Tax procedure
Extension of the taxation time limits

A Bill "on various tax and financial provisions" dated 20 November 2022 is of **significant importance** to all taxpayers, in particular because of **the extension of the investigation and taxation time limits**.

1. NEW INVESTIGATION AND TAXATION TIME LIMITS

Until this Bill, the time limits were 3 years (ordinary situation, no tax evasion) and 7 years (tax evasion/fraud).

This Bill introduces 4 investigation and assessment periods of 3, 4, 6 and 10 years respectively:

- **3 years** for **ordinary situations**. This period is counted from the first of January of the year designating the tax year. For companies that close their accounts on a date other than 31 December, the period is counted from that other date. This is the same time limit that currently applies in the absence of tax evasion/fraud;
- **4 years** for **failure to file a tax return** or **late filing**;
- **6 years** in certain **specific cases** (limited list) with a cross-border element:
  - Companies making reportable **payments to tax havens**;
  - Companies that are part of a **multinational group** subject to certain **transfer pricing reporting requirements**; these include companies that are part of a multinational group with a consolidated turnover of at least EUR 750 million and companies that, as part of a multinational group, have operating and financial income of more than EUR 50 million, a balance sheet total of more than EUR 1 billion or an average number of employees of more than 100;
  - Tax returns that include a claim for a **lump-sum foreign** tax credit;
  - **Withholding tax returns** with exemptions, waivers or reductions granted **under tax treaties or directives;**
  - Foreign information is obtained and that relates to:
    1. a reportable **cross-border arrangement**; or,
    2. information from **platform operators** where the information for a taxpayer is **EUR 25,000 or more.**
- **10 years** for a **"complex" tax return**; a tax return is considered complex if it relates to:
  - a mandatory declarable **"legal construction"**; or
  - a **"hybrid device"**; or
  - undistributed profits from a **"non-genuine" tax arrangement**.
- **10 years** in the **case of fraud** (instead of the current 7 years); the notification of the taxpayer by the tax authorities of indications of fraud is abolished and replaced by a prior notification of the presumption of fraud and the willingness to apply the extended time limit.

The new time limits of 6 years and 10 years in the case of complex declarations cannot be used by the tax authorities to challenge simple items, i.e. certain expenses (car, reception, restaurant, clothing), social benefits, fines or regional taxes, except in cases of fraud. The question of **the scope of the rectification possibilities** (only complex items or all items except for the few items defined by the law as simple) is **controversial:** the bill seems to be very broad in its application, which in our view this raises several **objections** (in particular in constitutional questions of discrimination induced by this bill).

On the other hand, the time limit for a taxpayer to **contest a tax assessment** is extended to **1 year** (instead of 6 months).

2. EXTRAORDINARY TIME LIMITS

The existing **extraordinary time limits** remain **unchanged**, but their application is extended in certain cases with regard to withholding tax on movable assets and professional income. These extraordinary time limits would thus be applicable when:

- In the course of an inspection or investigation relating to the application of income tax, it is established that the **withholding tax due on movable property or professional income** has not been declared or has been declared late, incompletely or incorrectly during any of the 5 years preceding the year in which the finding is made; the tax authorities then have a period of 12 months from the date of the said finding to carry out an additional assessment;
- **foreign information** shows that taxable income, or the withholding tax due on income from movable property or professional activities has not been declared in Belgium during one of the **5 years** (**7 years** in the case of fraud) preceding the year in which the information was transmitted to the Belgian tax authorities; the tax authorities then have a period of 24 months from the date of this transmission in which to carry out additional controls and taxation;
- a **legal action** reveals that income, or the withholding tax due on income from movable property or professional activities due, was not declared during one of the five years preceding the year in which the action was brought; the tax authorities then have a period of 12 months from the date on which the decision relating to this legal action is no longer subject to opposition or appeal to carry out an additional assessment;
- **evidence shows** that income or the withholding tax due on income from movable property or business activities due has not been declared in any of the **5 years** preceding the year in which the evidence comes to the attention of the tax authorities; the tax authorities then have a period of 12 months from the date of this communication to carry out an additional assessment;
- an **international procedure for the settlement of tax disputes** shows that a tax is still due; the tax authorities then have a period of 12 months from the end of this procedure to carry out an additional assessment.

3. RETENTION OF BOOKS AND RECORDS

In addition to the extension of the tax and control periods, the **retention period** for books and records is be extended to **10 years** (previously 7 years).

4. ENTRY INTO FORCE

These new time limits will apply **from the 2023 tax year without retroactive effect**: the previous time limits will remain in force for the 2022 tax year (being: 2021 income for individuals, 2021 accounts if the accounting period corresponds to the civil year, and accounting periods closed by 30 December at the latest for the others).

5. COMMENTS

This extension of time limits is of significant importance, both for the **internal administrative management** process (retention of documents and justifications) and for the **risk management process** (risk arising from changes in case law, both for ordinary transactions and for restructurings & acquisitions through the extent of upcoming due diligence requirements).

This tendency to extend the period of control and taxation raises **many questions**. If, on the one hand, the State has of course to collect taxes, on the other hand, this right must be exercised in compliance with the right to legal certainty, the principles of equality and, in particular, the rights of the defence.

Legal certainty is, of course, diminished if the tax authorities can call into question a tax return filed 10 years ago without there even being any question of fraud. For example, a change in case law favourable to the tax authorities, even after the financial years in question, would be sufficient to call into question the taxpayer's position for 10 years.

Similarly, in our view, these new time limits create an **unjustified distinction** between taxpayers who meet the new specific criteria and the others: the former could be audited during the new 6- and 10-year time limits on virtually all of their returns (and not just on the criteria mentioned in the law), regardless of the absence of fraud, whereas the latter could only be audited during the 10-year time limits only if they had committed fraud and had been notified in advance.

Finally, 10-year tax periods undermine the **rights of defence**, since it is naturally more difficult to provide evidence 10 years after the event, especially when complex legislation is being applied and, as far as companies are concerned, the employees present at the time of the event may no longer be present.

In order to **justify** the extension of the time limits, the law mainly refers to the particularly long periods of time required for the exchange of information between states. At a time when the tax authorities have more data than ever thanks to automatic information exchange, data mining and artificial intelligence, and when postal delays are largely eliminated with emails, this justification is surprising.

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