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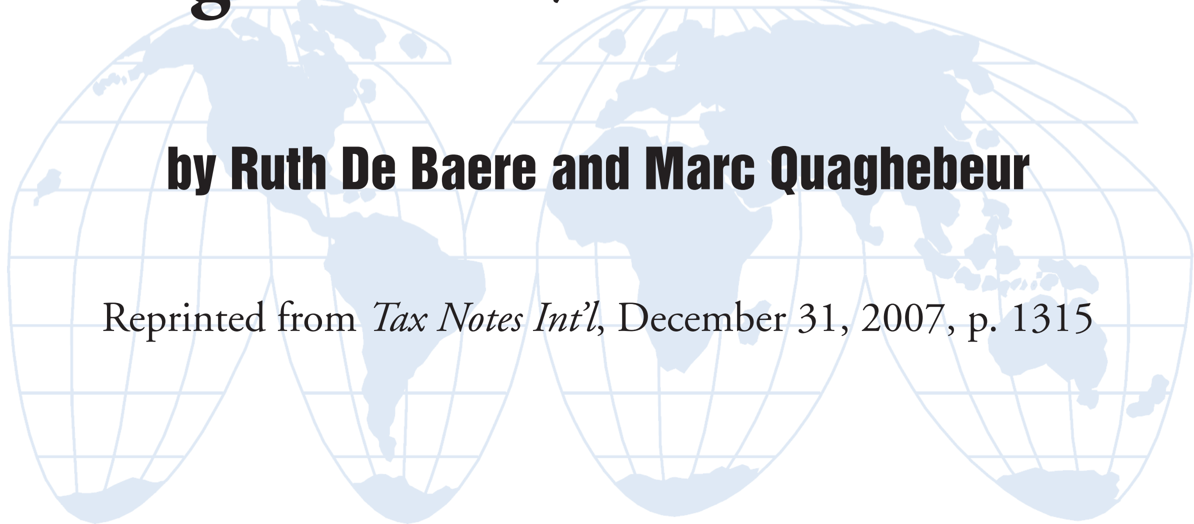

by Ruth De Baere and Marc Quaghebeur

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Belgium: 2007 Year in Review

by Ruth De Baere and Marc Quaghebeur

Because Belgium has been unable to form a federal government since the June 10 election, most tax developments occurred in the first half of the year. The previous government continued to make the country more attractive to foreign investors by reducing the salary cost and the corporate income tax burden. The most significant changes involved the withholding tax on wages, the patent income deduction, VAT grouping, and the reduced tax rate for tax-exempt reserves.

Withholding Tax on Wages

In Belgium, taxes on salaries are prepaid via monthly deductions at source. To reduce the tax burden on shift work and overtime, employers already benefit from an exemption of the obligation to remit (part of) the withholding tax to the Finance Ministry. The withholding tax not remitted may be reinvested in the company. That does not make any difference for the employee since he can still set off the full tax withheld against his final tax liability.

In 2007 a series of new measures were implemented to reduce the salary cost in specific situations. On January 1 the exemption for employers of researchers was expanded from universities and scientific institutions (who benefit from a 50 percent exemption) to include private companies (25 percent of the wage tax on salaries paid to researchers with a master's degree).

Since October, every private company is exempt from having to remit an amount equal to 0.25 percent of the employee's gross salary by way of withholding tax (regardless of the qualification of the employer and of the employee).

For professional and nonprofessional athletes, 70 percent of the withholding tax on their earnings is now exempt.

Patent Income Deduction

A patent income deduction was introduced to encourage technological innovation and to promote the development of patents in Belgium. (For prior coverage, see *Tax Notes Int'l*, Apr. 30, 2007, p. 423, *Doc 2007-10197*, or *2007 WTD 79-10*.) Belgian companies and branches are entitled to a deduction of 80 percent of patent income, resulting in an effective tax rate on royalties of 6.8 percent (instead of the standard corporate income tax rate of 33.99 percent). The deduction is granted on royalties for Belgian patents or extended patent certificates that are developed by Belgian companies or branches or that are acquired and further developed in Belgian research centers.

Personal Income Tax Rates

Although the exemptions from withholding tax remittance benefit employers, some categories of employees have also received beneficial treatment. Teachers and researchers at Belgian universities (or some scientific institutions) who receive royalties for the exploitation of an invention are taxed at a flat rate of 33 percent instead of the progressive income tax rates (up to 50 percent).

Income received by resident and nonresident athletes is also taxed at a flat tax rate of 33 percent (16.5 percent for athletes under 26). The 18 percent withholding tax for nonresident athletes has been replaced with the 70 percent withholding tax exemption on earnings.

Stock Options

Several court decisions in 2007 confirmed the trend in the case law relating to the taxation of "old" stock options (options granted before the Act of March 26, 1999). These decisions confirmed that the taxable moment is the date of attribution of the stock option, not the date the stock options were

exercised, unless there was a possibility that the beneficiary forfeited them.

Pensions

Belgium has finally complied with European Community law regarding cross-border occupational pensions. Belgium has lifted the ban on the tax deduction of employers' contributions paid to a pension institution established in the European Economic Area. The same rule applies to the employee's tax credit for his personal contributions to an EEA pension institution.

The effect of the exit tax on pensions due by taxpayers leaving Belgium is limited to taxpayers taking up residence outside the EEA. Also, pension capitals or pension reserves are only liable to tax if they are moved out of the EEA.

Similarly, Belgium has extended its housing tax relief for individuals' owner-occupied and secondary houses located in Belgium to owner-occupied and secondary houses within the EEA.

Treaty Developments

Belgium has signed new double tax treaties with Bahrain, Congo, Rwanda, and Uganda. Also, the tax treaty with San Marino entered into force on June 25, 2007, with effect beginning in 2008. Belgium signed a double tax treaty with the U.S., and ratification by the U.S. Senate is pending. The treaty could come into effect in 2008. Belgium has taken the opportunity to adopt its own model tax convention.

Since January 1, Belgium has extended the benefit of the EU parent-subsidiary directive to countries that have signed a double tax convention with Belgium. Dividends paid to a parent company in one of these countries are exempt from withholding tax if the parent company holds a direct participation of at least 15 percent (10 percent as of 2009). (For prior coverage, see *Tax Notes Int'l*, Mar. 19, 2007, p. 1055, *Doc 2007-6224*, or *2007 WTD 50-7*.)

VAT Grouping

Since April 1, Belgium has allowed groups of companies to apply for group treatment as a single VAT payer. This means that transactions between group members remain VAT exempt. This will result in administrative simplification, an optimization of the VAT cash flow, and a savings in direct expenses. This will not give the group a higher VAT deduction, but it will give significant VAT savings, particularly for VAT-exempt or mixed taxpayers (for example, banks and insurance companies that outsource information technology services now pay VAT on the HR cost). (For prior coverage, see *Tax Notes Int'l*, Jan. 15, 2007, p. 121, *Doc 2007-369*, or *2007 WTD 5-1*.)

Tax-Exempt Reserves

To encourage Belgian companies to use up the tax-exempt reserves they have built up in the past, those companies have been granted a chance to have these reserves taxed at reduced rates between 2007 and 2009. If the reserves are reinvested in depreciable tangible or intangible fixed assets, the rate is 10 percent (for tax year 2008), 12 percent (for tax year 2009), or 14 percent (for tax year 2010). If the company opts to distribute the retained earnings, the rates would be 16.5 percent, 20.75 percent, and 25 percent, respectively. The rate will go back to 33.99 percent in 2010. ◆

♦ *Ruth De Baere and Marc Quaghebeur are with Vandendijk & Partners in Brussels.*

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