Deloitte.

Budget 2012
The second wave

1 February 2012

Agenda

1. Introduction

2. Personal income tax

3. Corporate income tax

4. General anti-abuse provision

5. Conclusion

1. Introduction

- Law of 28 December 2011
- Draft bill(s)
  - To be submitted to Parliament in February 2012
  - To be voted and published in March 2012
- Information may be subject to change!
- Budget control: new tax measures?

Agenda

1. Introduction
2. Personal income tax
3. Corporate income tax
4. General anti-abuse provision
5. Conclusion

2. Personal income tax

Company cars – Employee/executive (Art. 36, §2 ITC)

Benefit in kind – Law of 28 December 2011

Past	Current
Tax year 2012	**BIK as of 1 January 2012**

Past – Tax year 2012

BIK based on combination of:

- CO^2 emission
- Fuel type
- Private kilometers driven (deemed 5,000 or 7,500 km)

Current – BIK as of 1 January 2012

BIK =

- 6/7ths of list value X CO^2 coefficient
- Absolute minimum = 1,200 € for tax year 2013 (= indexed; basis = 820 €/year)

List value =

- amount invoiced incl. VAT and options, but excl. discounts

CO^2 coefficient =

- min. 4% and max. 18% (5.5% = 95g CO^2 for diesel/115g CO^2 for petrol)
- 0,1% per 1g CO^2 (1% per 10g)
- adapted to developments in automotive industry

2. Personal income tax

Company cars – Employee/executive (Art. 36, §2 ITC)

Benefit in kind – Draft bill

To be

As of tax year 2013

BIK =

- 6/7ths of list value X CO² coefficient X age coefficient

List value =

- New car => amount invoiced incl. VAT and options, but excl. discounts
- Second-hand car => B2C list price new car incl. VAT and options, but excl. discounts

Age coefficient =

- Annual depreciation of 6%, applicable to BIK granted as of 1 May 2012 for payroll tax purposes
- Calculated as of date of first registration car with DIV
- Minimum basis for BIK = 70% of list value (even if older than 5 years)

2. Personal income tax

Company cars – Employee/executive (Art. 36, §2 ITC)

Benefit in kind – Draft bill – Example Audi A4 (30,600 €; 114g/km CO²)

Time elapsed since first registration vehicle	% of list value to be considered for calculation of the benefit	Benefit in kind
From 0 to 12 months	100%	€ 1,940.91
From 13 to 24 months	94%	€ 1,824.46
From 25 to 36 months	88%	€ 1,708.00
From 37 to 48 months	82%	€ 1,591.55
From 49 to 60 months	76%	€ 1,475.09
As of 61 months	70%	€ 1,358.64

2. Personal income tax

Company cars – Employee/executive (Art. 36, §2 ITC)

FAQ 26 January 2012 – FGS Finance

Question	Answer
Pro-rata calculation BIK	• Part of year • Car change Example New car on 10/7/2012 Old car: 1/1 – 9/7/2012 — 191/366 New car: 10/7 – 31/12/2012 — 175/366 • Temporary car until new car is delivered
Options borne by employee or executive	• Value of options should not be included in basis to calculate BIK Example List value — 30,000 Options (employee) — 2,000 Basis for BIK — 30,000

2. Personal income tax

Company cars – Employee/executive (Art. 36, §2 ITC)

FAQ 26 January 2012 – FGS Finance

<table>
<tr><th>Question</th><th>Answer</th></tr>
<tr><td>Net contribution</td><td>• Can be offset against BIK
• ≠ personal contribution damage repair / end of lease repair
• Example
Gross BIK: 2,500
Net contribution: -1,500
Net BIK: 1,000</td></tr>
<tr><td>VAT: list value or discounted value</td><td>• Example
List value: 28,000
VAT: 5,880
Basis for BIK: 33,880

Discounted value: 25,000
VAT: 5,250
30,250</td></tr>
<tr><td>Two or more company cars</td><td>• BIK for each car</td></tr>
</table>

2. Personal income tax

Company cars – Employee/executive (Art. 36, §2 ITC)

FAQ 26 January 2012 – FGS Finance

Question	Answer
Reporting obligations (forms 281.10 / 20)	• Initial FAQ: exemption of 370 € abolished • Rectified FAQ 31 January 2012
Option packs	• Value of options to be included in basis to calculate BIK • Examples:
"6 wheels" leasing contract	• Company car + bike • Separate BIK to be calculated • No benefit if bike used for commuting

Examples (option packs):

List price	30,000
Option pack (for free)	3,000
Basis for BIK	33,000

List price	30,000
Option pack value	4,000
Option pack discount	-2,000
Basis for BIK	34,000

2. Personal income tax

Company cars – Employee/executive (Art. 36, §2 ITC)

Other questions addressed in FAQ

- CO^2 coefficient
- (Fleet) discounts
- Temporary unavailability (e.g. maintenance)
- Vans (“*lichte vrachtwagens / camionnettes*”)
- Short- and long-term absences
- Commuting / professional use only
- Pool cars

2. Personal income tax

Reporting investment income (Art. 313 ITC)

Past	Current
Tax year 2012	As of tax year 2013
• Mandatory reporting	• Mandatory reporting

• No mandatory reporting in personal income tax return
  • Not for investment income subject to WHT
  • Not for investment income exempt from WHT
	• All investment income is mandatory reportable, whether subject to WHT or not
	• Exception:
	  • Investment income subject to 21% WHT and on which 4% surcharge has been withheld at source

Central Contact Point

- Law of 28 December 2011

  "Central Contact Point" (CCP) hosted in National Bank of Belgium

- Draft bill

  CCP would be "separate" unit within FGS Finance

4. Personal income tax
Deductions

Miscellaneous expenses (Art. 145 ITC)

Tax reduction between 30% - 40% depending on level of income → **Reduced to 30% (fixed)**

Gifts, daycare children, primary dwelling & building savings (Art. 107, 113 and 115 ITC)

Deductions depending on marginal tax rate (up to 50%) → **Reductions at 45% (fixed)**

Example – Pension savings (max. 910 € for tax year 2013)		EUR
Tax reduction old	Max. 40% x 910 €	364 €
Tax reduction new	30% x 910 €	273 €
Difference		91 €

4. Personal income tax
Other changes

- Increase of lump-sum benefit in kind for housing for company executives
    - o Royal Decree modifying Art. 18 RD/ITC still to be issued

- Extra-legal pension changes
    - New 80%-rule (Art. 59 ITC): current 80%-cap + absolute maximum equal to highest government pension (Art. 39, 2nd indent Law of 5 August 1978)
    - o Higher tax rates for pension capital payments from employer contributions + requirement that individual must have been actually active until age payment (Art. 171 ITC)

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3. Corporate income tax
Notional interest deduction

Carry-forward NID stock

Carry-forward (Art. 205*quinquies* ITC)	• Abolished as of tax year 2013 • Impact? Tax year 2010 NID stock (box 332): € 12,640,865,726 (1,679,518,178 SME's / 10,961,346,548 MNC's)
Existing stock (Art. 536 ITC)	• Transitional rules for stock remaining per tax return for tax year 2012 – changes to closing date financial year as of 28 November 2011 not opposable • Remains deductible for 7-year period but maximum deduction of 60% taxable base before NID stock, except on first million € taxable base • 60%-limitation may not lead to *de facto* reduction NID stock (underlying principle: deduct what would have been deductible under 7-year carry-forward rule) = 2 calculations will have to be made • Deduction stock becomes last operation in determination of taxable base

3. Corporate income tax
Notional interest deduction

Carry-forward NID stock – Tentative example

Tax year 2014:

- NID stock of 2,000,000 € relating to tax year 2007
- current year NID of 500,000 €

	Current	To be
Taxable base	2,300,000	2,300,000
DRD	-	-
NID - NID stock	(2,000,000)	N/A
- NID current year	(300,000)	(500,000)
Losses	-	-
	0	1,800,000
NID stock	N/A	(1,480,000)
	0	320,000
	C/F CY NID 200,000	C/F NID stock 320,000 or 520,000?

3. Corporate income tax
Capital gains on shares

Capital gains	Art. 192, §1 ITC
Exempt amount	100% exemption of net capital gains
Conditions	• Taxation requirement • Holding period of 1 year full ownership => if sale < 1 year: taxable at the rate of 25.75% • DRD holding requirement (2.5 mio € or 10%) not imposed
Entry into force	Capital gains realised as of (i) tax year 2013 and (ii) tax year 2012 for companies with financial year closing on or after date of publication of law, provided capital gain is realised as of 28 November 2011 + anti-abuse rule

Summary new regime capital gains on shares	
1-year holding + taxation requirement	0%
Taxation requirement met + sale < 1 year (Art. 217, 2° ITC)	25.75%
Taxation requirement not met	33.99%

Capital losses	Art. 198, 1st indent, 7° ITC
Deductibility	No changes to rules regarding deduction of capital losses: • Losses only deductible in case of liquidation up to fiscal paid-in capital subsidiary • No losses can be deducted from capital gains < 1 year

3. Corporate income tax

Capital gains on shares

- 25.75% tax: practical modalities?
  - No restriction on use of tax attributes (e.g. losses – cf. Art. 207 ITC)

Example 1

Profit ex CG	100
CG < 1 year	100
	200
Loss C/F	(200)
	0

  - Determination of tax rate to be applied?

Example 2

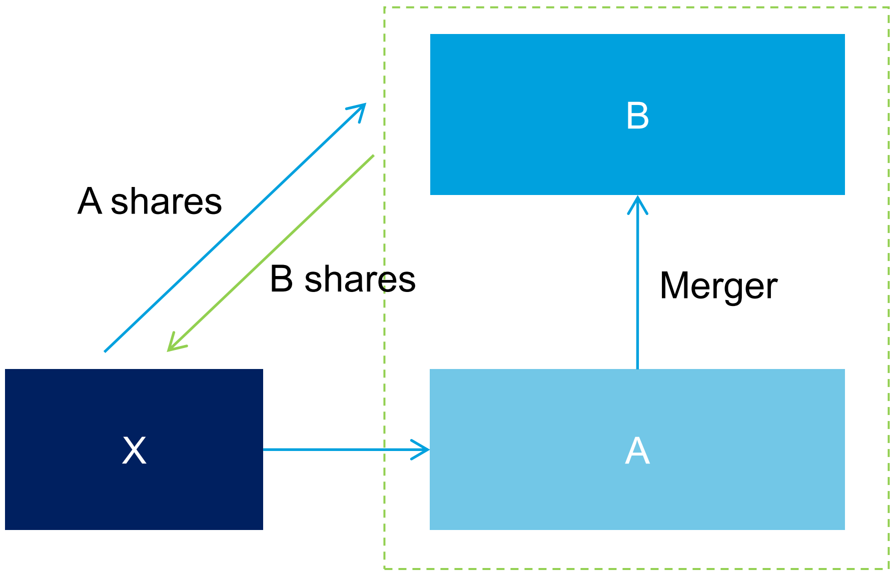
Loss ex CG	(50)
CG < 1 year	100
	50 x 25.75%/33.99%= 12.9 or 17?

  - Partial sale?

3. Corporate income tax
Capital gains on shares

Calculation 1-year holding period

=> Tax-neutral reorganisations disregarded



Example:

- X owns shares in A since 1/1/2012
- Tax-neutral merger (Art. 183*bis* and 211 ITC) of A into B on 1/1/2013
- Exchange of A shares for B shares
- X sells B shares with capital gain on 1/6/2013
- 1-year holding period calculation starts as of 1/1/2012 = capital gain exempt

3. Corporate income tax
Capital gains on shares

Derogation for trading companies (governed by RD 23/9/1992)

Capital gains/losses	Art. 192, §1 and 198, 1st indent, 7° ITC
Shares	Shares part of trading portfolio (e.g. shares acquired for resale within 6 months)

Tax regime	• Alienation:
	  • Capital gains taxable
	  • Capital losses tax deductible
	• Internal transfer = deemed alienation:
	  1. Transfer to trading portfolio: gains exempt if 1-year holding requirement met + write-offs not deductible
	  2. Transfer from trading portfolio: gains taxable + write-offs deductible

Entry into force	Capital gains, capital losses and write-offs realised / recorded as of (i) tax year 2013 and (ii) tax year 2012 for companies with financial year closing on or after date of publication of law, provided realisation / recording as of 28 November 2011 + anti-abuse rule

3. Corporate income tax
Deductions – Thin capitalisation

Current	To be
Until tax year 2012	**As of date publication law**
Article 198, 1st indent, 11° ITC:	**Modification of Article 198, 1st indent, 11° ITC:**
Interest not tax deductible	**Interest not tax deductible**
• Ratio	• Ratio
• To the extent that debt to equity ratio of 7:1 is exceeded	• To the extent that 5:1 debt to equity ratio is exceeded
• Equity	• Equity
• Taxed reserves at the beginning of the taxable period +	• Taxed reserves at the beginning of the taxable period +
• Paid-in capital at the end of the taxable period	• Paid-in capital (*) at the end of the taxable period
	(*) For NPO's (Law 27 June 1921) subject to corporate income tax: paid-in capital = funds of the association as reflected on balance sheet

3. Corporate income tax

Deductions – Thin capitalisation

Current	To be
Until tax year 2012	**As of date publication law**
Article 198, 1st indent, 11° ITC:	**Modification of Article 198, 1st indent, 11° ITC:**
➡ **Interest not tax deductible**	➡ **Interest not tax deductible**
• Debt	• Debt
• Tainted (intra-group and third party) loans • Tainted = beneficial owner of interest is not subject to income tax or subject on interest income to considerably more beneficial income tax regime • Loans = civil law definition; gross borrowing position • Not: publicly issued bonds and other debt securities	• All intra-group loans • Other loans if tainted • Group = affiliated companies under Art. 11 Belgian Companies Code • Loans = civil law definition; gross borrowing position • Not: publicly issued bonds and other debt securities + loans granted by EEA banks and other financial institutions (Art. 56, §2, 2° ITC)

3. Corporate income tax

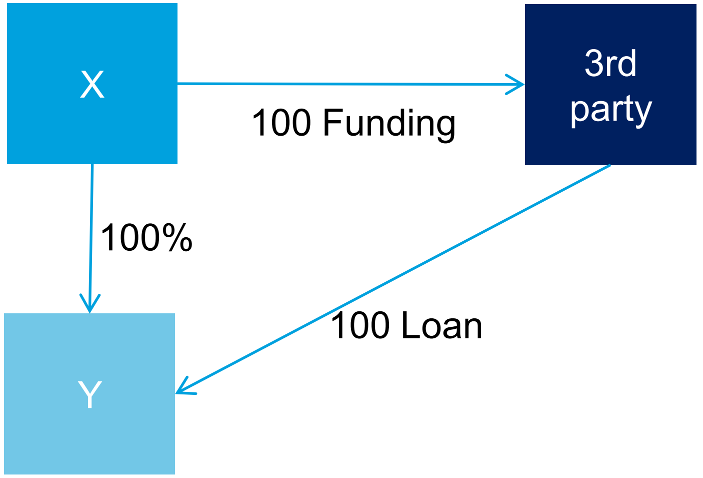
Deductions – Thin capitalisation

Current	To be
Until tax year 2012	As of date publication law
Article 198, 1st indent, 11° ITC:	**Modification of Article 198, 1st indent, 11° ITC:**
Interest not tax deductible	**Interest not tax deductible**
• Not applicable	• Not applicable

• No exceptions	• Companies engaged in equipment leasing (RD n° 55)
	• Companies mainly engaged in factoring and real estate leasing, provided
	    • they belong to financial sector, and
	    • loans are effectively used for factoring / leasing
	• Companies mainly engaged in execution of PPP projects (public procurement)

3. Corporate income tax
Deductions – Thin capitalisation

Current	To be
Until tax year 2012	As of date publication law
Article 198, 1st indent, 11° ITC:	**Modification of Article 198, 1st indent, 11° ITC:**
Interest not tax deductible	**Interest not tax deductible**
• Anti-abuse rule	• Anti-abuse rule
• None	• Loans guaranteed or funded by “third party” (+ risks borne by “third party”) and • Main aim guarantee/funding is tax evasion



3. Corporate income tax
Deductions – Thin capitalisation
Examples

Facts
- Company with paid-in capital & taxed reserves of 10,000,000 € and tainted intra-group loans of 60,000,000 €
- Current rule: - no general limitation on (intra-group) loans
  - limit of 70,000,000 € for tainted loans
- To be rule: limitation of intra-group loans to 50,000,000 €

Example 1

		Current	To be
Bank loans	20,000,000	-	-
Intra-group loans	80,000,000	-	30,000,000
- Tainted	60,000,000		
- Not tainted	20,000,000		

Example 2

		Current	To be
Intra-group loans	100,000,000	-	50,000,000
- Tainted	60,000,000		
- Not tainted	40,000,000		

3. Corporate income tax
Extra-legal pension accruals

- Mandatory externalisation, subject to 4.4% insurance premium tax
- Quid existing accruals?
  - To be transferred within 3-year period (2012 – 2014), subject to reduced insurance premium tax of 1.75%?
  - Maintained on balance sheet, subject to 1.75% insurance premium tax?

Agenda

4. General anti-abuse provision

Current

Income, registration & inheritance taxes	
Legal basis	• Art. 344, §1 ITC; Art. 18, §2 Registration Tax Code; Art. 106, 2nd indent Inheritance Tax Code • Introduced by Laws of 22 July 1993 and 30 March 1994
Requalification when...	• Requalified legal act or series of legal acts has similar or identical legal consequences as legal act / series of legal acts executed by taxpayer(s) – cf. landmark decision Supreme Court dd. 10 June 2010 • No legitimate needs of financial or economic nature for taxpayer's qualification

VAT	
Legal basis	• Art. 1, §10 VAT Code (replacing Art. 59, §3 VAT Code) • Introduced by Law of 20 July 2006 – will remain unchanged
Abuse when...	• Transaction essentially aims at VAT benefits • Benefits against objectives pursued by the law

4. General anti-abuse provision
To be – Draft bill

Income, registration & inheritance taxes	
Requalification when…	• No need to demonstrate identical or similar consequences - "substance over form" or economic reality • Legal act (series of legal acts) is carried out for tax reasons = presumption that tax evasion is main objective legal act (series of legal acts) • Taxpayer cannot demonstrate other than mainly tax reasons ○ taxpayer acts in contradiction with objectives tax legislation = through choice of legal form he realises tax savings (tax not due/tax benefit achieved) ○ "wholly artificial arrangement" = transaction does not pursue economic objectives tax legislation or has no link with economic reality or does not take place at commercial/financial market conditions
Effect…	• Qualification not opposable: tax authorities can redefine tax qualification of these legal acts to allow taxation in accordance with purpose law => • "creation" of fact pattern (substitute/eliminate legal acts) allowing "correct" taxation in accordance with objectives legislation • "new" facts should not respect consequences of qualification given by taxpayer

4. General anti-abuse provision
To be – Draft bill

Income, registration & inheritance taxes	
Entry into force…	• Income tax => unclear • Registration & inheritance taxes => legal acts (series of legal acts) accomplished as of 1 January 2012
Impact on rulings granted...	• No requalification possible • Requalification possible but legitimate needs

4. General anti-abuse provision

To be – Draft bill

- Income, registration and inheritance taxes

  - No examples to date in Explanatory Memorandum
  - Quid constitutional principle of legality?
  - Quid European Human Rights Convention?

Agenda

1. Introduction

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5. Conclusion

5. Conclusion

- Legislative process to clarify outstanding issues
- www.budget2012.be
- Deloitte Tax Forum (13 February 2012)
- Questions?
  - Get in touch with your regular contact or
  - Send e-mail to academy@deloitte.be

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