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Tax Corner / June 2014

Reduced labor costs for  
investment in areas in difficulties

B-REIT: alternative to the Belgian  
real estate investment company

Sixth State Reform also  
implemented in tax law

# Tax Corner

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# Reduced labor costs for investment in areas in difficulties

**Recently, a law was published containing a number of fiscal measures designed to promote the competitiveness of businesses, employment and economic recovery.**

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**Both large companies and SMEs qualify, although SMEs will be subject to more flexible conditions.”**

The most eye-catching of these measures is a response to several controversial plant closures and large-scale restructuring operations in recent years. These measures aim to support investments in areas in difficulty by lowering labor costs.

More specifically, the measure means that employers who invest in an area in difficulty may be exempt from paying 25% of the withholding tax deducted at source on the wages of workers recruited in connection with such an investment.

Both large companies and SMEs qualify, although SMEs will be subject to more flexible conditions.

Only investments in tangible and intangible fixed assets, which are also receiving support from the Regions and which are connected with the creation of a new site or diversification of production at an existing site, are eligible. The investment may also relate to the acquisition of the assets of a site whose closure has been announced,

or that is in proceedings for bankruptcy or judicial reorganization. For SMEs the investment may also be related to a capacity expansion or fundamental change in the production process of an existing site.

The areas in difficulties, which have yet to be decided, will be based on a proposal by the Regions. The prerequisite is that there must have been a collective dismissal (at least 500 dismissals over a period of 3 years within an area of 20 km<sup>2</sup>). Moreover, the Regions and the federal government have yet to sign a cooperation agreement on the application of the measure. Unlike large companies, SMEs can also invest in areas that do not coincide with the support areas on the regional aid map of the European Union.

Only new hires within three years after the investment are eligible. The exemption from the payment of tax deducted at source is valid for two years. The exemption is conditional: employment must be maintained for five years (three years for SMEs).

## Other fiscal stimulus measures

The government has proposed other measures besides the support for investments in areas in difficulty. For example, the exemption from paying tax deducted at source for night and shift work will be increased to 22.8% in several stages. Moreover, the work bonus for low wages will also be increased in several stages to a maximum of EUR 440. ■

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# B-REIT: alternative to the Belgian real estate investment company

**On 24 April 2014, the Belgian Parliament approved a Law concerning a new type of real estate company, namely the B-REIT or Belgian REIT.**

The purpose of the law is to provide existing real estate investment companies ('*Vastgoedbevaks/ SICAFI Immobilières*') the opportunity to mitigate the impact resulting from the application of the AIFM ('*Alternative Investment Fund Managers*') Directive. The tax rules of the B-REIT will be aligned to the ones that currently apply to Belgian real estate investment companies.

Existing Belgian real estate investment companies can be converted in B-REITs.

The so-called AIFM Directive concerns the oversight of the management of alternative investments and subjects alternative investment funds to tight regulation. The current Belgian real estate investment companies are incorporated under the law of collective investment undertakings as investment funds (Law of 3 August 2012) and therefore qualify as alternative investment funds according to the AIFM Directive. This means that a Belgian real estate investment company - once the AIFM Directive has been transposed into Belgian law - will have to comply with additional legal obligations.

However, the Belgian legislator doubts that these additional regulations will provide added value for the existing Belgian real estate investment companies. For that reason, a law has now been adopted that makes it possible to establish an alternative type of real estate company, '*B-REIT*' or '*Belgian Real Estate Investment Trust*' that no longer qualifies as a collective investment undertaking.

Existing real estate investment companies can be transformed into B-REITs and will have four months to apply for licensing as a B-REIT with the FSMA. The conversion process also provides the right to exit for existing shareholders of the real estate investment company.

## Favorable tax status

The B-REIT will be able to benefit from the same tax regime as the existing real estate investment companies.

- **Corporate income tax**

No corporate income tax on actual profit, but an alternative, minimal basis consisting of (i) abnormal or benevolent advantages received and (ii) disallowed expenses excluding impairments and capital losses on shares.

The secret commissions tax will also apply.

- **Exit tax**

Existing companies which apply for and obtain the status of B-REIT will be subject to an exit tax of 16.5% (plus 3%). If no exit tax is provided for, recognition as a B-REIT would mean that deferred capital gains on the real estate could no longer be taxed. The same exit tax is applicable to (cross-border) mergers, demergers and similar transactions in which a B-REIT is involved.

What if an existing real estate investment company wishes to be recognized as a B-REIT? In these cases, the exit tax according to the law does not apply. The reason for this is that an exit tax is already levied when a company is recognized as a real estate investment company. The conversion of a real estate investment company should therefore be completely tax-neutral.

- **Withholding tax on distributed dividends**

Dividends distributed by B-REITs will be subject to a withholding tax of 25%, or 15% for residential B-REITs.

Dividends distributed on or after 1 January 2013 by a real estate investment company to savers/non-residents are - under certain conditions - exempt from withholding tax (Art. 106, § 7 Royal Decree/Income Tax Code). This article will be extended, through a separate Royal Decree, to B-REITs.

- **Annual tax on CIUs**

Oddly enough, the real estate investment trusts, although they are not explicitly collective investment undertakings, will be subject to the annual tax on collective investment undertakings.

- **Stock exchange tax**

Finally, the tax neutrality should - according to the Law - also be extended to the stock exchange tax. Thus, the stock exchange tax will apply to the sale and purchase of shares in B-REITs in the same way it does for real estate investment companies. ■



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## Sixth State Reform also implemented in tax law

The revised Finance Act (Special Law of 6 January 2014, published in the Belgian Official Journal on 31 January 2014) grants the regions autonomous fiscal powers concerning personal income tax. Just before it was dissolved before the election, the federal parliament approved the implementation of the new regional tax capabilities in the Income Tax Code.



**Under the new capabilities, the regions have been given the possibility of raising income tax surcharges."**

### Regional powers concerning personal income tax

Under the new capabilities, the regions have been given the possibility of raising income tax surcharges (the so-called regional supplementary tax). Besides that, the regions can also allow discounts, apply tax increases and reductions and allow refundable tax credits.

Additionally, a number of tax 'expenditures' have been transferred to the regions. In the present case it concerns the following expenses:

- tax relief regarding one's own dwelling (for a second or subsequent home, the federal government remains competent);
- service vouchers and 'PWA' checks;
- renovation of houses in zones for positive metropolitan policy;
- renovating houses rented out at a low price;
- securing homes against burglary and fire;
- maintenance and restoration of protected monuments and sites

### Changes in the taxation of non-residents

To avoid problems with the European legislation, adjustments are also being made to the taxation of non-residents (TNR).

From now on, we distinguish three categories of taxpayers in the TNR:

- non-residents from the European Economic Area with at least 75% of their earned professional income in Belgium;
- non-residents from outside the EEA with at least 75% of their earned professional income in Belgium;
- 'ordinary' non-residents

The existing category of non-residents with a home in Belgium has been abolished.

Only the first category of non-residents will be entitled to apply the regional tax rules on personal income tax.

The new absolute 75% limit can have a negative impact on taxpayers who enjoy expatriate status in Belgium but earn less than 75% of their taxable income in Belgium.

To determine the region to which a non-resident belongs, specific location rules are contained in the Code.

In general, the new regulations will enter into force as from the 2015 tax year.

Finally, the King is authorized to prepare a new coordination of the Income Tax Code. This is a task for the next government, which is generally expected to include a drastic reform and simplification of the tax system in its program. However, with the granting of these new powers and the opportunities given to the regions, any simplification seems consigned to the more distant future. ■