

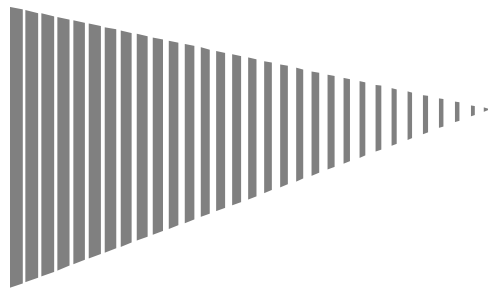
The Belgian tax reform - key highlights

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ベルギーの税制改正 - 主要論点解説

ベルギー日本人会商工委員会セミナー
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Belgian Corporate Income Tax Principles 2017



現行ベルギー法人税の原則



Current Belgian corporate income tax system

Key Principles (1)

- ▶ A Belgian company is in principle **taxed on its worldwide income**, whereby foreign source income may be exempt under the Belgian participation exemption regime (dividends), or the treaty branch exemption
- ▶ Standard **CIT rate: 33.99%** (i.e. 33% + 3% “crisis” surtax)
- ▶ Effective tax rate may be substantially lower by using tax attributes and/or tax deductions
- ▶ **Reduced progressive rates** are applicable to small and medium-sized companies (SME) in case the minimum salary requirement is met
- ▶ Taxable income is based on Belgian GAAP, with adjustments for exempt income items, disallowed expenses and deductions of tax attributes and incentives

現行のベルギー法人税制度 主要原則 (1)

- ▶ ベルギーの会社は、原則として世界中の源泉所得に課税されるが、外国源泉所得がベルギーの資本参加免除制度等により免除される可能性。
- ▶ 法人税の標準税率は **33.99%** (すなわち 33% + 3% 財政再建のための付加税)。
- ▶ 税属性および所得控除により実効税率が実質的に低くなる可能性。
- ▶ **軽減税率**は 最低給与要件を満たす中小企業(SME)に適用される。
- ▶ 課税所得は、ベルギーの一般に公正妥当と認められた会計基準をベースとして加減算項目の調整、インセンティブを考慮して計算される。

Current Belgian corporate income tax system

Key Principles (2)

- ▶ **Tax Losses** can be carried forward without any time limitations
 - ▶ A change of control may lead to the forfeiture of the tax losses carried forward, unless the change is justified by financial and economic reasons
- ▶ **Notional Interest Deduction (“NID”)** allowing a tax deduction based on qualifying equity
- ▶ **Strong R&D deduction/credit** (innovation deduction at 85% of the net qualifying IP income)
- ▶ Limited restrictions on deductions of arm’s length **interest payments**
 - ▶ Interest on qualifying intercompany loans and qualifying loans to tax haven jurisdictions exceeding a debt to equity ratio (5:1) is non tax-deductible
- ▶ No explicit CFC legislation

現行のベルギー法人税制度 主要原則 (2)

- ▶ 欠損金は無期限に繰り越すことが認められている。
 - ▶ 支配権の変更がある場合、その変更が財政的および経済的理由により正当である場合を除き、欠損金の無期限繰り越しの適用範囲が制限される可能性がある。
- ▶ みなし利子控除-Notional Interest Deduction (“NID”)は適格資本において認められる
- ▶ 研究開発控除の強み (適格IP所得の85%を控除)
- ▶ 利払金の損金算入は第三者間取引価格の範囲まで認める限定的な制限
 - ▶ 過小資本税制 – 自己資本の5倍を越える部分の負債利子は損金算入不可
- ▶ 明白なタックスヘイブン対策の法律はない

Current Belgian corporate income tax system

Key Principles (3)

- ▶ **Broad Treaty Network** (close to 100 treaties signed)
- ▶ No **tax consolidation** or tax grouping regime
- ▶ OECD-based arm's length **transfer pricing** principles apply with anti-abuse transfer pricing adjustment mechanism (increase taxable basis – disallow deduction of tax attributes)
- ▶ Domestic and cross-border **business restructurings** (merger, de-merger, contribution branch of activity, partial demerger) can take place in a tax neutral manner if not primarily tax-driven (aligned with the EU Merger Directive) and are within a EU context
- ▶ **Outbound migration** is assimilated to a deemed taxable liquidation (*i.e.* realization of assets and thus triggering exit taxation) unless emigration to an EU Member State and provided Belgian taxable presence remains

現行のベルギー法人税制度 主要原則 (3)

- ▶ 多くの諸外国との租税条約 (100カ国近くと締結)
- ▶ 連結納税、税グループ制度なし。
- ▶ OECDに準拠した移転価格の原理を構築。メカニズムの乱用を規制 (課税基礎の増加 – 不当な部分は税控除を許可せず)
- ▶ 国内およびクロス・ボーダー再編 (合併、会社分割、部分的な会社分割、支店化) はタックス・ニュートラルで実施可能。但し、税主導 (EU合併指令に沿う) でなく且つEU域内である場合に限定。
- ▶ 他のEU加盟国への移転の際、ベルギーに納税実体を残さない限りみなし清算課税となる。(いわゆる出口課税)

Current Belgian corporate income tax system

Key Principles (4) - Withholding tax – Interest/royalties

Domestic withholding tax on interest and royalties is 30%. However, domestic, treaty and EU based exemptions and reductions may apply

- ▶ Some domestic exemptions
 - ▶ Very broad implementation of the EU Interest-Royalty directive:
 - ▶ The recipient of the payment is an ‘associated’ company of the Belgian paying company and is resident in another Member State of the EU
 - ▶ ‘Associated’ means that one of the companies must hold, directly or indirectly, at least 25% of the capital of the other company, or a third EU resident company must hold, directly or indirectly, at least 25% of the capital of both associated companies
 - ▶ A minimum holding period of at least 1 year is required
 - ▶ Interest withholding tax exemption for interest payments by qualifying Belgian holding companies to non-residents (holdco exemption regime - subject to certain conditions)
 - ▶ Interest withholding tax exemption for interest payments by qualifying Belgian group financing companies to non-residents (finco exemption regime - subject to certain conditions)
 - ▶ Possible interest withholding tax exemption for payments to foreign entities on issued registered bonds

ベルギーの法人税制度

主要原則 (4) – 源泉徴収 – 利子/ロイヤリティ

利息およびロイヤリティの国内源泉税は30%。しかしながら、国内法、租税条約、EU法の規定によって免除や削減の可能性。

- ▶ いくつかの国内における免除
 - ▶ EU利子-ロイヤリティ指令を非常に幅広く導入
 - ▶ 支払いの受領者は、ベルギーの支払会社の「関連」会社であり、EUの他の加盟国に居住している
 - ▶ 「関連」とは、一方の会社が他方の会社の資本の少なくとも25%を直接的または間接的に保有しなければならない、またはEUに居住する第3の会社が直接的または間接的に両方の関連会社の資本の少なくとも25%を保有しなければならないことを意味する。
 - ▶ 少なくとも1年間の最低保有期間が必要
 - ▶ 非居住者にベルギーの持株会社を認定することで利払いの利子源泉税控除(holdco免除制度 - 特定の条件による)
 - ▶ 非居住者にベルギーのグループ金融会社を認定することで利払いの利子源泉税控除 (finco免除制度 - 特定の条件による)
 - ▶ 外国企業への発行登録債の支払いに対する利子源泉税控除の可能性あり

Current Belgian corporate income tax system

Key Principles (5) - Withholding tax - Dividends

Domestic withholding tax on dividends is 30%. However, domestic, treaty and EU based exemptions and reductions may apply

- ▶ The implementation of the EU parent-subsidiary directive has been implemented in Belgian law and broadened to qualifying parent companies resident in countries with which Belgium has an effective tax treaty providing for exchange of information. A full exemption of withholding tax on dividends applies if following conditions are met:
 - ▶ Payments to a parent company which holds shares in the Belgian company in full ownership for at least 10% of the share capital
 - ▶ The 10% holding must have been maintained for a continuous period of at least one year (not yet to be completed at time dividend is paid)
 - ▶ The parent company must have a limited liability legal form and not benefit from a tax regime that deviates from the common regime in its country of residence
- ▶ The exemption from withholding tax is not applicable for dividends linked to a legal act (or series of legal acts) which is proven to be artificial and set up primarily to obtain the withholding tax exemption (anti-abuse provision)

ベルギーの法人税制度

主要原則 (5) – 源泉徴収 – 配当

配当に対する国内源泉税は30%。しかしながら、国内法、租税条約そしてEU法をベースに免除や削減が適用される可能性。

- ▶ EU親子会社指令の実施はベルギーの法律に反映され、ベルギーが情報交換のための有効な租税条約を締結している国に居住する認定された親会社に拡大された。配当に対する源泉税の完全免除は、以下の条件が満たされた場合に適用される。
 - ▶ ベルギー企業の10%以上の株式資本を完全保有する親会社への支払い
 - ▶ 少なくとも1年間の継続期間にわたって10%の保有を維持していなければならない(配当支払い時には未完了)
 - ▶ 親会社は有限責任法的な形式の必要があり、その居住国の共通の制度以外の税制の恩恵をうけてはならない
- ▶ 源泉税免除を主目的とする設立と証明される法的行為に関連した配当には免除規定は適用されない。(濫用防止条項)

Corporate tax reform draft



法人税改正案



Objectives of the corporate TAX reform

The corporate tax reform is intended to create a more business-friendly tax environment and will improve the attractiveness of Belgium for foreign investments

What are the Belgian Government's objectives?

- ▶ A competitive tax regime
- ▶ A fair tax regime
- ▶ Simplification
- ▶ Increased tax compliance
- ▶ Budgetary neutral
- ▶ EU and OECD alignment
- ▶ Stimulate entrepreneurship
- ▶ Support SMEs and innovation

Are the objectives realized?

法人税改正の目的

よりビジネス・フレンドリーな税環境を創出し、ベルギーに外国人投資家を誘致する意図。

ベルギー政府の目的は？

- ▶ 競争力のある税制
- ▶ 公正な税制
- ▶ 簡略化
- ▶ タックス・コンプライアンスの強化
- ▶ 予算として中立であること
- ▶ EUとOECDとの調和
- ▶ 起業の促進
- ▶ 中小企業と技術革新を支援

目的は実現されるのか？

Key topics

The corporate tax reform was announced on 26 July 2017 and is expected to be approved by year-end 2017

Overview

- ▶ More competitive corporate tax rate of 25%
- ▶ 100% participation exemption
- ▶ Measures relevant for SMEs and minimum salary requirement
- ▶ Limitation of use of tax attributes (minimum tax base)
- ▶ Reform of notional interest deduction
- ▶ Pro rata allocation of capital reduction to taxed reserves
- ▶ EU Anti-Tax Avoidance measures
- ▶ Tax consolidation
- ▶ Voluntary taxation of tax exempt reserves
- ▶ Streamlining of disallowed expenses and new rules on income recognition

Entry into force in two waves

- ▶ Measures applicable as of 2018: FYs starting as of 1 January 2018
- ▶ Measures applicable as of 2020: FYs starting as of 1 January 2020

主なトピック

法人税改正は
2017年7月26日に
公表され、2017
年末までに承認さ
れる見込

法人税改正の主なトピックは？

- ▶ より競争力のある法人税率→25%
- ▶ 資本参加免除→100%
- ▶ 中小企業優遇とその適用のための最低給与設定
- ▶ 税属性の使用制限（最低課税標準の設定）
- ▶ 見做し利子控除の改正
- ▶ 減資額の資本金と剰余金への比例配分
- ▶ EU租税回避防止措置
- ▶ 連結納税制度
- ▶ 非課税準備金の自主課税
- ▶ 損金ルールの合理化と収益認識に関する新規則

発効

- ▶ 2018年適用: 2018年1月1日以降開始の事業年度より
- ▶ 2020年適用: 2020年1月1日以降開始の事業年度より

More competitive corporate tax rate

General			
Year	2017	2018-19	2020
Base rate	33%	29%	25%
Crisis surtax	3%	2%	0%
Combined rate	33,99%	29,58%	25,00%

SME – Tax rate			
Year	2017	2018-19	2020
90K Profit	30,00%	20,40%	20,00%
300K Profit	33,87%	26,52%	23,33%

Gradual reduction of corporate tax rate as of 2018

- ▶ Gradual reduction of the corporate tax rate to 25% in 2020 and elimination of the crisis surtax
- ▶ Reduced rate for SMEs of 20% on the first 100 kEUR of taxable income
- ▶ Exit tax upon conversion to special tax regime status (REIT) will be reduced to 12,5% in 2020 (in 2018 and 2019 to 12,5% + 2%)
- ▶ No changes to innovation deduction regime with effective tax rate to 3,75% in 2020

Impact

- ▶ Reduced rate should attract new investments / companies
- ▶ Rate reduction of almost 10% is considerable, but still above EU average
- ▶ Overall impact of tax reform on effective tax rate to be assessed taking into account other measures
- ▶ Timing of income and expenses recognition in 2017-2020
- ▶ Consider the impact on deferred taxes – tax accounting and reporting

より競争力のある法人税率

通常の税率

Year	2017	2018-19	2020
基準率	33%	29%	25%
財政再建のための付加税	3%	2%	0%
組合せた税率	33,99%	29,58%	25,00%

2018年以降開始事業年度より法人税率が逡減

- ▶ 2020年には法人税率は25%、財政再建付加税は廃止
- ▶ 中小企業の課税所得につき、最初の100k EURは軽減税率20%を適用
- ▶ 特別税制ステータス (REIT) に転換後、出口課税は2020年には12,5%に減少 (2018年と2019年は12,5% + 2%に)
- ▶ 技術革新控除制度は変更なく、2020年の実効税率は3,75%

影響

- ▶ 軽減税率が新規投資家/企業を誘致
- ▶ ほぼ10%の削減は、評価に値するが依然EU加盟国の平均を上回る
- ▶ 他の措置を考慮し、税改正の全体的な影響が実効税率で評価される
- ▶ 2017年-2020年における収益と費用認識のタイミング
- ▶ 税効果会計への影響を考慮 – 連結会計上の適用税率に留意

中小企業の税率

Year	2017	2018-19	2020
利益 90K	30,00%	20,40%	20,00%
利益 300K	33,87%	26,52%	23,33%

Limitation of use of tax deductions (2018)

New order of deductions	
Tax exempt items	
Dividend received deduction	<p>Minimum tax base as result of limited use of deductions</p> <ul style="list-style-type: none"> ▶ Use of carried-forward deductions limited to 1 mEUR + 70% of taxable profit in excess of 1 mEUR ▶ Limitation applicable to carried-forward tax losses (CFTL), carried-forward DRD, carried-forward innovation deduction, carried-forward NID and new “incremental” NID ▶ No limitation on current-year deductions and carried forward investment deduction / tax credits ▶ Exception for start-up companies during first four taxable periods
Patent income deduction	
Innovation deduction	
Investment deduction	
Limitation	
Incremental NID	<p>Impact</p> <ul style="list-style-type: none"> ▶ Major impact (cash tax increase) on groups with substantial tax attributes ▶ Consider impact on deferred taxes ▶ More favorable than some other jurisdictions ▶ Impact on major restructuring using tax attributes (e.g. conversions, exit) ▶ Low impact on SME with 1 mEUR threshold
CF Dividend received deduction	
CF Innovation deduction	
CF Losses	
CF NID (unlimited)	
CF NID (7 years)	

所得控除の使用制限 (2018年)

控除の新順序
非課税項目
配当金控除
特許収入控除
技術革新控除
投資控除
制限
増分見做し利子控除
繰越配当控除
繰越技術革新控除
繰越欠損金
繰越見做し利子控除(無制限)
繰越見做し利子控除(7年)

所得控除の使用制限の結果、最小課税ベースが発生する可能性

- ▶ 繰越所得控除アイテムの使用は1 mEUR + 1 mEUR を超える課税所得の70%部分に制限される
- ▶ 制限は繰越欠損金、繰越配当控除、繰越技術革新控除、繰越見做し利子控除、新「増分」見做し利子控除に適用する
- ▶ 当年の控除と繰越投資控除/所得控除には制限なし
- ▶ 新興企業は初年度から4課税期間は例外

影響

- ▶ 実質的な税属性を持つグループに主要な影響（増税）
- ▶ 税効果会計への影響を考慮
- ▶ 他の欧州管轄区域より有利な点を有する
- ▶ 税控除を利用した再編等に影響 (例. conversions, exit)
- ▶ 課税所得が1 mEUR以下の中小企業には影響僅少

Limitation of use of tax deductions (2018) - example

Facts	(in EUR)
Current-year DRD	1.000.000
Carried forward DRD	2.000.000
Carried forward tax losses	9.000.000
Tax calculation	
Taxable result	10.000.000
Current-year DRD	-1.000.000
Tax base before limitation	9.000.000
Carried forward DRD	-2.000.000
Carried forward tax losses (limited to 4.600.000)	-4.600.000
Final tax base	2.400.000

- ▶ No limitation for deductions of the current year (except “incremental” NID)
- ▶ Limitation of the carried forward deductions
 - ▶ Limited to $1.000.000 + 70\%$ on the balance, i.e. $1.000.000 + (70\% \times 8.000.000) = 6.600.000$
- ▶ Minimum tax base
 - ▶ Minimum tax base of $30\% \times 8.000.000 = 2.400.000$

所得控除の使用制限 (2018年) – 例

実施	(in EUR)
当年の配当控除	1.000.000
繰越配当控除	2.000.000
保有繰越欠損金	9.000.000
税計算	
税引前利益	10.000.000
当年の配当控除	-1.000.000
制限前の課税ベース	9.000.000
繰越配当控除	-2.000.000
保有繰越欠損金 (4.600.000が制限)	-4.600.000
最終課税ベース (課税所得)	2.400.000

- ▶ 当年の控除には制限なし (“増分”見做し利子控除を除く)
- ▶ 繰越控除の制限
 - ▶ $1.000.000 + \text{残高の70\%に制限、即ち } 1.000.000 + (70\% \times 8.000.000) = 6.600.000$
- ▶ 最小課税ベース
 - ▶ $\text{最小課税ベースの30\%} \times 8.000.000 = 2.400.000$

Measures relevant for holding companies (2018)

Capital gains on shares		
2017	2018-19	2020
Subject-to-tax test not met		
33,99%	29,58%	25%
Subject-to-tax test and min. shareholding requirement met > 1 Y		
0,412%	0%	0%
Subject-to-tax test and min. shareholding requirement met < 1 Y		
25,75%	25,5%	25%
Subject-to-tax test met, min. shareholding requirement not met > 1 Y		
0,412%	29,58%	25%

- ▶ Participation exemption for dividends goes to 100% (95% currently)
- ▶ Special tax of 0,412% tax on long term capital gains on shares (held for more than one year) abolished as of 2018
- ▶ Capital gains on shares will *again* be fully exempt as of 2018, but subject to the following conditions :
 - ▶ Subject-to-tax test of participation exemption regime (*as before*)
 - ▶ Minimum shareholding requirement of at least 10% or 2.5 mEUR for at least one year in line with participation exemption regime
- ▶ Short terms capital gain gains (held less than one year) will as from 2020 be taxed as ordinary income. In 2018-2019, they will be taxable at 25% (plus 2% surtax).
- ▶ Fairness tax to be abolished?

Impact

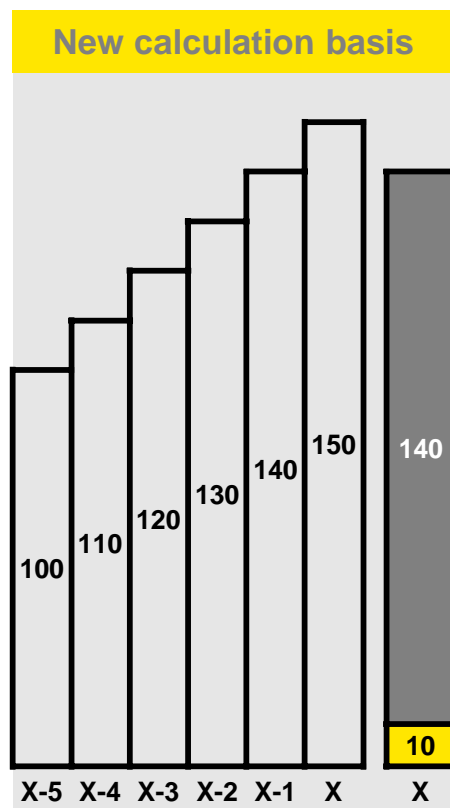
- ▶ Long term (more than one year) capital gains on shares on minority investments will become taxable at 29,58% resp. 25%.
- ▶ Consider timing of realization of capital gain on shares in 2017

持株会社に関連する措置 (2018年)

株式のキャピタル・ゲイン		
2017	2018-19	2020
課税対象テストを満たさない		
33,99%	29,58%	25%
課税対象テストと最低株式保有要件を満たし、1年以上保有		
0,412%	0%	0%
課税対象テストと最低株式保有要件を満たすが、1年未満の保有		
25,75%	25,5%	25%
課税対象テストを満たし、最低株式保有要件を満たさず、1年以上保有		
0,412%	29,58%	25%

- ▶ 資本参加免税制度による配当控除は100% (現在95%)
 - ▶ 長期保有(1年以上)の株式キャピタル・ゲインに対する特別税率0,412%を2018年に廃止
 - ▶ 以下の条件下で、株式キャピタル・ゲインは2018年に完全に課税控除される
 - ▶ 資本参加免税制度の課税対象テスト (従来通り)
 - ▶ 10%以上または2.5mEUR以上の株式を1年以上継続保有することが要件
 - ▶ 短期保有(1年未満)の株式キャピタル・ゲインは、2020年から通常所得として課税。2018年-2019年には25%の税率(プラス2%の付加税)で課税される。
 - ▶ フェアネス・タックスは廃止?
- 影響**
- ▶ 少数株主としての長期保有(1年以上)の株式のキャピタル・ゲイン課税は29,58% 最終的に 25%.
 - ▶ 2017年の株式売却タイミングを考慮すべき

NID on incremental equity (2018)



Notional interest deduction (NID) not abolished

- ▶ Calculation of NID based on incremental adjusted equity in excess of the average equity of the preceding five years, instead of full adjusted equity
- ▶ Other rules remain unchanged, such as the NID rate, the increased NID rate for SMEs and the limitation on the use of carried forward NID
- ▶ The investment reserve regime will be abolished

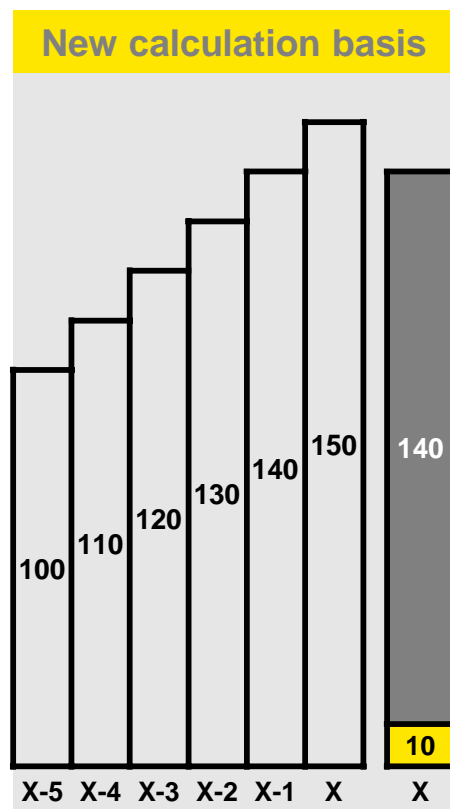
Example

- ▶ Old rules: NID on prior year equity: **140**
- ▶ Now NID on one fifth of positive difference between net equity at year-end FY X (150) and at year-end FY X-5 (100) = **10**

Impact

- ▶ Because of the low NID rate and the new calculation basis, the benefit of the NID for group financing activities is gradually disappearing
- ▶ The new definition of the NID basis is in line with the EU draft directive on a common corporate tax basis

見做し利子控除の改正 (2018年)



見做し利子控除は廃止されないが、増加資本にのみ適用

- ▶ 調整資本（残高）に代わり、過去5年間の平均増加調整資本が控除額の計算基礎になる
- ▶ 見做し利子税率、中小企業への見做し利子控除の増率、繰越見做し利子控除の使用制限など他のルールは変わらない
- ▶ 投資準備金制度は廃止される

例

- ▶ 旧ルール: 前年度の調整資本（残高）が基礎: 140
- ▶ 現在は、X年度末の純資産(150)とX-5年度末の純資産(100)の増加部分の1/5(年平均) = 10に見做し利子控除

影響

- ▶ 低い見做し利子控除税率と新計算基準により、グループ融資活動のための見做し利子控除の利点が徐々に消えている
- ▶ 見做し利子控除ベースの新定義は共通の法人税課税ベースのEUドラフト指令と整合

Measures to improve tax compliance (2018)

Compensating measures are intended to increase tax compliance and to finance the corporate tax reform

- ▶ **Minimum tax base in case of tax adjustments:** Tax adjustments imposed further to a tax audit will constitute the minimum taxable basis against which no tax deductions will be allowed (except for the current-year DRD) è Important when deciding on tax filing positions. Exception in case tax increase below 10% is applied
- ▶ **Incentive to make tax prepayments:** Higher tax increase calculated at base rate of at least 3% in case of insufficient tax prepayments (minimum increase of 6,75% vs 2,25%)
- ▶ **Minimum lump-sum tax base in case of non-reporting:** gradual increase as of 2018 resulting in a corporate tax due of 10 kEUR
- ▶ **Interest for late payment:** Moratorium and late payment interests will be linked to the OLO interest rate (with a minimum of 2% for moratorium interests). Late payment interest due by taxpayer is minimum 4% and will always be 2% higher than moratorium interest due by Belgian treasury

タックス・コンプライアンス強化措置 (2018年)

代替措置はタックス・コンプライアンスを強化し法人税改正による税収増加を意図

- ▶ **修正申告に最低課税ベース:** 税務調査を受け実施する修正申告（10%以上の修正）において当年度の配当控除以外の税控除項目の使用は認められない。è 決定時の税務ポジションが重要。修正が10%を下回る場合は例外。
- ▶ **税金の前払いインセンティブ:** 税金の前払いが不十分な場合、最低でも3%高い税率で計算される（2,25%から6,75%に増加）
- ▶ **無申告の場合の最低一時課税ベース:** 2018年から徐々に増加し、最終的に10 kEURの法人税が課される
- ▶ **支払遅延利息:** 支払猶予期間と支払遅延利息は、ベルギー国債10年物の金利にリンクされる（モラトリアムの利息は最低2%）。納税者による支払遅延の利息は、最低4%でベルギーの財務省によ支払猶予期間の利息より常に2%高くなる。

Measures for SMEs (2018)

In addition to the reduced tax rate, the Belgian government also proposes measures to prevent inappropriate use of companies by individual taxpayers

Reduced rate for SMEs subject to conditions

- ▶ Reduced tax rate of 20% on corporate tax base below 100 kEUR as of 2018, subject to attribution of minimum salary of 45 kEUR to individual manager
 - ▶ For salaries < 45 kEUR, the salary should at least be equal to the taxable profit
 - ▶ No minimum salary requirement for start-up companies incorporated less than 4 years prior to 1 January of the assessment year
- ▶ Temporary increase of the investment deduction from 8% to 20% as of 2018

Special tax assessment if salary is insufficient

- ▶ SMEs and all other companies will be liable to a special tax assessment to the extent that salary was insufficient at rate of 5% in 2018-2019 and 10% as of 2020. Tax assessment is tax deductible.
- ▶ Calculation by reference to minimum salary of 75.000 EUR for groups managed by one individual

中小企業への措置 (2018年)

軽減税率に加え、
ベルギー政府は個人納税者による不適切な企業の使用を阻止する措置を提案

条件を満たす中小企業に軽減税率

- ▶ マネージャーへの最低給与45 kEURを条件に、2018年より100 kEUR以下の課税所得に軽減税制20%
 - ▶ 45 kEUR未達の給与の場合は、給与が課税利益と同額以上でなければならない
 - ▶ 調査年度の1月1日に先立ち4年以内に設立された新興企業には最低給与要件なし
- ▶ 2018年に投資控除を8%から20%に一時的増加

給与が不十分な場合は特別税額加算

- ▶ 中小企業および他のすべての企業は、給与が不十分な場合2018-2019年5%、2020年10%の特別加算。加算された税額は損金処理可能。
- ▶ 個人事業主は最低給与額75.000ユーロを参照して計算

Other compensating measures (2018)

Limitation of tax benefits for employment activation companies

- ▶ The corporate tax exemption for employment activation companies (inschakelingsbedrijven) will be limited to 7.440 EUR for each qualifying employee
- ▶ Elimination of double exemption of regional grants

Deduction of pre-paid expenses

- ▶ Pre-paid costs will only be deductible in the tax year to which they relate (introduction of matching principle into tax law)

Provisions

- ▶ Provisions for liabilities and charges will only be tax exempt if they relate to contractual, legal or regulatory obligations existing at the end of the financial year. Not retroactive: only for provisions and additions as of 2018!
- ▶ Upon reversal, provisions will be taxed at the rate applicable at the moment they were recorded (anti-abuse measure)

Spread taxation of capital gains

- ▶ Upon voluntary reversal of the spread taxation regime or untimely reinvestment, the capital gain will be taxed at the rate applicable at the moment it was realized (prevention of abuse of the reduced tax rate)

他の代償措置 (2018年)

雇用活性化企業への税制優遇措置の制限

- ▶ 雇用活性化企業（登録企業）への法人税控除を適格な従業員につき7.440 EUR に制限
- ▶ 地域補助金の二重控除の廃止

前払い経費の控除

- ▶ 前払い費用は、関連する納税年度においてのみ控除可能（税法における費用収益対応の原則の導入）

引当金

- ▶ 負債および費用の引当金は、会計年度末に存在する契約上、法律上または規制上の義務に関連する場合に限り控除される。遡及なし：準備金と2018年の追加分のみ
- ▶ 戻し入れの場合、引当金は記録時に適用された税率で課税される（反濫用措置）

キャピタル・ゲインのスプレッド課税

- ▶ スプレッド課税または時期尚早な再投資の自主的な戻し入れの場合、キャピタル・ゲインは実現時に適用された税率で課税される（減税率濫用の防止）

Transposition of Anti Tax Avoidance Directives (2020)

Transposition of ATAD scheduled for 2020. But apart from exit taxation, ATAD1 must be transposed as of 2019

Interest limitation rule

- ▶ Tax deductibility of net interest payments limited to higher of:
 - ▶ 3.000.000 EUR (to be allocated within groups); **or**
 - ▶ 30% of the taxable EBITDA of the company, i.e. taxable result plus tax deductible depreciation and net interest, less non taxable items (dividend received deduction, 85% of innovation income, 80% of patent income and treaty exempt income)
- ▶ Interest includes economically equivalent expenses defined by RD
- ▶ Ad hoc consolidation for Belgian group entities with possibility to transfer excess net interest payments between group companies
- ▶ Exceptions for loans concluded before 17/6/2016, stand alone entities, financial sector and public infrastructure projects
- ▶ Current 5:1 thin cap limitation remains applicable for interest payments to tax havens and loans concluded before 17/6/2016
- ▶ Companies will be able to carry forward disallowed interest

租税回避防止指令の移行(2020年)

租税回避防止指令の移行は2020年に予定されている。しかし、出口課税の他に租税回避防止指令1は2019年に移行されるべき。

利息制限ルール

- ▶ 純利息控除は下記いずれかの高い方に制限される
 - ▶ 3.000.000 EUR (グループ内で配分) または
 - ▶ 会社のEBITDAの30%、即ち課税結果に損金算入した減価償却費と純利息を加え、非課税項目を引いたもの(配当控除、技術革新控除の85%、特許収入の80%、そして条約免除所得)
- ▶ 利息はRDによって定義される経済的に同等の費用を含む
- ▶ ベルギーのグループ企業に、グループ企業間の超過純利払金を譲渡する可能性のあるアドホック連結
- ▶ 2016年6月17日までのローン、独立型団体、ファイナンス・セクターと公共インフラプロジェクトは適用除外
- ▶ 現在の5:1の過小資本税制は、タックスヘイブンへの利息支払と2016年6月17日以前に締結されたローンに引き続き適用される

Transposition of Anti Tax Avoidance Directives (2020)

Controlled foreign company (CFC)

- ▶ Transposition of measures in ATAD1
- ▶ Non distributed profit realized of CFCs is added to tax base of Belgian parent
- ▶ CFCs defined as:
 - ▶ Foreign companies and PEs
 - ▶ 50% participation
 - ▶ Artificial construction (not “passive income”)
 - ▶ Taxation < 12,5% threshold (1/2 of 25%)
- ▶ 100% participation exemption upon distribution of previously taxed CFC-income
 - ▶ Quid indirect CFCs?

Hybrid mismatches

- ▶ Transposition of measures in ATAD2 addressing various types of mismatches
 - ▶ Hybrid entity mismatches;
 - ▶ Hybrid financial instrument mismatches;
 - ▶ Hybrid transfers;
 - ▶ Hybrid permanent establishment mismatches;
 - ▶ Imported mismatches;
 - ▶ Dual resident mismatches;
 - ▶ Reverse hybrid entity mismatch.

Exit taxation

- ▶ Transposition of measures in ATAD1
- ▶ Step-up upon transfer from outside the EU

租税回避防止指令の移行(2020年)

タックス・ヘイブン税制

Controlled foreign company (CFC)

- ▶ 租税回避防止指令の移行措置 1
- ▶ CFCの非分配利益は、ベルギーの親会社の課税ベースに加算される
- ▶ CFCの定義は下記のとおり
 - ▶ 外資系企業と恒久的施設
 - ▶ 資本50%
 - ▶ 人為的設立 (受動的収入ではない)
 - ▶ 課税 < しきい値の12,5% (25%の1/2)
- ▶ 過去に課税されたCFC収入の分配時に100%資本参加免除
 - ▶ 間接的CFC?

ハイブリッド・ミスマッチ

- ▶ 租税回避防止指令の移行措置 2は様々なタイプのミスマッチに対処している
 - ▶ ハイブリッド企業ミスマッチ
 - ▶ ハイブリッド金融商品ミスマッチ
 - ▶ ハイブリッド移転
 - ▶ ハイブリッド恒久的施設ミスマッチ
 - ▶ 輸入ミスマッチ
 - ▶ 二重居住者ミスマッチ
 - ▶ 逆ハイブリッド企業ミスマッチ

出口課税

- ▶ 租税回避防止指令の移行措置 1
- ▶ EU域外からの移転時にステップアップ

Tax consolidation (2020) - General

Belgium opts for a group contribution regime which is easy to implement by tax authorities and taxpayers

Tax consolidation based on Scandinavian model

- ▶ Groups not treated as a single taxpayer (no fiscal unity)
- ▶ System of “group contributions” between companies which are part of a group:
 - ▶ Group company which is in a taxpaying position can make a tax deductible group contribution to another group company which is in a loss position
 - ▶ Group contribution is taxable in the hands of the receiving group company and may be offset with available tax attribute
 - ▶ Receiving group company is remunerated for use of its tax assets
- ▶ Final losses incurred by foreign subsidiaries can also be offset by group contributions

連結納税 (2020年) – 一般

ベルギーは、税務当局と納税者が実施し易いグループ拠出制度を選択

北欧をモデルとした連結納税

- ▶ 企業グループは単一の納税者として扱われない(財政統合しない)
- ▶ 下記の場合、グループ会社間で“グループ拠出”制度
 - ▶ 納税ポジションの会社は、グループ内の非納税ポジションの会社に拠出(所得の振替)ができる
 - ▶ 拠出は、受け側会社の課税所得となるが利用可能な税属性(控除項目)で相殺できる
 - ▶ 受け側会社は、当該拠出の使用に対して報酬を受ける
- ▶ 海外子会社による最終的な損失も、グループ拠出によって相殺が可能

Tax consolidation (2020) – Key features and example

Example

No consolidation	A	B	Total
Profit / Loss	-100	100	0
Tax	0	-25	-25
Profit after tax	-100	75	-25

Consolidation	A	B	Total
Profit / Loss	-100	100	0
Remuneration	25	-25	0
Tax	0	0	0
Profit after tax	-75	75	0
Reserves	-75	75	
Group contribution	100	-100	
Remuneration	-25	25	
Tax base	0	0	

- ▶ Group contributions available for Belgian group companies and Belgian establishments of EEA resident group companies:
 - ▶ Between parents and subsidiaries with direct 90% participation
 - ▶ Sister companies with direct joint 90% parent resident in Belgium or in the EEA
 - ▶ Minimum participation maintained for at least 5 years
 - ▶ As of 6th year after company has become group member

- ▶ Compulsory group contribution agreement
- ▶ Amount of group contribution capped to “professional loss”, but tax attributes other than losses may be offset
- ▶ Remuneration for use of tax attributes is tax neutral (exempt for recipient and disallowed in hands of contributing company)
- ▶ Not for historic losses: group contribution regime only available for losses incurred as of assessment year 2021

連結納税 (2020年) – 主な特徴と例

例

連結なし	A	B	Total
利益 / 損失	-100	100	0
税金	0	-25	-25
税引き後の利益	-100	75	-25

連結	A	B	Total
利益 / 損失	-100	100	0
報酬	25	-25	0
税金	0	0	0
税引き後の利益	-75	75	0
準備金	-75	75	
グループ拠出	100	-100	
報酬	-25	25	
課税ベース	0	0	

- ▶ 下記の場合、ベルギーグループ企業およびEEAに居住するグループ会社のベルギー施設でグループ拠出の利用可能
 - ▶ 親子会社間で直接資本90%
 - ▶ ベルギーまたはEEAに居住する親会社が直接90%合資する姉妹会社
 - ▶ 少なくとも5年間、最低限の資本を保有
 - ▶ 会社がグループのメンバーになり6年目
- ▶ 強制グループ拠出契約
- ▶ グループ拠出の金額は「プロフェッショナルロス」に上限されるが、損失以外の税属性は相殺できる可能性
- ▶ 税属性の使用に対する報酬は税金中立(受取人を免除、拠出会社へは許可されない)
- ▶ 過去の損失へは不可: グループ拠出制度は、評価年度2021年より発生する損失にのみ利用可能

Voluntary taxation of tax exempt reserves (2020)

The voluntary taxation of tax exempt reserves is aimed at raising tax revenue

Voluntary taxation of tax exempt reserves at favorable rate

- ▶ During a period of 2 years, taxpayers will be allowed to convert certain tax exempt reserves of FYs closed before 1 January 2017 into taxed reserves at a reduced tax rate of 15% or 10%
 - ▶ The 10% tax rate will be applicable to the extent that the converted reserves correspond to new investments during the taxable period in certain depreciable assets
- ▶ The converted reserves will constitute a minimum taxable basis
- ▶ Not available for certain tax exempt reserves, including tax shelter for audiovisual works and stage arts, spread taxation regime for certain capital gains, exempt provisions and impairments
- ▶ Immediate cash tax vs. timing aspect or possibility to use tax attributes

非課税準備金の自主課税 (2020年)

税収入を目的とした非課税準備金の自主課税

有利な税率で非課税準備金を自主課税

- ▶ 2年間は、納税者は、2017年1月1日以前に終了した会計年度の特定の非課税準備金を15%または10%の特別税率で課税済の剰余金に変換可能
 - ▶ 10%の税率は、特定の減価償却資産で課税期間中に変換された準備金が新規投資に対応する範囲で適用される
- ▶ 変換された剰余金は最低課税ベースを構成
- ▶ 視聴覚作品と舞台芸術のためのタックスシェルター、特定のキャピタルゲインのためのスプレッド課税制度、免除規定および減損を含む特定の非課税準備金には使用することができない
- ▶ 即時現金課税 vs 税属性を使用する時期の見通しまたは可能性

Streamlining of disallowed expenses (2020)

The Belgian Government intends to streamline the disallowed expenses

- ▶ Tax deductibility of car expenses will be amended:
 - ▶ Car expenses will be deductible based on CO₂ emission, regardless of fuel type (based on a fixed formula). CO₂ emission of petrol cars will be multiplied by 0,95
 - ▶ If CO₂ emission exceeds 200 g/km, tax deductibility will be limited to 40%
 - ▶ Fuel expenses will be deductible based on CO₂ emission
 - ▶ Expenses related to chargeable hybrid cars purchased after 1 January 2018 will be deductible based on non-hybrid counterpart
 - ▶ Expenses related to electric cars will be deductible at 100% (currently at 120%)
- ▶ All fines imposed by authorities will be fully disallowed
- ▶ Secret commissions tax will be fully disallowed. Hidden profit can no longer be reintegrated in the company's books at the 50% secret commissions tax rate.

損金ルールの合理化 (2020年)

ベルギー政府は損金ルールの合理化を意図

- ▶ 車の経費の税控除を調整
 - ▶ 車の経費は燃料タイプに関わらずCO2排出量に基づいて控除される（固定式に基づく）。ガソリン車のCO2排出量は0.95倍
 - ▶ CO2排出量が200g / kmを超える場合、損金は発生費用の40%に制限される
 - ▶ 燃料費はCO2排出量に基づいて控除される
 - ▶ 2018年1月1日以降に購入される充電式（簡易）ハイブリッド車に関連する費用は、非ハイブリッド車として控除される
 - ▶ 電気自動車に関連する費用は100% 認め可能（現在120%）
- ▶ 直接または間接税に関連するすべての罰金は損金として全く認められない
- ▶ 使途秘匿費の損金性無し。これまでの様に使途秘匿費税率（50%）で会社の帳簿に記帳できなくなる

Other compensating measures (2020)

Limitation of losses incurred in foreign PEs

- ▶ Only “final losses” incurred in a foreign establishments will be deductible in Belgium
- ▶ Final losses: losses which are no longer deductible in the foreign jurisdiction upon final closure of PE (no carry-forward / carry-back or transfer to other person available)
- ▶ New measure will in practice likely prevent the deduction of most losses incurred in foreign PEs

Broad Belgian PE definition

- ▶ Broader definition of Belgian establishment taking into account BEPS Action 7 (definition of independent agent)

Interest on “current account” positions

- ▶ Reference to market interest rate replaced by a reference rate based on a rate published by the Belgian national bank +2,5% as maximum interest on debt positions without term. Exception for framework agreements for cash pooling

Depreciation

- ▶ Accelerated depreciation method abolished
- ▶ Pro rata depreciation in year of acquisition of asset will also apply to SMEs

Discount debt

- ▶ Financial expenses on discount debt disallowed if debt relates to assets that cannot be depreciated (e.g. land or shares)

他の代替措置 (2020年)

外国の恒久的施設で発生した損失の制限

- ▶ 外国の施設で発生した最終的な損失に限りベルギーで控除可能
- ▶ 最終的な損失: 恒久施設閉鎖時に外国の管轄区域でもはや控除できない損失(繰越/繰戻または他人への移転不可)
- ▶ 新たな措置により、実際には外国の恒久的施設で発生するほとんどの損失に対する控除を防ぐ

幅広いベルギーの恒久的施設の定義

- ▶ BEPS Action7を考慮しベルギー施設の定義を拡大 (独立エージェントの定義)

当座預金ポジションの金利

- ▶ 市場金利の基準は、期限のない債務ポジションに対する最大利息として、ベルギー国立銀行が公表するレート+2,5%に基づいた基準レートに置き換えられる。キャッシュ・プーリングの契約範囲に例外

減価償却

- ▶ 加速償却方法を廃止
- ▶ 資産取得年の比例減価償却を中小企業にも適用

割引債務

- ▶ 債務が減価償却できない資産（土地や株式など）に関連する場合、割引債務における金融費用は認められない

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EY will be closely following up on the tax reform. We will be issuing tax alerts and organizing seminars with the latest updates.