



Tax corner

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BEPS and the implementation of an anti tax avoidance package

Impact on international taxation

On October 5, 2015, the OECD published its final report with regard to the Base Erosion and Profit Shifting (BEPS) project, which has as its objective counteracting the artificial shifting of business profits to low or no-tax locations where there is little or no economic activity. On January 28, 2016, within this same framework, the European Commission presented an anti tax avoidance package to combat aggressive tax planning, promote transparency between the Member States and guarantee fairer competition.



BEPS action items

The final BEPS action plan consists of 15 action items and has been drawn up on the basis of three key concepts: coherence, substance and transparency. The objective is to bring about better coordination of national corporate income tax systems in order to prevent double non-taxation. Current tax rules need to be revised and new rules developed in order to ensure that companies are taxed where the economic activity takes place and where the value is created. This will partly be realized through the implementation of new reporting and tax return obligations.

Anti tax avoidance package

On January 28, 2016, the European Commission proposed new measures in the fight against corporate income tax avoidance. The anti tax avoidance package forms part of the BEPS project and contains a number of statutory and non-statutory initiatives. The main initiatives of the package are the proposed Anti Tax Avoidance Directive and revision of the Administrative Cooperation Directive with the implementation of country-by-country reporting.

The Anti Tax Avoidance Directive contains six specific anti avoidance rules:

- 1 Controlled Foreign Company (CFC) rule to deter profit shifting to no or low tax countries.
- 2 Switchover rule to prevent double non-taxation of certain income.
- 3 The implementation of exit taxation to prevent companies from re-locating assets purely to avoid taxation.
- 4 The implementation of interest limitation to discourage companies from creating artificial debt arrangements designed to minimise taxes.
- 5 A rule to monitor hybrids to prevent companies from exploiting national mismatches to avoid taxation.
- 6 A General Anti-Abuse Rule to counter-act aggressive tax planning when other rules don't apply.

In addition, the package contains a recommendation to Member States on how to prevent tax treaty abuse, a new European process for listing third countries that refuse to play fair and actions to promote tax good governance internationally.

The recently presented anti tax avoidance package confirms the current tendency to tackle corporate income tax at an international level. The draft Directives have been submitted to the European Parliament and the European Council for adoption. (A unanimous vote is required within the European Council.) After adoption, the Directives must be transposed into the national laws of the various EU Member States.

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What is changing in customs legislation

On May 1, 2016 completely new customs legislation will take effect in the EU. This new Union Customs Code (UCC) will fundamentally change the European customs landscape.

But what are the changes the new customs legislation will bring in practice, and above all, how will this impact your organization? To get an initial view of the impact the UCC will have on your business, we would strongly advise you to be already asking the following questions within your organization:

1. Will I have to pay more import duties as of 1 May 2016?

Royalties and license fees in relation to imported goods, will in principle need to be included in the taxable customs value. Furthermore, the principle of "First Sale for Export" will be abolished, and the transactional value will need to be determined on the basis of the last sales transaction before the goods were brought into the EU.

These changes could lead to an increase in your taxable customs value, triggering higher import duties and import VAT.

2. Will my customs guarantees increase?

The system of customs guarantees will be completely revised in the next few years, which could mean customs guarantees rising by as much as 1,000%! However, the legislator has provided for economic operators who meet certain criteria (namely Authorised Economic Operators – "AEO") to be able to enjoy reduced guarantees or even exemption from them.

3. Will my customs authorizations change?

Almost all customs authorizations (e.g. customs warehouse, inward processing, etc.) will undergo changes in the future. In addition, the issuance or renewal of certain customs authorizations will be made dependent on meeting certain AEO criteria. So look ahead at what changes will apply to your customs authorizations.

4. What is the impact of the new definition of "exporter"?

From May 1, 2016 onwards, the "exporter" will in principle be the person who holds the contract with the addressee outside the EU and who has the power for determining that goods are to be brought outside the Union. If the new definition means that you can no longer act as an "exporter", this could affect your proof of the VAT exemption for export, as well as certain customs authorizations.

5. Will AEO become a must?

The AEO concept is a crucial element throughout the whole Union Customs Code. Where today companies still sometimes assess the concrete benefits of an AEO certificate as being fairly limited, this will change fundamentally in the future. Companies who are professionally involved in international trade and customs will no longer be able to avoid the AEO concept. AEO will become a necessity for companies who hold customs authorizations and/or custom guarantees.

Finally, although the importance of May 1, 2016 cannot not be underestimated, companies must also be aware that not all of the changes will be introduced at once. Many provisions will be implemented step by step with a final end date of December 31, 2020. It thus already seems clear that customs will stay high on the agenda for the next few years. Companies are therefore advised to thoroughly review their customs strategy so that they can implement all the changes in good time.

Furthermore, we also recommend you to take a close and thorough look at the impact of the new customs legislation on your company. A strategic plan is recommended to guide you through the period from 2016 to 2020.

If you would like more information about the new customs legislation, please do not hesitate to reach out to your contact within the KPMG Global Trade & Customs team.

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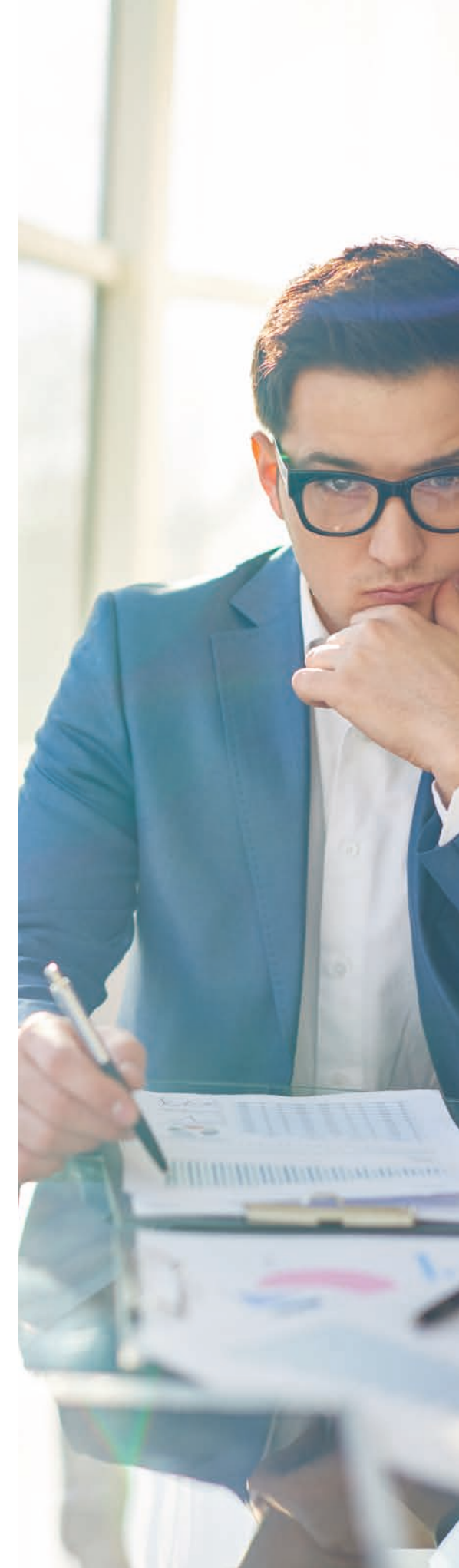


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This article was written by Lotte Verbiest (Tax Adviser).

Summary explanation of the taxshift for Belgian companies

With the law of December 26, 2015 on measures concerning the strengthening of job growth and purpose power, the parliament approved some important measures regarding the much talked-about taxshift. Besides increasing the purchase power, the taxshift's main objective is to improve the competitiveness of Belgian companies. A brief explanation of the most essential measures of interest to Belgian companies is provided below.



Firstly, a reduction in employer contributions from 33% to 25% is anticipated for the period 2016-2020. This is an important step for lowering employers' wage costs in Belgium.

Although the increase in competitiveness will mainly be achieved by the adjustment of social security contributions, the law also contains some other measures which could directly be in the benefit of Belgian companies depending on their activities and investment policy.

In first instance, reference can be made to the rate increase to 22,8% for the exemption of payment of wage withholding tax for shift and night labor.

Some adjustments are also foreseen to the increased investment deduction regime. For SMEs, the rate for regular investments will be increased from 4% to 8% and the time during which the deduction may be applied will be prolonged indefinitely in time. The measure in effect previously was only applicable to investments which were made during the financial years 2014 and 2015.

In order to stimulate investments in high technological production in Belgium, specific tax advantages were also approved aimed at making such investments more attractive. As such, an increased investment deduction is foreseen for investments in production means for high technological products on the condition that it concerns products of which the production is new and these products increase R&D expenditure during the first period of serial production. In respect of the application field of this deduction, the nature and the characteristics of the fixed assets and high-tech products will be determined by royal decree. In addition, the companies that manufacture high-tech products through a system of shift and night labor will be entitled to an additional increase to the exemption of wage withholding tax of 2,2% (which brings the total exemption to 25%).

The other measures that have been included in the law would have, in most cases, no or only

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an indirect effect on Belgian companies. As such, the increase of withholding tax from 25% to 27% for companies that are part of a group will in many cases be neutralized by specific exemptions, but the speculation tax can for certain sectors negatively impact the position on the stock exchange.

The aforementioned measures regarding social security contributions and wage withholding tax shall come into force on April 1, 2016. Other measures entered into effect on January 1, 2016.

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