



Mazars Info

Your update on Tax, Accounting and Legal matters

09 2022

CORPORATE INCOME TAX

Increased compliance burden for entities with “insufficient substance”

As part of the European Commission's fair taxation initiatives, a proposal for a EU Directive to combat shell or flow-through entities was published on 22 December 2021 (Anti-Tax Avoidance Directive 3 or “ATAD 3”). The proposal not only targets the trust sector or private wealth structures, but could potentially affect various internationally active groups working with intermediate holding companies.

Initially, companies that may have too little substance are identified using a number of indicators:

1. more than 80% of the company's turnover consists of passive income (which is presumed to be the case if at least 75% of the company's assets consist of real estate or shares)
2. more than 65% of these revenues are resulting from cross-border transactions
3. The company has outsourced the management of its day-to-day operations and decision-making on major functions in the previous two years (unless the outsourcing is done to another entity within the same jurisdiction)

If these criteria are met, the entity is presumed to be a shell company, which entails a significant administrative burden as the entity will need to demonstrate in its annual corporate income tax return that it meets the substance test.

The substance test means that the entity will need to demonstrate (based on underlying documentation) that it has an exclusive right of use over immovable property, an active bank account within the European Union and an active director and/or qualified full-time employees who are tax resident(s) in or close to the state of the company's domicile. Lack of evidence for the above, will result in a presumption of insufficient substance.

The presumption is rebuttable hence evidence to the contrary can be provided, e.g. by showing that the (holding) structure does not reduce the effective tax rate for the beneficial owners or for the group as a whole.

The draft ATAD 3 excludes certain companies from possible qualification as shell entities, including entities with at least five full-time employees, or holding companies located in the same country as an operating group entity. It also largely excludes the financial sector as well as listed companies,

A qualification as a shell company results in a full denial of Double Tax Treaty benefits in the hands of the entities concerned. Also, the companies would be treated as fiscally transparent which results in their profits being taxed in the hands of its shareholders.

The entry into force was initially planned for 1 January 2024 but as the draft Directive has been amended by the European Parliament, its entry into force has been postponed with 1 year.

As the substantive test is based on the two preceding financial years, the delayed entry into force will give international groups until the end of 2023 to take the necessary measures or make adjustments to the group structure.

CORPORATE INCOME TAX

Deadline for income tax return filings is approaching

We would like to remind you that the corporate, legal entities and non-resident income tax returns pertaining to income years with ending date from 31 December 2021 to 28 February 2022, should be filed through Biztax by 17 October 2022.

You will recall that income tax returns filed no later than 15 September 2022 giving rise to a refund, will be processed by the Belgian tax authorities with priority. As a result, refunds will in principle be obtained by the end of December 2022 at the latest for the taxpayers who already filed their CIT returns by 15 September to benefit from this administrative tolerance.

VAT

Goods to fight Covid-19: extension of the exemption from import duties and VAT until 31 December 2022

The import of goods to combat Covid-19 is exempt from import duties and VAT on imports until 31 December 2022.

This full import VAT exemption takes precedence over the application of the temporarily reduced VAT rate of:

- 6% for the import of mouth masks and hydroalcoholic gels (to fight Covid-19)
- 0 % for the import of Covid-19 vaccines and medical devices for the in vitro diagnosis of this disease.

Belgian tax number structure change announced

The format of the Belgian registration number is Zxxx.xxx.xxx, where the first digit is a 0. However, due to the combinations running out, the numbers will soon start to be issued with '1' as the first digit.

We recommend you to have your ERP set up, to be able to accept these numbers as from January 1, 2023.

Belgium to require electronic Invoices for B2G supplies

Belgium is due to introduce new electronic invoicing obligations, first for business-to-government supplies and later for business-to-business supplies.

The measure, enacted late March 2022, is intended to reduce the size of the value-added tax gap.

A Royal Decree published in Belgium's Official Gazette on March 31, 2022, provides for the phased implementation of the requirements, starting with B2G transactions, on the first day of the month 6, 12, or 18 months after the publication of the decree, depending on the size of the transaction.

The Royal Decree stipulates, then, that from October 1, 2022, electronic invoices must be issued for B2G contracts worth € 214,000 or more.

This electronic invoicing requirement will be introduced for contracts worth € 30,000 or more from April 1, 2023, before being introduced for all contracts over € 3,000 from October 1, 2023.

A B2B electronic invoicing requirement is expected to be phased in starting from 2024.

VAT

July 2024 to July 2025 B2B invoicing phased rollout; Peppol likely preferred standard

Original plans to launch July 2023 likely have been delayed for a second time to start July 2024 as key decisions and planning remain.

An ambitious, and potentially subject to delay timetable for the introduction of mandatory B2B invoices in Belgium is being circulated to gather options. Belgium has so far not applied to the European Commission and EU Council for the necessary permission to mandate e-invoicing and derogate from the EU VAT Directive. It is also likely that the requirement will be restricted to resident taxpayers – foreign businesses will be excluded.

Furthermore, it is not likely that governmental live reporting will be included as with Italy Sdl or much of South America (pre-clearance of invoices).

Belgium will not impose its own e-invoicing standard as has been done in Italy and Poland. It is likely that a Peppol 4-corner framework will be adopted, already adopted for B2B in Belgium. Although it's not yet decided if Peppol would be the exclusive format.

The original plan was made up of three stages, but this timetable is highly likely to slip to 2024:

- July 2024: Large taxpayers (turnover above € 9 million)
- January 2025: Mid-sized taxpayers; and
- July 2025: Small taxpayers

The Belgian Ministry of Finance had confirmed in the 2022 budget plan's statement on rolling out a B2B / B2C e-invoicing regime. Draft legislation will be issued in 2022 for consultation. Belgium has around € 3.6 billion in missing VAT revenues according to the EU's last VAT Gap estimate.

Currently, B2B e-invoicing is permitted without the requirement to produce a paper-invoice provided both parties confirm their agreement and there are sufficient secure controls over the issuance, receipt, and storage processes.

The Belgian budget in October 2021 included a provision for the phased introduction of electronic invoicing for Business-to-Business transactions.

VAT

9.9% August inflation prompts second 3-month extension of electricity, gas and heating VAT rate cut to 31 March 2023

As Belgian energy inflation hit 50% in August, the temporary cut in heating VAT rate was extended a further 3 months until the end of quarter 1, 2023. This covers: electricity, natural gas and other heating system supplies. The rate cut on electricity was due to end at the end of December 2022.

Extension of prior cut

Belgium had imposed a temporary cut in domestic electricity and natural gas VAT rate from the standard rate of 21% to 6%. This was meant to apply between March and 30 September 2022. Only customers (households) with residential contracts can benefit from the measure. There will also be a short-term excise tax cut on petrol and diesel, and an extension of the social gas or electricity tariff until September.

In addition, each household received an energy bill rebate of € 100.

Global Mobility Services

Telework – Limosa declaration obligation

As discussed earlier this year (cf. Mazars Payroll Newsletter Q3/2022), the Belgian COVID-19 agreements with respect to income tax implications for cross-border workers have no longer been extended after June 30, 2022 and ended from July 1, 2022 onwards, while a new European social security neutralisation guideline was issued which approved that the social security regime of cross-border workers would not switch to another country if the concerned would increasingly work in his/her home country until December 31, 2022.

However, this (extended) social security tolerance starting from 1 July 2022 does not apply on the Limosa filing obligation. This was recently confirmed by the Belgian social security authorities.

The suspension of the Limosa filing obligation has also ended on 30 June 2022. As a result, it is again – as from 1 July 2022 – mandatory to report both temporary and partial telework via the Limosa application.

In case of occasional telework, the effective period of employment in Belgium can be indicated. For partial telework (due to a new “hybrid way of working”) a notification can be made for the next 12 months. For the latter, a new section was created in the social security platform called “Teleworking” in which information about the physical place of employment is now requested.

If you have any questions or require assistance with respect to the above, please contact Stijn Sablon (stijn.sablon@mazars.be) or Bart Van Laere (bart.vanlaere@mazars.be) from our Global Mobility department.

KEEP IN MIND THE DEADLINE!

VAT

- VAT return August 2022 : September 20, 2022
- Reclaim foreign VAT : September 30, 2022

Corporate income tax

- Corporate income tax return AY 2022 - Belgian resident companies and foreign entities:
 - Via Biztax e-filing platform : October 17, 2022 (1)
- Transfer pricing local form '275 LF via the MyMinfin Pro e-platform) : October 17, 2022

(1) Taxpayers entitled to a tax refund managing to file the tax return by 15 September 2022, are treated on a priority basis and generally can expect to receive the actual tax refund by 31 December 2022.

Personal income tax

- Personal income tax return – Belgian residents
 - Via proxyholder (Tax-on-Web) : October 28, 2022 (2)
- Personal income tax return – Non-residents
 - On paper : November 10, 2022
 - Via Tax-on-Web : November 25, 2022
 - Via proxyholder (Tax-on-Web) : November 25, 2022

(2) Instead of the initial due date of September 30, 2022 following the agreement reached between ITAA and Minister of Finance.

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