Chambers
Global Practice
Guides

Definitive global law guides offering
comparative analysis from top-ranked lawyers

Corporate Tax 2022

Belgium: Trends & Developments
Christophe Goossens and Antoine Cleret
White & Case

practiceguides.chambers.com

Trends and Developments

Contributed by:
Christophe Goossens and Antoine Cleret
White & Case see p.6

Impact of COVID-19 on Belgium's 2022 Tax Agenda

Like almost all jurisdictions around the world, Belgium has been deeply impacted by the COVID-19 crisis. While the impact was obviously primarily health-related, with a large number of tragedies, the pandemic also had a significant economic impact on Belgian society. According to the latest OECD report of December 2021, Belgium's GDP fell by 5.7% in 2020, which is the worst result for the country since the Second World War. The impact of the COVID-19 crisis varies greatly depending on the sector of activity, with the catering, hotel, travel and cultural sectors being the most affected. In parallel, Belgian public debt increased from 97.7% in 2019 to 112.8% in 2020, according to the Belgian National Accounts Institute report published in October 2021.

Nevertheless, a GDP growth of 3.2% is expected for 2022 before reverting towards potential at 1.4% in 2023, according to the OECD report referred to above. This growth is driven by resilient business investment and a surge in private consumption enabled by the effective vaccine rollout. However, it is still difficult to estimate the real impact of the crisis on Belgian companies. The number of reported bankruptcies is much lower than before the pandemic (6,533 in 2021 against 10,598 in 2019) according to Statbel, the Belgian federal statistical institute. However, this statistic can be explained by the numerous public measures put in place to support companies during the crisis, including a freeze on certain bankruptcy proceedings. These measures will still be active in the first months of 2022, so the full impact of the pandemic may not be experienced until the effects of the measures have expired.

The government is currently considering extending the Belgian fiscal measures implemented to support businesses in the context of the COVID-19 crisis. A draft bill was approved by the Council of Ministers (*Conseil des ministres*) at a second reading on 14 January 2022, the main feature of which is a tax credit for irrecoverable expenses caused by the pandemic.

There have been no COVID-19 related tax increases in Belgium, apart from a new tax on securities accounts (*voy infra*) and an increase in excise duties on tobacco. Nevertheless, Belgium remains one of the states with the highest tax wedge on labour, according to the OECD Taxing Wages report of 2021, although a decrease in the tax wedge has been observed over the last ten years.

Developments of 2021 that May Affect 2022

New tax regime for impatriates

The Programme Act published on 31 December 2021 in the Belgian Official Gazette provides for the introduction of a new special tax regime in Belgium for "impatriate" workers, managers and researchers, which came into force on 1 January 2022.

In substance, the regime concerns the impatriate employee-associated costs that the employer may bear. Two main categories of costs can be considered as non-taxable indemnities.

- Recurring costs that result directly from being made available or employed in Belgian territory. However, this amount cannot exceed

30% of the employee's gross remuneration or EUR90,000 per year. The excess amount is considered as remuneration and taxed as such.

- Costs related to:
  - (a) the impatriate's travel to Belgium;
  - (b) furnishing the home in Belgium during the first six months after arrival in Belgium; and
  - (c) certain expenses, especially academic expenses, related to the impatriate's children or partner.
- The granting of the benefit of this regime is subject to the following conditions.
- The employee must be either an employed person receiving a minimum remuneration of EUR75,000 gross per year (before the deduction of social security contributions) or an impatriate researcher who has a certain level of education or at least ten years of experience. In the first scenario, the employee may also be a company manager, in which case they must be responsible for the day-to-day management of the company. Furthermore, the manager cannot hold 30% or more of the company's shares nor be the founder (or co-founder) of the company.
- During the last 60 months prior to their entry into service in Belgium, the person concerned cannot have resided in Belgium or within 150 km of the Belgian border, nor been subject to non-resident tax on their professional income.
- The person concerned must be recruited by a Belgian resident company, a Belgian permanent establishment or an association with legal personality.

The benefit of the scheme can only be granted for a maximum period of five years (possibly extendable by three years under certain circumstances).

The previous system for "foreign executives" is repealed and replaced by this Programme Act of 31 December 2021. However, there is a transitory period until 31 July 2022 to allow beneficiaries of the old scheme to claim the benefit of the new one (if they are eligible).

Bill introducing tax-free "relaunch hours"

The act published on 31 December 2021 in the Belgian Official Gazette provides for the introduction of a new system of "relaunch hours" (*heures de relance/relance-uren*). This new regulation follows the economic flexibility measures introduced during the COVID-19 crisis in Belgium – the so-called "Corona measures". Under this previous regime, 120 hours of overtime per year were allowed in certain critical sectors (ie, enterprises and public services that are necessary for the protection of "the vital needs" of Belgium to limit the spread of COVID-19, including doctors, nurses, retailers of essential goods, etc) under a favourable tax regime.

This new law allows 120 hours of overtime for all sectors without distinction for the FYs 2021 (performed between 1 July 2021 and 31 December 2021) and 2022. These hours can be performed by employees on a voluntary basis and are exempted from income tax.

Tax on securities accounts

The act published on 17 February 2021 in the Belgian Official Gazette provides for the introduction of a new tax on Belgian securities accounts, which is due annually on securities accounts where the average value of taxable financial instruments held exceeds EUR1 million during the reference period (ie, a period of 12 consecutive months beginning on 1 October and ending on 30 September of the following year). A tax of 0.15% is applied on the average value of the referred account.

The tax is due from:

- Belgian tax residents who have a securities account held with an intermediary in Belgium or abroad;
- a Belgian establishment of a non-resident which has a securities account that forms part of the assets of that establishment and is held with an intermediary in Belgium and abroad; and
- a non-resident who has a securities account held with a Belgian intermediary.

The act of 17 February 2021 is the second version of the tax on securities accounts in Belgium; the first version was annulled by the Constitutional Court in 2019. This second version is also currently criticised before the Court, which could reach a decision at the end of 2022. In the meantime, the tax on securities accounts remains in force.

According to government statements, this new tax is supposed to bring in EUR429 million revenue for the Belgian state.

Belgian double taxation treaty network

The Belgian state has an extensive network of double taxation agreements, which was updated in 2021 with the following:

- the signing of a new double tax treaty with the French Republic on 9 November 2021;
- the signing of an additional protocol to the convention with Norway of 23 April 2014, dated 9 September 2021; and
- the notification dated 25 November 2021 by Netherlands and Belgium to the OECD Secretariat of their intention to bring their double tax treaty under the umbrella of the Multilateral Instrument.

Declaration of foreign bank accounts

The law dated 8 July 2018 as amended by the Programme Act dated 20 December 2020 and further executed by the Royal Decree dated 6 June 2021 provides that credit institutions must report the following to the *Point de contact central des comptes et contrats financiers* by 31 January 2022:

- bank balances and the aggregated amounts of investment contracts; and
- the aggregate amounts of life insurance contracts.

This obligation covers the accounts of private persons and legal entities. Information should then be further updated by the financial institutions every 30 June and 31 December.

This extended reporting obligation is part of the fight against money laundering, the financing of terrorism and serious crime, and tax evasion.

Potential Future Tax Reform

On 27 November 2021, national newspaper "La Libre Belgique" published information on a possible future tax reform, leaking an expert report commissioned by the government and aiming for a thorough reform of the taxation of individuals in Belgium. The information published in La Libre highlights a reform that will affect the entire Belgian tax system, including corporate tax aspects.

The points envisaged by the government include the following.

- The transparent taxation of management companies – in the published draft, the government contemplates treating management companies as transparent entities, which would mean their income would be directly taxable in the hands of their shareholders. This change would significantly affect the investment (or management rollover) structure of Belgian managers. Adjustments will be necessary in Belgian private equity deals.

- The taxation of capital gains – in the published draft, the government contemplates modifying the taxation on capital gains arising from the normal management of one's own private estate. Capital gains realised by individuals in Belgium are currently generally exempt from tax, but the reform suggests modifying the system so that capital gains would be taxed at a rate similar to dividends (ie, 30%).
- Value added tax – in the published draft, the government contemplates increasing the standard rate of VAT from 21% to 22%.

These reforms would target extremely sensitive points of the Belgian tax system, as tax concessions are the counterbalance to the high tax wedge on labour income. It should be noted that some of the points mentioned in the La Libre article are regularly raised by certain of the more socialist parties. However, it is the first time that such a global package has been contemplated in the same reform.

Although it is unlikely that all of the points envisaged in the government's draft will receive a sufficient majority in parliament, the draft shows a clear willingness to impact the existing privileged tax zones. This project should be monitored closely in terms of both personal and corporate tax.

White & Case is an international law firm that serves companies, governments and financial institutions. Its long history as a global firm means it is uniquely placed to help clients resolve their most complex legal challenges, wherever they are. As a global law firm with longstanding offices in the markets that matter today, White & Case's on-the-ground experience, cross-border integration and depth of local, US and English-qualified lawyers help clients work with confidence in any one market or across many. The team guides clients through difficult issues, bringing their insight and judgement to each situation. Its innovative approaches create original solutions for clients' most complex domestic and multi-jurisdictional deals and disputes. By thinking on behalf of clients every day, the firm anticipates what they want, provides what they need and builds lasting relationships, doing what it takes to help clients achieve their ambitions.

AUTHORS

Christophe Goossens heads the tax and white-collar crime practice of White & Case in Brussels. He has 20 years' experience in business tax law, and advises clients on Belgian and Luxembourg tax law issues in the fields of M&A, real estate taxation and international taxation. He has also developed a strong track record in conducting major tax litigation, including criminal tax law. Christophe's areas of expertise include white-collar investigations and litigation, including criminal defence of corporations and individuals. He has written academic publications on tax law and criminal tax law, and is a frequent speaker at academic conferences and congresses.

Antoine Cleret is an associate in the Benelux transactional practice and in the global tax practice of White & Case. His practice focuses on all aspects of international and domestic taxation, and primarily on the tax aspects of private equity transactions, M&A, group structure reorganisations and financings. Antoine completed his Master of Law degree in corporate law at Université catholique de Louvain.

White & Case

Wetstraat
62 rue de la Loi
1040 Brussels
Belgium

Tel: +32 2 239 26 20
Fax: +32 2 239 26 26
Email: Daniella.arbyn.havugimana@whitecase.com
Web: www.whitecase.com

WHITE & CASE