

Austerity Tax Measures in Belgium to Mitigate Economic and Financial Impact of COVID-19 Corona Pandemic

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Werner joined AKD Benelux Lawyers in April 2019 with a mission to develop the tax advisory and litigation practice in Brussels. Werner has over 30 years of experience in the Belgian, E.U. and international tax area. He practised in Antwerp, Amsterdam, Luxembourg, New York and Brussels. He is a regular speaker at Belgian and international tax conferences and authored numerous publications on Belgian, E.U. and international tax. He is one of the Vice-Chairs of the Legal & Tax Committee of the American Chamber of Commerce in Belgium (AmCham).

Agenda

- 1 What We Do Not Discuss Today
- 2 Measures Already in Force
- 3 Recently Approved Measures
- 4 Proposals Floating Around

What We Do Not Discuss Today

- Excise Duties or Customs/Import Duties;
- Tax Shelter – extension of 6-months period of justification of expenses;
- Federal tax exemption for regional grants and subsidies;
- Exemption from Mortgage Tax on conversion of mortgages;
- Numerous local and regional tax measures (e.g., suspension of hotel taxes ...);
- Exemption of VAT for gifts of medical material;
- Tax exemption for gifts in kind to hospitals;
- Etc.



Measures Already in Force

Corporate Income Tax (“CIT”) Assessments

- CIT assessment for Belgian resident and non-resident corporations and for non-corporate legal entities;
- Relating to Tax Assessment Year (“*aanslagjaar*”) 2019;
- Established on or after March 12, 2020;
- Due date mentioned on the tax assessment note (“*aanslagbiljet*”) is extended by two months;
- For example: tax assessment note issued March 20, 2020 – regular due date = May 20, 2020 → extended through July 20, 2020;
- No request or application required: automatic;
- No interest for late payment and no fine.

Measures Already in Force

CIT Returns

- Due date for CIT returns that are (were) due March 16, 2020 is deferred until April 30, 2020;
- Applies to Belgian resident and non-resident corporations and to non-corporate legal entities;
- No request or application required (automatic);
- No administrative fine for late filing;
- No ex-officio taxation (“*ambtshalve aanslag*”) → no reversal of the burden of proof.



Measures Already in Force

CIT Advance Payments (“*voorafbetalingen*”)

- For Belgian resident and non-resident corporations (and for non-incorporated independent workers, but not for employees etc.);
- Only for Tax Assessment Year 2021 (book years ending on or after December 31, 2020). No solution for companies closing their book year in the course of 2020 (before December 31)
- Provided no (i) redemption/buy-back of shares or (ii) dividend distributions take place between March 12 and December 31, 2020;
- Due dates remain unchanged; if financial year = book year: April 10, July 10, October 10 and December 20;
- Tax increase for non-payment or underpayment of CIT through Advance Payments remains unchanged;

Measures Already in Force

CIT Advance Payments (“*voorafbetalingen*”) (2)

- For Q1 and Q2, credit percentages remain unchanged (9% and 7.5% respectively);
- Credit percentages go up by 75 bps for Q3 (6.75% instead of 6%) and Q4 (5,25% instead of 4.50%) – Advance Payments in Q3 and Q4 will generate more credit to undo the tax increase but payments made in Q1 and Q2 remain more advantageous;

Remark: One political party will submit Law Proposal (Bill) in parliament for different system.



Measures Already in Force

CIT Advance Payments (“voorafbetalingen”) (3)

Example

Taxable Income	CIT due for 2020	Advance Payments (regular regime)	Advance Payments (COVID-19 regime)
1,000,000	250,000	Q1 $63,750 \times 9\% = 5,737.50$	0
	Increase if no Advance Payments are made	Q2 $63,750 \times 7,5\% = 4,781.25$	0
	$250,000 \times 1,02 = 255,000$	Q3 $63,750 \times 6\% = 3,825.00$	Q3 $255,000 \times 6,75\% = 17,212.50$
	$\times 6,75\%$	Q4 $63,750 \times 4,5\% = 2,868,75$	Q4 0
	17,212.50	Total credit 17,212,50	Total credit 17,212.50

Measures Already in Force

Wage Withholding Tax (“WWT”) Payments (“*bedrijfsvoorheffing*”)

- Automatic extension of the due-date for payment of WWT:
 - Through May 13, 2020 for WWT payment related to the WWT return for February 2020;
 - Through June 15, 2020 for WWT payments related to the monthly WWT returns for March and April 2020 and for the quarterly WWT return for Q1 2020;
- No interest or administrative fines for late payment;
- No need to request or apply for this extension;
- No decision yet for WWT on salaries of April (due May 15, 2020) – if no further action taken, WWT for February and April will be due simultaneously (mid-May).



Measures Already in Force

Value Added Tax (VAT) (“*btw*”)

- Automatic extension of deadlines for filing of periodic VAT returns and Intra-Community customer list:
 - Through April 6, 2020 for return and list for February 2020;
 - Through May 7, 2020 for return and list for March 2020 and Q1 2020;
 - Through April 30, 2020 for annual customer list.
- Automatic extension of deadline for payment of VAT:
 - Through May 20, 2020 for amount due on basis of monthly return for February 2020 (1 month extra);
 - Through June 20, 2020 for amount due on basis of monthly return for March and April 2020 and Q1 quarterly return.
- Upon request and subject to certain conditions being met, monthly VAT filers can obtain expedited refund of VAT credits for monthly VAT returns for February 2020; request must be made by April 30, 2020.



Measures Already in Force

Additional Support for CIT, WWT and VAT

- By June 30, 2020, taxpayers can apply for the following additional relief measures:
 - Payment of CIT, WWT or VAT in instalments;
 - Exemption from interest for late payment;
 - Waiver of administrative fines for underpayment or late payment.
- Details and application form can be found on the website of the Ministry of Finance
 - In Dutch: <https://financien.belgium.be/nl/ondernemingen/steunmaatregelen-betreffende-het-coronavirus-covid-19>
 - In French: <https://finances.belgium.be/fr/entreprises/mesures-de-soutien-dans-le-cadre-du-coronavirus-covid-19>



Measures Already in Force

Real Estate Tax (“*onroerende voorheffing*”)

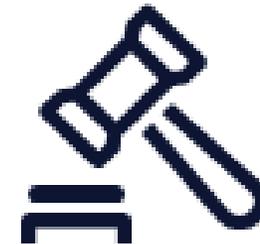
- Flanders will not start sending assessment notes until September 2020, instead of May 2020.
- Wallonia extends the deadline for payment with the time the COVID-19 corona crisis lasts. Yet unclear how long that will be. Assessment notes will go out in July-August 2020.
- Brussels Capital Region: two-month extension for payment of Real Estate Tax.



Measures Already in Force

Impairment Losses on Trade Receivables (“*voorziening dubieuze debiteuren*”)

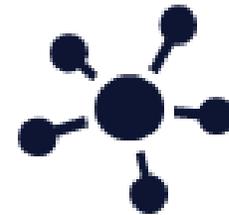
- Circular Letter March 23, 2020 (reference no. 2020/C/45).
- Outstanding claims (receivables) against customers who are directly or indirectly impacted by COVID-19 crisis are eligible for inclusion in the tax-deductible provision for bad debts;
- Such customers must be identified and the circumstances leading to the “bad debt” must be detailed in Form 204.3 (to be annexed to the annual CIT return).



Measures Already in Force

Tax-free Cost Compensation for Workers for E-Work or Remote Work during the Confinement Period

- EUR 126.94 per month.
- To cover costs for furnishing and using a desk, printer and computer equipment, office supplies, utilities such as water, electricity and heating, maintenance, insurance and property tax at the worker's home.
- An Advance Tax Ruling must be submitted, for which a template form should be used:
 - In Dutch: <https://www.ruling.be/nl/nieuws/aanvraag-thuiswerk-covid-19>
 - In French: <https://www.ruling.be/fr/actualites/demande-teletravail-covid-19>



Measures Already in Force

Cross-Border Workers

- Belgian-Luxembourg Commuters (“*grensarbeiders*”).
 - Since March 14, 2020, days spent at home by commuters do not count towards the 24/30 days.
- Information Package for Frontier Workers and Posted Workers, dated March 30, 2020 from the E.U. Commission (not tax). See: <https://ec.europa.eu/social/main.jsp?langId=en&catId=89&furtherNews=yes&newsId=9630> (scroll down to “Related Documents”)



Measures Already in Force

Freeze on Tax Audits

- Not broadly published to prevent public disapproval.
- Instruction within the Tax Administration to halt all tax audits through April 5, 2020.
- No formal extension yet; tax inspectors seem to remain flexible in practice.



Recently Approved Measures

Tax Exemption for Overtime in Horeca Extended to Other Industries

- Approved by Council of Ministers April 3, 2020.
- No regular social security contributions and no WWT or personal income tax.
- But special contribution by employers of 25%.
- Limited to 120 hours.

WWT and Income Tax Exemption for Wage Paid during Two Vacation Days



Proposals Floating Around

Removal of Red Tape – Further Digitalisation of Tax Administration

- All kinds of forms to enjoy exemptions or reductions of tax, including under bilateral tax treaties.

Deferral for Reporting of Backlog under DAC6/MDR

- Proposal not to impose penalties if reporting takes place by end 2020.



Refund of R&D Tax Credits

- May be pre-financed by banks (to taxpayers) and next year paid by Tax Authorities to banks.

Proposals Floating Around

Tax Credit for Losses

- Credit in 2020 for expected losses of 2020 (based on pro forma tax return).
- CIT and Advance Payments for 2020 can be reduced, no need to wait one year to have cash benefit.
- Proposed by National Bank of Belgium.
- Unclear if and which limits or conditions will apply.
- Another proposal would provide for carry-back of losses (CIT-rate 2019 was 29.58%, now 25% ...).



Proposals Floating Around

Withholding Obligation in the Construction Industry

- Problem: if construction company is in distress, it can get relief from the withholding obligation but can also not receive any payment for ongoing work.
- Proposal to allow construction companies in distress to collect payments for ongoing work.

Tax-Free Bonus of EUR 1,000 per Year for Workers Coming Back to Work

- Advice is pending.



Proposals Floating Around

Travel Days for Workers on Split Payroll or Expat Regime

- If workers are stuck in Belgium, the Belgian part of their salary goes up, where they would otherwise have travelled on some of these days.
- For Social Security authorities, confinement days are *force majeure*.
- Not clear how this will be treated for (income) tax purposes.



Temporary Relaxation of EBITDA-based Interest Limitation

- If income goes down, EBITDA goes down.
- If EBITDA goes down, amount of tax-deductible interest goes down.
- Companies facing decline of revenue might end up paying CIT over 2020.
- No firm proposals yet.



Proposals Floating Around

Investment Deduction

- Notional percentage of capex immediately deductible. Stimulates targeted investments (sustainable energy, R&D, etc.).
- If company makes no profit, investment deduction does not lead to tax reduction.
- Trade associations and interest groups are thinking about alternative system leading to cash advantage for businesses.



Proposals Floating Around

Non-Tax Measure – Equity Injection

- Discussed last Saturday and seems viable.
- On top of government guarantee for certain loans and credits, government may inject equity in certain heavily impacted companies.
 - For large businesses (> 250 workers) the Federal Participation Company might inject equity;
 - Several funds would be created to inject equity in SMEs.



Special Tax on Dividends – Not on the Table (Yet)

- So-called “Bouchez Tax” inspired by President Macron’s proposal.
- Not on the table in Belgium (yet).
- Only sanction for companies paying dividend in 2020 → not entitled to increased CIT Advance Payments credit percentages for Q3 and Q4.

Thank you for your attention
Stay healthy