

## NEW TAX MEASURES 2012

### 1) Taxable benefit for company cars

With effect from the 1<sup>st</sup> of January 2012, the taxable benefits for the free disposal of company cars is calculated based on the catalogue value of the car (including VAT and options, but excluding any rebates) and the CO<sup>2</sup> emissions of the vehicles, according to the formula: catalogue value multiplied with a % (linked to the CO<sup>2</sup> emission rate of the car) and multiplied with 6/7.

The basic percentage to apply is 5,5% for a diesel car with a CO<sup>2</sup> emission of 95 g/km and for a petrol car with 115 g/km CO<sup>2</sup> emission. This percentage is then increased or decreased by 0,1% for each CO<sup>2</sup> g/km below or above the threshold (with a minimum percentage of 4% and a maximum of 18%). The benefit in kind can however not be lower than €1.200 per year (subject to an indexation each year).

This means for instance for a petrol car with a value of €40.000 and a CO<sup>2</sup> emission of 125 g/km (BMW 5 series), the benefit in kind amounts to €2.914,29 in 2012, which is  $6/7 * 40.000 * \{(5,5\% + ((125-95)*0,1\%))=8,5\%$ . Compared to € 1.481,25 in 2011 (125g/km\*0,0237\*5.000 km).

Also the cost for the employer increases because 17% of the benefit in kind will need to be declared as disallowed expense by the company (on top of the limited deduction for car expenses) and can not be offset against losses to carry forward.

A change of the legislation has been announced to consider the age of the car by reducing the catalogue value of the car with 6% per year, up to a maximum of 30%. This reduction would be in force as of May 1, 2012 but has not been implemented in the law yet.

### 2) Free housing provided by the employer

As from January 1, 2012, the lump-sum taxable benefit in kind for free heating and electricity to company directors has been increased to €1.820 for heating and €910 for electricity (subject to a yearly indexation – the amounts were €1.640 en €820 for 2011).

The benefit in kind for the free disposal of housing by a company director (or employee) will be almost double because the cadastral income of the house (higher than €745) will not longer be multiplied with 100/60\*2 but with 100/60\*3,8.

This implies that, if the cadastral income of the house is higher than €745, the benefit in kind will be calculated on behalf of the beneficiary by multiplying 100/60 of the indexed cadastral income of the house with 3,8 (instead of 2).

If the cadastral income of the house is lower than €745, The formula remains unchanged: 100/60 of the indexed cadastral income of the house multiplied with 1,25.

This means that the benefit in kind for a house with a cadastral income of €4.000 put at disposal by a company to a director and his family amounts to about €40.600 in 2012 (which is  $€4.000 * 1,6035 * 100/60 * 3,8$ ). This was about €20.000 in 2011 and means an increase of personal taxes for the director of about €10.000 per year (assuming that the top rate of 50% + 7% community tax applies).

### **3) Increase of taxation on stock options granted as from 01/01/2012.**

The taxable benefit in kind for (non-quoted) stock options granted under the Belgian law of March 26, 1999 was equal to 15% of the value of the underlying shares at the time of offer. The percentage is increased with 1% per year (or part of the year) if the exercise period of the option is longer than five years.

Today, the taxable moment is still the moment of grant. However, the basic rate for stock options granted as from 1 January 2012 has been increased from 15% to 18% (and from 7,5% to 9% in case the conditions for the reduced rate are met).

The capital gains realized by individuals at the moment of sale of the shares stays as a principle not taxable (in opposition to the capital gains realized by companies).

### **4) The energy saving expenses for the house.**

The deduction for energy saving expenses for houses (e.g. for the installation of solar water heaters, the installation of solar panels, double glass, replacement and maintenance of boilers, installation of thermostatic cranes or room thermostat, the energy audit, passive houses, etc.) have been **abolished** as from 2012. Exception is made for the isolation of roofs (this tax credit has only been reduced).

A tax credit is however still possible if the contracts were concluded before 28 November 2011 (other than about the isolation of roofs) and the expenses will be paid in 2012. Also the investments based on contracts concluded before 28 November 2011 can be carried forward. There are no transitional provisions for the tax credit for low and zero energy houses and passive houses. These tax credits are abolished as from 2012. However, in case the house has been completed in 2011 and the request for the certificate has been filed before 31 December 2011 (and issued before 29 February 2012), the certificate shall be deemed to be awarded in 2011.

**5) Tax deductible items become tax credits.**

The current available tax deductible items (with the exception for alimony payments) will be converted into tax reductions with the purpose to simplify the personal income tax system.

Also the rates applying to the tax credits have been simplified. Only two percentages will apply:

- the rate of 45% applies to
  - tax credit for the purchase of your home (mortgage bonus)
  - cost for child care
  - gifts
- the rate of 30% applies to the other tax credits (including long saving plans such as live insurance, retirements savings,...).

**6) Limited number of service-cheques/ vouchers.**

Per 1 January 2012, a new ceiling for the services cheques has been introduced. This ceiling is 500 service cheques (with a value of € 7,5 per cheque) per taxpayer and per calendar year. A family with two parents can therefore only order 1'000 cheques per calendar year. However, a number of users (e.g. single-parent families with dependent children) can still order 2'000 cheques per calendar year.

The tax reduction is calculated at a tax rate of 30% which results in an actual cost for a service cheque amounting to € 5.25 €.

**7) Measures relating to company pension schemes.**

The contributions paid by an employer / company to finance a group insurance and/or pensionfund are tax-deductible until 31 December 2011 insofar as the pension constituted including the state pension does not exceed 80% of the final annual gross salary.

The government agreement announced that the aforementioned 80% limit will be capped to a maximum equal to the highest civil servant pension (± 78000 €) as from 1 January 2012. There are however still no legal texts available about the concrete implementation and it is uncertain whether this proposal will enter into force.

The tax reduction for the personal contributions in the group insurance, currently calculated on the basis of a special average tax rate of 30% to 40%, are calculated as from 1 January 2012 on the basis of a fixed percentage of 30% for all taxable persons, regardless of taxable income.

A higher taxation will be applied to pension capital funded by the employer / company. For early retirements at the age of 60 (20% instead of 16.5%) and 61 (18% instead of 16.5%). The rate of 16.5% remains for benefits received at an age of 62 to 64 years, while the 10% rate also continues to apply to the benefits received as from 65 (under condition of employment until age 65).

Moreover, internal pension provisions in favor of company directors are no longer possible. In the government agreement, it is stated that the existing internal pension provisions should be transferred to an insurance company or pension fund within a period of 3 years, under application of a premium tax at 1.75%. However, it is said that a compromise would be worked out whereby only the future pension provisions (2012) should be externalized (with a premium fee of 4.4%). It is still unclear if this proposal will enter into force.

#### **8) Increase of the withholding tax due on interest and dividends.**

The withholding tax on the interest and certain dividends is increased from 15% to 21%. However, the following exceptions are provided for:

- for the savings accounts (and "savings booklets") the percentage remains at 15% for the part above the exempted amount (the exemption, for interest up to 1.830 € per person for 2012 remains available);
- the withholding tax on the liquidation bonuses in case of the entire settlement remains at 10%;
- the withholding tax on dividends and interests which were already subject to the withholding tax of 25% remains unchanged.

The increased rate of 21% is therefore applicable to, among others, bonds, saving bonds, State bonds (with the exception of the issued State bonds which could be subscribed until 2 December 2011).

Taxpayers with investment income (interest and dividends) exceeding €20.020 per year are subject to an additional contribution of 4% on the amounts exceeding this threshold. In order to be able to determine whether or not this limit is reached, it is clear that there will be an obligation to declare all investment income. The possibility exists to ask the financial institution to charge the additional 4% on top of the withholding tax as a result of which the obligation to declare the income would expire.

Also for non-Belgian source interests the income tax rate increases from 15 % to 21 %.

#### **9) Notaries and bailiffs are obliged to charge VAT.**

The VAT exemption for services delivered by notaries and bailiffs, has been abolished. These services are subject to VAT as from 2012 at the general rate of 21 %. Services from lawyers stay excluded from VAT.

**10) Pay television (=digital tv): from 12% to 21 % VAT.**

The "services to which the listeners and viewers have access to radio and television programs via a decoder in house" are now subject to the normal rate of 21%. The rate of 12% was valid until 31 December 2011.

**11) Capital gains on shares for companies.**

Gains realized on shares that a company has in full ownership since less than one year, are taxed at a separate rate of 25%. Capital losses on shares remain disallowed. However, there is still no capital gains tax on shares for private individual taxpayers.

**12) Notional interest deduction.**

Henceforth, in the corporate tax, only maximum 3 percent (instead of 3.8%) of the equity will be deductible from the taxable profit (this amounts to 3.5% for SMEs). The unused notional interest deduction can not longer be carried forward. The existing surplus of previous years is not lost but can be used only limited (i.e. at a rate of 60% of the taxable result).

Please do not hesitate to contact us should you have any questions with regard to these new measures.

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*This memo specifies the current state of these measures. However, a number of these measures should still be elaborated further into concrete legislation.*