The qualifying sectors would be defined by Royal Decree;
    - This measure would apply as of 2016.

Measures to reinforce the buying power

Low and middle income families

- The aim of the Federal Government is to increase the net after tax income with 100 Euro for low and middle income families as of 2016; the budgetary cost of this measure is estimated at 850 Million Euro (recurring); from this 100 Euro, 59 Euro comes from measures already put forward by what the Government calls the “first tax shift” (increase of the tax free minimum and increase of the lump sum deduction for professional expenses);
- In 2018 and 2020, additional measures would be implemented to increase also the net after tax income for higher revenues, resulting in an additional budgetary cost of 850 Million Euro in 2018 (recurring) and another 850 Million Euro in 2020 (recurring);
- At this stage it is unclear how this decrease of the federal individual tax burden will be achieved; during the press conference following the conclusion of the Government agreement, the Minister of Finance referred to the abolition of the 30% tax bracket;
- The Federal Government plans to consult with the Regions to avoid that the decrease of the federal individual tax burden would be compensated by an increase of the surtax imposed by the Regions.

Pension income

Earlier this year, the social partners agreed to increase certain pensions (welvaartsenveloppe 2015-2016 | enveloppe bien-être 2015-2016).

However, for certain categories of retired taxpayers this increase is (fully) neutralized by a higher taxation. The Government would plan to introduce a measure to counter this adverse effect. The budgetary cost of this measure is estimated at 5 Million Euro as of 2015.

Financing of the tax shift

Withholding tax

As of 1 January 2017, the 25% withholding tax rate would be increased to 27%. Movable income subject to lower withholding tax rates would not be affected (e.g. on dividends paid by SMEs). Also the tax regime for income from regulated savings deposits would remain unchanged.

Increase of VAT rate on the supply of electricity

The former Government reduced the VAT rate on the supply of electricity for residential consumption from 21% to 6%. The current Government plans to reverse this measure with effect as of 1 September 2015.

The Government also announced targeted tax audits to detect “inappropriate” application of the 6% rate in the electricity market.

Look-through tax (alias “Cayman tax”)

Earlier this year, the Government estimated the budgetary revenue of the Cayman tax at 120 Million Euro as of 2016. Based on a new estimation, the measure is expected to generate 200 Million Euro as of 2016. Note that the Cayman tax is put forward by the Program Law which was adopted by the House of Representatives on Friday 24 July (Dutch | French).

Speculation tax

As of 1 January 2016, a tax of 25% (or 27%, as indicated in certain press) would be applicable on “speculative” capital gains realized on stock quoted shares purchased as of 1 January 2016. The tax would only apply to capital gains realized within 6 months as of the purchase date of the shares.

Capital losses on such shares would be deductible from the taxable base on which the speculation tax is computed. Excess capital losses can be carried forward to the three subsequent taxable periods.

This speculation tax regime would apply to both physical and legal persons. It is unclear how this will interfere with the current taxation regime for short term capital gains (within 1 year as from acquisition) realized on shares by corporate shareholders. The Government plans to introduce anti-abuse measures to avoid that the effect of this measure would be “undermined”.

This measure is expected to generate additional revenue of 28 Million Euro as of 2016.

Increase of excise duties

The Government plans to increase the excise duties on alcohol, tobacco and diesel. For professional diesel consumers, the price increase will be neutralized via the refund mechanism. The excise duties on fuel will be lowered.

“Unhealthy” food would become subject to the common VAT rate (21%) and/or “specific” excise duties.

Real estate investment trust (REIT)

The Government plans to introduce a new real estate investment vehicle for institutional and professional investors.

To this end, the current framework for (public) Belgian real estate investment trusts (REITs) (“sicafis immobilières” / “vastgoedbevaks”) would be reformed/enlarged so to allow the establishment of “private REITs”. For such “private REITs”, the public emission of shares and stock quotation would not be required.

The new “private” vehicle would have a limited duration in order to allow investors to step out.

It is expected that “private REITs” will benefit from a tax regime, similar to the tax regime applicable to public REITs: the taxable basis is limited to non-deductible items and received non-arm’s length benefits. The conversion of existing real estate companies into “private REITs” would trigger an “exit tax” on latent capital gains. Dividends distributed by “private REITs” will probably not benefit from the participation exemption.

At the same time, and in order to be compliant with EU legislation, the Government envisages to open the beneficial tax regime for so called Regulated Investment Companies (“Sociétés Immobilières Réglementées” / “Gereglementeerde Vastgoedvennootschappen”) and public REITs (“sicafis immobilières” / “vastgoedbevaks”), to Belgian real estate companies held by non–resident REITs.

Other measures

Other measures to finance the tax shift include (amongst others) a better collection of taxes and new measures to combat tax fraud.

Budget 2016

Permanent fiscal regularisation system

In the framework of the Budget 2016 agreement, the Government plans to introduce a new permanent fiscal regularisation regime, applicable as of 1 January 2017. Under such regime, a taxpayer can regularise his tax position with respect to income or capital which was not reported to the tax authorities in due time. The previous regularisation regime expired on 31 December 2013.

The new regime would also apply to income and capital for which the assessment term has expired. Regularisation means that the income or capital is subject to the normally applicable tax regime/rate, increased by a penalty rate. The penalty rates would be higher than those applicable under the previous regime and those applied by the tax authorities.

The Minister of Finance and the Minister of Justice would elaborate a dedicated civil and penal legal framework.

This measure is expected to generate 250 Million Euro as of 2017.

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