

# THE POINT

BDO NEWSLETTER

## BDO IS BEHIND ADVISORY ALL THE WAY!

### TAX

Exploring the Programme Law  
of 1 July 2016

### FAQ

• Disruption. Plucked out of business

### PARTNERSHIP NEWS

Culture Club 4 You(th) Give young people  
the chance to dream!



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COLOPHON

### BDO NEWSLETTER

#03 | 2016

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Disruption is an age-old phenomenon.

It was even an issue in prehistoric times, when the dinosaurs, which were big and strong, were forced to compete with mammals, which, although less powerful, were more flexible and agile. The mammals were able to adapt more quickly to the new world and changing circumstances.

It's not difficult to see how this metaphor can be applied to the business world in 2017.

In actual practice, disruption takes a variety of forms – ranging from new technology (developed in response to needs that, not long before, were limited to the realm of science fiction), to new and innovative business models that are altering the way in which market supply is structured. Failing to acknowledge – or, in fact, underestimating – the fundamental changes taking place in the world, and the speed with which they are occurring, poses a major threat – not least of all in the world of business.

This disruption goes unseen, and in many traditional sectors there is even a tendency to laugh it off. In all honesty, who would ever have thought that Microsoft would enter the banking industry? Or that Google would become a car maker? Or take the impact of digitization on our society – just this disruption alone has been surreal.

The term 'disruption' has also been used and abused to the point that its essential meaning has eroded and the concept has become nothing more than a buzzword. Together with its partners FEB/VBO and ING, BDO took up the challenge of addressing 'disruption' from a pragmatic and tangible perspective using Keynotes – testimonials by CEOs who have actually had to deal with the issue.

How are well-established businesses that have forged a considerable legacy reacting to the new business models that threaten to disrupt their traditional foundations? Should CEOs even be concerned? Are there any best practices to help us prepare for a phenomenon whose concept, form and impact are difficult to predict at this stage? These informative Keynotes are available to download free of charge from [www.bdo.be](http://www.bdo.be).

There's no getting away from the fact that disruption in all its guises is a game-changer. And players have no choice but to change with it. In our role as consultants, we experience first-hand the challenges and changes our clients are being forced to address. BDO is not immune, either. Our biggest challenge – and, indeed, our biggest opportunity as well – is that BDO itself is undergoing change while we support other businesses through their changes.

In this edition of 2thePOINT, we are proud to present details of the expanded range of consultancy services that we offer to support you more fully and to provide valuable advice in today's 'disruptive' VUCA world.

WERNER LAPAGE  
*President of the Editorial Board*

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# BDO IS BEHIND ADVISORY ALL THE WAY!

OUR 'ADVISORY' SERVICES WILL BE THE FOCAL POINT OF BDO'S FUTURE DEVELOPMENT.



ON 1 OCTOBER, BDO FURTHER EXTENDED ITS RANGE OF 'ADVISORY' SERVICES TO RESPOND EVEN MORE EFFECTIVELY TO COMPANIES' CURRENT AND FUTURE CHALLENGES. FROM NOW ON, YOU CAN CALL ON THE EXPERTISE OF MORE THAN 70 SPECIALISTS IN CORPORATE FINANCE, ORGANIZATION & PERFORMANCE MANAGEMENT, DIGITAL & INNOVATION, HUMAN CAPITAL, INTERIM MANAGEMENT AND RISK ADVISORY. A CONVERSATION WITH THE PEOPLE IN CHARGE OF BDO ADVISORY: JOHAN VANDENBROECK AND ALEXANDRE STREEL.

**BDO Advisory is growing strongly. How did this business line come about?**

**Johan Vandenbroeck (JVDB):** "BDO's objective is the same as it always was. We want to be the preferred partner of entrepreneurs – a confidential advisor who helps them achieve their goals in a sustainable and pragmatic way. We actually used to do this in our roles as auditor, accounting expert, or tax and legal advisor. In 2010, to respond to the increasing and varied expectations of our customers, we decided to set up a team of highly specialized consultants, with the focus on transactions and problems relating to human resources. All the more so because, at the time, we were at the end of the financial crisis. Given our success in these areas – and based on our efforts to listen even more attentively to our customers – we've expanded our range of specialized 'Advisory' services even further."

**What does the range of services in Advisory look like today?**

**Alexandre Streel (AS):** "In concrete terms, we offer our services in 6 areas: Corporate Finance, Organization & Performance Management, Digital & Innovation, Human Capital, Interim Management and Risk Advisory. Although traditionally they are often presented as separate specialist areas (see the table), we don't regard them as islands. On the contrary, first and foremost we offer our customers integrated solutions to their challenges and ambitions. So, more often than not, our solutions consist of a combination of different services."

**Why did you choose to diversify with these Advisory services in particular?**

**JVDB.** "The constant diversification is the result of two findings. On the one hand, we are very close to our customers and listen continually to their problems and challenges. But that's not enough. We also want to proactively make our customers aware of the rapid changes in the current VUCA (volatile, uncertain, complex and ambiguous) world. A think tank studied the areas in which we

« We want to proactively make our customers aware of the rapid changes in the volatile, uncertain, complex and ambiguous (VUCA) world. »»

*should definitely support our customers in order for them to progress into the future with confidence.”*

### **Is that why BDO launched a Digital & Innovation department within Advisory, for example?**

**AS.** “Yes, it is. Digitization is not just happening in the banking or accounting sector. With its more than 150 accounting experts, BDO is in a perfect position to fully understand the challenges of this irreversible evolution. Today, only 1 in 4 managers is concerned about digitization and innovation. That's far too few. Digitization will affect all sectors, whether they currently focus on routine work or intellectual work. From checklists for doctors to jurisprudence for lawyers, everything can be digitized. You can well imagine the consequences of this evolution... Our consultants in Digital & Innovation are making our customers aware of the need to innovate – whether in terms of financial and other processes, customer relations or working methods for employees. We call that ‘the new way of working’. Thus, for example, we've developed a carefully designed ‘digital scan’ that enables us to measure a company's digital maturity.”

### **INCREASING PROFITABILITY What is the biggest challenge for today's companies?**

**AS.** “Without doubt, the biggest challenge is to increase profitability. This makes it possible to fund growth, exports or investments in innovation.

*A large majority of our customers view this as the main objective over the next few years. One of our services is focused precisely on increasing the profitability and, more generally, the value of companies. This service, Value Enhancement, consists of (i) identifying the main factors that lead to an increase in value, (ii) looking for ways to influence these factors positively, and finally (iii) rolling out these recommendations in the field according to a predetermined roadmap. Thus, we can, for example, work on the financial, organizational, human and fiscal aspects simultaneously – with the result that the company's profitability and value sometimes increase by more than 50%.”*

### **Did the expansion of the Advisory services also involve an investment in people?**

**JVDB.** “In October and November, 4 senior managers and partners joined our Advisory team. Renzo Caponi, a real ERP guru, supports companies in the selection and implementation of integrated management systems. Sofie Mertens is responsible for the further development of Interim Management in the Brussels-Capital Region. She has over 12 years of experience in managerial positions with recruitment firms. Geert Claes makes his specialized expertise in public healthcare available to our Organization & Performance Management department. Finally, there's Inge Peytier: with her 15 years of experience in advice and project management, especially in the financial

*sector, she will further develop our Business Transformation service.”*

**AS.** “In addition, we've also been strengthened by young talent with a critical mind and a flair for innovation. The result is a team of over 70 colleagues active in Flanders and Wallonia. And there are still one or two vacancies...”

### **So Advisory will grow further?**

**JVDB and AS.** “Undoubtedly. After all, we're convinced that our ‘Advisory’ services will be the focal point of our organization's future development.” ■

*For more information:  
Contact our colleagues in Advisory:  
[advisory@bdo.be](mailto:advisory@bdo.be)*

**BDO ADVISORY IN FIGURES**



**THE 6 INTERVENTION AREAS WITHIN 'ADVISORY'**



**CORPORATE FINANCE**

- ✓ Valuation
- ✓ Due Diligence
- ✓ M&A
- ✓ Financing Advisory & Modeling



**DIGITAL & INNOVATION**

- ✓ Digital Strategy
- ✓ Digital Transformation



**INTERIM MANAGEMENT**

- ✓ Interim Management



**ORGANIZATION & PERFORMANCE MANAGEMENT**

- ✓ Strategy & Business Model
- ✓ Strategy Implementation & Business Transformation
- ✓ Performance Management



**HUMAN CAPITAL**

- ✓ Talent Management
- ✓ HR Screening Tools
- ✓ Workforce Intelligence



**RISK ADVISORY**

- ✓ Internal Audit
- ✓ Risk Management & Internal Control
- ✓ Forensic Advisory Services



## BUDGETING OFFERS STRATEGIC INSIGHT

BETTER APPROXIMATE BUDGETING  
THAN NO BUDGETING AT ALL.

BUDGETING IS A TECHNIQUE THAT OFFERS THE ENTREPRENEUR OR MANAGER THOROUGH INSIGHT INTO A COMPANY'S FINANCES. AND IT PROVIDES VALUABLE AND REALISTIC INPUT FOR THE BUSINESS STRATEGY, COST MANAGEMENT, ETC. HOWEVER, PRACTICE HAS SHOWN THAT ONLY A FEW SMALLER BUSINESSES DRAW UP BUDGETS. IN CONTRAST, FOR EXAMPLE, TO LOCAL AUTHORITIES, WHERE BUDGETING IS AN ESTABLISHED ANNUAL EXERCISE.

Local authorities are strictly regulated and have to produce as accurate an estimate as possible of their result on a cash basis (incoming and outgoing cash flows) and their self-financing margin. Drawing up a budget should not, however, be seen as an additional process that places an extra burden on the organization, but as a useful technique that adds value to the business. Thanks to a thorough analysis of the figures, drawing up a budget is the first step towards making the organization aware of 'the state of affairs'. Thus, drawing up a budget invariably leads to a better view of the organization's functioning and makes clear the link between operational and financial processes.

The twofold view you can take when drawing up a budget – a look back at the figures achieved, and a look forward at the medium-term prospects for the future - provides good insight into the company's financial position.

### WHY BUDGETING?

#### 1 - Insight into figures achieved

One of the first steps in preparing to draw up a budget is taking a brief look back at the figures achieved. After all, these historical figures contain a wealth of information and show certain trends and developments that will have an impact on the future.

#### 2 - Long-term (and maybe also medium-term) vision

First and foremost, budgeting must translate the company strategy into



## « A budget is telling your money where to go instead of wondering where it went. »

DAVE RAMSEY

specific objectives and actions with the associated euros. In other words: what do we want to achieve and how are we going to approach it? What resources do we need and can we get by with the current financial base or is additional financing needed? Creating a budget forces management to think about the company's competitiveness and financial position. It is advisable to set the vision to the medium-term ( $\pm 3$  years).

Drawing up a budget is the first step; monitoring the budget is the second. The budget must be monitored at least every quarter so that you can adjust the objectives in good time by looking back (at what has already been achieved) and at the same time looking forward (are the objectives still achievable, or do we have to make adjustments to the budget?). It is also important to propose a plan that's as realistic as possible.

### 3 - Performance assessment

A sound and well-founded budget creates opportunities for performance assessment. Whoever translates the company's strategy into measurable and specific objectives is in the best position to review and assess the performance of those employees who are responsible for achieving the objectives. And, in fact, to monitor the development of the entire organization or business.

### 4 - Profitable growth

To grow profitably as a company, you have to be able to gauge what the

most profitable projects are. Thanks to an effective budgeting process, you can perform simulations and compare the possibilities and results of projects. At the same time, you can map the causal links between costs on the one hand and revenue on the other.

### 5 - Cost management

Cost management is a major factor in the budgeting process. A company often has recurrent costs that are rarely questioned but account for a sizeable part of the budget. The question is: do you have these costs under control? Can you influence them? Are they temporary or permanent in nature? A critical top-down and bottom-up analysis can provide answers to these questions. Going through the entire budgeting process will reward you with a better understanding of the cost structure of your organization.

### BDO FINSLIM

To support businesses in drawing up their budget, BDO is launching a new budgeting tool: the **BDO finslim**. With this tool, we are filling the gap experienced by smaller businesses and helping them understand their organization's budgeting process and financial structure through clear diagrams and analyses.

This finslim tool – for **financial (slimme) [smart] simulator** – is based on two main principles: **a vision of the future** with attention to the past, and **flexibility**.

Ask our budgeting specialist for more information. ■

*For more information:*

*Contact our colleagues in*

*Accountancy: [accountancy@bdo.be](mailto:accountancy@bdo.be)*

### CASE STORY: "HET NATUURHUIS"

"Our group has experienced strong growth in recent years. Society's interest in organic products and a healthy lifestyle – and the way Het Natuurhuis



provides an answer to these things – have resulted in the opening of a second, and then a third, shop. Such significant growth

obviously requires efficient monitoring of budgets and effective cash management," says Director Raf Van den Heuvel. "BDO Accountants help us draw up and monitor these budgets, at both group and shop level – even as far as business unit (analytical) level. Experience has shown on several occasions that this budgeting offers particular added value to daily management."

# GDPR: NEW ERA FOR THE PROCESSING OF PERSONAL DATA

THE INTRODUCTION OF THE GDPR ON 25 MAY 2018 STILL SEEMS FAR AWAY. BUT COMPANIES WILL NEED THE TIME TO ADAPT THEIR DATA PROCESSING.

THE CURRENT REGULATIONS GOVERNING THE PROCESSING AND PROTECTION OF PERSONAL DATA RECEIVED THEIR LAST SUBSTANTIAL MODIFICATION IN 1998, AND SO THEY'RE NO LONGER IN LINE WITH TODAY'S REALITY. AFTER ALL, 20 YEARS AGO THERE WAS HARDLY ANY MENTION OF E-COMMERCE, SOCIAL MEDIA (FACEBOOK, TWITTER), THE CLOUD, SMARTPHONES, BIG DATA, 'LOCATION-BASED MARKETING', AND SO ON. SO, IT'S HIGH TIME TO UPDATE THE RULES.

## NEW TIMES, NEW PRIVACY RULES

After years of lobbying, the European regulator reached an agreement on the General Data Protection Regulation (GDPR) of 27 April 2016 – which provides a new European framework for the processing of personal data.

The GDPR signifies a fundamental turnaround and is designed to give European citizens more control over their personal data. Thus, the European regulator is extending the rights of the citizen – for example, he or she now has the right to be 'forgotten' – and the processing of

data must become more transparent. Lengthy 'privacy policies' are no longer permitted, and the need for clearer communication using standardized icons and visual representations is growing.

With the GDPR, the European regulator is stressing that privacy is more than a legal concept. Under the new regulations, businesses and organizations can be required to be technically competent and take the necessary measures to process personal data correctly.

## DEADLINE IN SIGHT: 25 MAY 2018

The GDPR will be directly applicable in European Member States as from 25 May 2018. That still seems far away, but the transitional period for compliance is no luxury. This is because the GDPR requires:

- ➔ an adaptation of the legal documents, such as 'privacy policies' and the mandatory agreements with the data processors;
- ➔ the implementation of new or adapted technical measures, including sophisticated mechanisms to obtain consent to process, and new access controls to better protect stored data against leaks;
- ➔ new organizational measures, including codes of conduct and training, so that employees know how to behave in compliance with the new principles.

## EXISTING CORE RULES RETAINED

Despite the fundamental turnaround pursued by the GDPR, the current core

## « The new rules give European citizens more control and rights over their personal data. »

rules on the protection of personal data are being retained.

The GDPR relies on the existing concepts of 'processing', 'personal data' and 'sensitive data' and assumes the same players, such as the 'controller', the 'processor' and the 'supervisory authority'.

In addition, as before, processing must take place in accordance with specific principles – although these have been extensively modified (see below). Think of the minimum data processing and the protection of data. At least one condition for processing must also be met: the 'consent', for example, or the 'legitimate interest'.

### A FEW FUNDAMENTAL CHANGES

Let's take a closer look at a few fundamental changes.

#### *Sanction mechanism*

The GDPR no longer leaves infringements unpunished and considerably extends the arsenal of powers available to the national supervisory authorities – which includes the powers of the Belgian Commission for the Protection of Privacy (CPP), better known as the Privacy Commission. For example, the Privacy Commission can have controlling and corrective measures taken, but it can also impose administrative fines on businesses or organizations of up to EUR 20 million (or up to 4% of the organization's annual worldwide turnover, if that figure is higher). And collective actions are possible if it appears that the GDPR has been breached (for example, a data leak where it is claimed that insufficient measures were taken to prevent or contain the leak).

#### *Broader scope*

The GDPR rules for the processing of personal data also apply to a company that is not based in the European Union, as soon as this company offers goods or services to people or entities based in the EU. This means, for example, that the GDPR can be enforced on American or Chinese web stores that sell to Belgians.

#### *'Privacy by design', 'privacy by default' and accountability*

The principle of 'privacy by design' means that an organization or business must incorporate measures that increase privacy when designing its information system. And that it only processes data that are required for the purpose of the processing. That in itself is not new, but the GDPR introduces accountability as a new basic principle: thus, you not only have to take the appropriate technical and organizational measures, you also have to be able to prove that the processing is actually being carried out in accordance with the GDPR.

With the concept of 'privacy by default', the GDPR adds a new dimension: that is, the data processing must guarantee the privacy of the individual concerned as far as possible. Thus, it is no longer permissible to:

- ➔ use pre-filled fields in reply forms;
- ➔ request data if these are not relevant (such as when signing up for a newsletter);
- ➔ state, as part of the general terms and conditions, that the data will be shared with third parties.

### HOW AND WHERE TO START?

Compliance begins by mapping existing data streams (so-called 'data mapping'). You must also evaluate each processing operation and clearly describe: what data you will be processing, to what end, on what legal basis, what the risks to privacy are, who has access to the data, and with whom you will share the data, if applicable. After all, each processing operation (a customer file, a personnel file, etc.) is directed at specific data, has a separate purpose, is founded on a specific legal basis and sometimes highly specific resources.

Based on this data mapping, you can then set out how you must adapt the existing processes and procedures, including the additional technical and organizational measures. And what adjustments are necessary to avoid sanctions and liabilities that result from the GDPR. ■

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# SECONDMENT THROUGH EMPLOYERS' GROUP EXTENDED

THE SYSTEM OF EMPLOYERS' GROUPS FOR SECONDING EMPLOYEES HAS BEEN EXTENDED BY ONE YEAR (ROYAL DECREE OF 26 MAY 2016). COMPANIES WISHING TO SET UP AN EMPLOYERS' GROUP MUST SUBMIT THEIR APPLICATION BY 1 JULY 2017.

WITH THE EXTENSION UNTIL 1 JULY 2017, THE GOVERNMENT IS GIVING SOCIAL PARTNERS IN THE NLC TIME TO REFORM THE SYSTEM OF EMPLOYERS' GROUPS.

## « Employers' groups authorized before 1 July 2017 remain in force after this date. »

### WHAT IS AN EMPLOYERS' GROUP?

The employers' group is a system that enables multiple companies to group themselves into an autonomous legal structure and exchange employees among themselves through secondment. Thus, the employment is shared between the members of the group.

The employee enters into an employment contract with the employers' group. A second contract binds the group to each company that makes use of the labor.

The system was introduced in 2000 as an exception to the ban on secondment. Anyone wishing to make use of employers' groups must satisfy a number of conditions. These were relaxed by the change in the law in 2014.

#### *Before the 2014 change in the law*

Prior to 2014, the group had to take the form of an Economic Interest Grouping (EIG), with the sole purpose of seconding employees to members of the group. The employers' group could also only recruit employees who were hard to place (long-term unemployed job-seekers, people on a living wage or who were entitled to financial social assistance).

#### *After the 2014 change in the law*

Since 1 February 2014 a new, relaxed and more extensive scheme

has applied. Now the grouping can take the form of a non-profit organization. The scheme is also accessible to all profiles and occupations. The employment contract can be entered into for an indefinite period, a fixed period or for a specific assignment. Part-time contracts are also possible. In practice, for example, a lawyers' association can set up an employers' group and make joint use of a number of employees.

### HOW DO YOU APPLY FOR AN EMPLOYERS' GROUP?

Employers that want to group themselves together must first request authorization from the Minister for Employment. Before making a decision, the Minister asks for the opinion of the National Labour Council (NLC). If this opinion is positive, the Minister grants authorization for a specific period. If the employers fail to meet the conditions, the Minister may withdraw the authorization.

The members of employers' groups are jointly and severally liable for fiscal and social debts, both to third parties and to the employees seconded by the employers' group.

### SECOND EXTENSION

The law of 2014 only applied for a limited time and was introduced 'as an experiment'. The procedure was to have ended on 1 July 2015. However, the system was extended

for the first time (Royal Decree of 7 June 2015) until 1 July 2016. And now, for a second time, until 1 July 2017. In concrete terms, this means that employers can submit applications until this date. Applications from before 1 July 2017 will still be processed. Current authorizations from before 1 July 2017 will remain in force after this date.

With the second extension, the government wants to give social partners in the NLC time to reform the system of employers' groups and conclude a framework collective labor agreement. This collective labor agreement must include a number of important elements, such as which joint committee is competent for the employers' group, or arrangements regarding the wages that must be paid to seconded employees. ■

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NOT ALL INNOVATIONS  
ARE DISRUPTIVE, EVEN IF  
THEY ARE REVOLUTIONARY.

# DISRUPTION. PLUCKED OUT OF BUSINESS

WHAT IS YOUR INTERFACE WITH DISRUPTION? WE PUT THIS QUESTION TO 7 SENIOR MANAGERS OR CEOS – AND BROUGHT THEIR VISION AND EXPERIENCES TOGETHER IN THE BROCHURE 'DISRUPTION. STRATEGY AND BEST PRACTICES'. DO THEY EVER SEE THEIR ORGANIZATION DISRUPT THE MARKET? OR IS THEIR OWN BUSINESS LIKELY TO BE DISRUPTED BY A PLAYER OR A DEVELOPMENT THAT THEY DO NOT (OR CANNOT) YET SEE? VERY INTERESTING READING, IN WHICH EACH INTERVIEWEE PUTS ALL HIS OR HER CARDS ON THE TABLE.

As a foretaste, we've selected one question per CEO for this newsletter. The entire 'keynotes', which we are publishing together with the Federation of Enterprises in Belgium (FEB) and ING Belgium, can be downloaded for free at [www.bdo.be](http://www.bdo.be) (go to publications).

« It's not the role or task of the CEO to think disruptively. »

ANDRÉ DUVAL, TOPMAN DUVAL UNION



**ANDRÉ DUVAL | DUVAL UNION**

**IS THE PATH TO DISRUPTION BY DEFINITION ALSO DISRUPTIVE?  
DO THE MAINSTREAM CHANNELS NOT WORK?**

"I don't agree that a company can disrupt. That you can set up a model with which you deliberately undermine the sector. You always start from what is currently technologically possible and produce a calculation formula with that knowledge in order to achieve something. Satisfy consumers, for example, by giving them a tool that lets them get to their destination faster by travelling with a local driver rather than ordering a taxi. That this calculation formula disrupts the taxi business is the consequence but not the premise. The starting point is consumer-centric. Today's consumer is no longer led, he or she leads! The law of large numbers no longer exists. Thanks to big data, a company can be of service to every person – I associate the word consumer with 'undergoing' – in line with his person and reality."



**CHRISTIAN REINAUDO | AGFA-GEVAERT**

**PERSONALLY, DO YOU FEEL LIKE  
A BOTTLE ON THE WAVES?**

"I'm a doctor of thermodynamics and have a degree in polychemistry, but above all I was a suitable CEO for Agfa because of my know-how in the software industry and telecoms. For the past 20 years, I've been surfing to the rhythm of the waves that send me in the right direction. I'm young enough at heart to understand the new developments, but have to surround myself with young talent to be able to anticipate what's coming. It's vital that I keep all my senses keen and am smart enough not to put a brake on certain developments. Every CEO has to understand the essence of the new technology, to understand the basics of what is happening on the market and with the customers, and to be able to challenge his or her teams internally."



**TIM HOWELL | EUROCLEAR**

**YOU DON'T APPEAR TOO  
CONCERNED THAT THE  
FINANCIAL SERVICES SECTOR IS  
EASY PREY FOR DISRUPTION, IS  
THAT RIGHT?**

"It's too heavily regulated for that. Regulators don't like to admit it, but the rules and laws form both a protection and a dam against change. They encourage innovation, but aren't keen on disruption, or on banks, as a matter of fact. In other words, even if they're not that enthusiastic about the banks, the regulators still prefer to work with institutions they know and understand than with 'unknown' players. Imagine... Microsoft or Google becoming a bank."



**JURGEN INGELS | SMARTFIN CAPITAL**

## **SHOULD BANKS BE CONCERNED ABOUT THE PRESSURE FROM FINTECHS?**

"Definitely. The banks are now being very vigilant. But disrupting an entire bank is something completely different from what is currently happening. So far, very few fintechs have tried to bring a whole bank to its knees. Most analysts believe that the danger of disruption will play out at the front-end. But for me, the big problem for the banks is at the back-end – which is extremely old-fashioned and not adapted to customers' contemporary needs. They want 'instant satisfaction'. Think of real-time payments by smartphone and other 'hip' technologies that allow refreshing contacts with the end-consumer. These things enable fintechs to take some or all of the banks' customers."



**TOM CLOET | FRENTLIFE**

## **HOW DO YOU INTRODUCE A RENTAL MODEL INTO A MARKET WHERE EVERYONE WAS BORN WITH THE URGE TO BUILD OR BUY THEIR OWN HOME?**

"With extreme patience, and by stubbornly holding on to the initial idea! Every potential partner was enthusiastic during the exploratory discussions, but no one was able (or willing) to point out the weak spots to us. It took blood, sweat and tears to get a property developer to the point of telling us what the nub of the problem was. Our model focused too much on the furniture sector, the private owner, and not enough on an investor clientele. Once we'd done our homework, we got the chance to prove our specific added value. I'll explain: half of all inner-city apartments are sold as investments, to rent out. So make them ready to rent and move into: fully furnished, from curtains and furniture to bed linen and carpets to domestic appliances and household goods. And at an additional cost that when amortized doesn't exceed the purchase, installation and maintenance costs. In short, when a developer sells to an investor, we're the extension. If he sells to someone who will move in themselves, Frentlife can offer little added value."



**DOMINIQUE LEROY | PROXIMUS**

## **WILL A COMPANY THAT EVOLVES IN BELGIUM EVER BECOME A PLAYER OF THE MAGNITUDE OF GOOGLE OR FACEBOOK? WHAT CAN YOU AS A BUSINESS ACTUALLY DO ON THAT LEVEL?**

"We can play the 'locally anchored' card and construct alternatives or complementary solutions around the local ecosystem, with – very importantly – roots in the local economy. There's no point trying to set yourself apart – like Facebook or Twitter – in a global ecosystem. So Proximus recently acquired a majority stake in companies like Be-Mobile and Flow to build a unique Smart Mobility platform together, based on our own algorithms and know-how. In contrast to, say, Coyote, we can interact with local radio stations and police, with cities and municipalities, cooperate with public transport and parking companies, and a lot more. That's a major asset."





**CHRISTOPHE DEPRETER | SABAM**

**DURING YOUR TIME AS AN ENTREPRENEUR, HAVE YOU EXPERIENCED WHAT IT'S LIKE TO BE LEFT BEHIND?**

"No, but you really need to be constantly on guard. When I was negotiating with online access providers 10 years ago, I intended to ask a higher price for downloads and leave streaming free. Fortunately, on the advice of our market specialist, SABAM didn't go down that road. And what also surprised me, as a lawyer, is that the European Court of Justice gives precedence to the interests of the internet user over those of the author. And that can have a significant impact on the collection of fees. We haven't reached that point yet, but the risk is there."

# THE DESTINATION DOCUMENT AS ALTERNATIVE PROOF FOR INTRA-COMMUNITY SUPPLIES

TO RELAX THE BURDEN OF PROOF FOR VAT-EXEMPT INTRA-COMMUNITY SUPPLIES, AS FROM 1 JULY 2016 THE VAT AUTHORITIES HAVE MADE ALLOWANCE FOR A 'DESTINATION DOCUMENT' AS ALTERNATIVE PROOF OF CROSS-BORDER TRANSPORT.

## AN (EXCESSIVELY) HEAVY BURDEN OF PROOF

Three basic conditions must be cumulatively met to exempt so-called intra-Community supplies from Belgian VAT:

- ➔ the goods must be supplied by a taxable seller;
- ➔ the goods must be supplied to a foreign buyer, who must pay the VAT owed in the destination country;
- ➔ the goods must be transported or shipped to another EU Member State.

To show proof of the cross-border transport or shipment, the supplier may use the customer and corresponding commercial documents, such as purchase orders, foreign payments, the usual transport documents (CMR and other waybills, transport invoices, etc.).

In some cases, it is almost impossible for a Belgian supplier to collect sufficient transport documentation.

This is because foreign customers or intermediaries involved in chain transactions use their commercial interests as a reason not to have to provide transport documents. In addition, in practice there are often problems with collection transactions, in which the foreign client collects the goods himself.

## THE DESTINATION DOCUMENT AS ALTERNATIVE PROOF

Anticipating broader European initiatives and echoing certain neighboring countries (e.g. the 'afhaalverklaring' [collection declaration] in the Netherlands, the 'Gelangenbestätigung' [confirmation of arrival] in Germany, etc.) that unilaterally accept specified supporting documents, the Belgian VAT authorities provide a 'specific probative document' as an alternative to the 'traditional' transport documents. This is the so-called *destination document*.

## HOW DOES IT WORK?

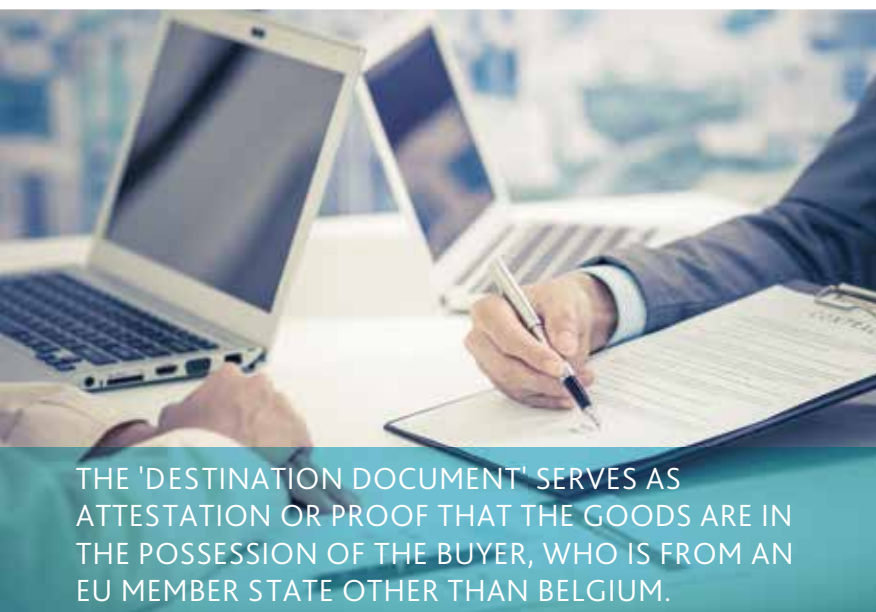
The destination document serves as attestation or proof that the goods are in the possession of the buyer (or his or her customer, in the case of triangular trade) who is from an EU Member State other than Belgium.

The destination document can be drawn up, sent and signed both electronically and in hard copy and must include at least the following:

- ➔ the full identity (name, address and VAT number) of the supplier and the buyer;
- ➔ the statement "Confirmation of the arrival of intra-Community supplies of goods, within the meaning of Article 13(1) of Directive 2006/112/EC";
- ➔ the period to which the document relates (max. 3 months);
- ➔ a description of the goods, the quantity and the price (excl. VAT);
- ➔ a clear reference to the invoice or other documents;
- ➔ a detailed description of the place of arrival of the shipment (the EU Member State, the town/municipality) as well as the month and year of receipt.

For each delivery, the Belgian supplier can opt for the destination document or continue to use the traditional

« It is up to the VAT authorities to check the authenticity of the transaction and the correctness of the destination document. »



THE 'DESTINATION DOCUMENT' SERVES AS ATTESTATION OR PROOF THAT THE GOODS ARE IN THE POSSESSION OF THE BUYER, WHO IS FROM AN EU MEMBER STATE OTHER THAN BELGIUM.

transport and commercial documents. He or she can produce one destination document per delivery or one central document per foreign customer for the past month's supplies (up to the last three calendar months).

The information provided on the destination document must be confirmed by the buyer's 'competent person' as quickly as possible, but within three months of the end of the period to which the document relates.

### DESTINATION DOCUMENT CREATES REBUTTABLE PRESUMPTION

The burden of proof is being reversed. Here's how: if, in addition

to the sales invoice and the proof of payment, the Belgian supplier has a dated destination document, the VAT authorities are to assume that the information in the destination document is correct.

In that case, it is up to the VAT authorities to check the authenticity of the transaction and the correctness of the declarations on the destination document. To do this, they may still request other documents (within reasonable limits), such as contracts, purchase orders, payment documents, etc.

### THE PROOF OF THE PUDDING WILL BE IN THE EATING...

The decision to allow the destination document has been in force since 1 July 2016. Since that date, Belgian companies, and globally liable representatives alike, have been able to make use of the alternative proof.

The VAT authorities are, however, entitled to collectively repeal this administrative decision or refuse to allow certain suppliers to use the alternative proof if the conditions for application are not met or in the event of abuse or attempted abuse. ■

*For more information:*  
 Contact our colleagues in the VAT Competence Centre: [btw-tva@bdo.be](mailto:btw-tva@bdo.be)

# EXPLORING THE PROGRAMME LAW OF 1 JULY 2016

WITH A LEGAL FRAMEWORK FOR THE SO-CALLED SHARING ECONOMY, THE GOVERNMENT WANTS TO TAKE SHARING ECONOMY ACTIVITIES OUT OF THE ILLEGAL WORK CIRCUIT.

DURING THE SUMMER MONTHS, THE GOVERNMENT DEVELOPED VARIOUS FISCAL MEASURES INTO THE PROGRAMME LAW OF 1 JULY 2016. THE MAIN OBJECTIVES OF THIS COLLECTIVE LAW ARE THE REGULATION OF THE SHARING ECONOMY, STRICTER RULES ON PAYMENTS TO TAX HAVENS, AND GREATER OPPORTUNITIES FOR THE ESTABLISHMENT AND RECOVERY OF TAXES. BELGIUM ALSO WANTS TO COMPLY WITH ITS LEGAL OBLIGATIONS UNDER THE BEPS ACTION PLAN IN RELATION TO THE DOCUMENTATION OBLIGATION FOR TRANSFER PRICING (READ THE ARTICLE 'TRANSFER PRICING: NEW DOCUMENTATION OBLIGATION FOR BELGIUM AND THE NETHERLANDS' ON P. 22).

## SHARING ECONOMY GIVEN LEGAL FRAMEWORK

In the sharing economy, people consume, produce and trade products, services, knowledge and money among themselves through peer-to-peer marketplaces, B2B marketplaces and cooperatives. Think of the local gardening enthusiast who is looking for an extra source of income and provides services to individuals for a small fee. Or: altering clothing, lending out cars, bicycles or children's things for a fee... all outside the professional sphere. These people normally find each other through a (electronic) platform.

Since 1 July 2016, this so-called sharing economy has had a legal framework. In this way, the government wants to take sharing economy activities out of the illegal work circuit. At the same time, it

wants to create a delineated framework with a minimum of administrative formalities to encourage this new form of economy.

### Minimum of formalities

People who generate income from activities that belong to the sharing economy are not subject to the self-employed social status and do not have to register with the Crossroads Bank for Enterprises (CBE).

For VAT, these people come under the special exemption scheme for small businesses. They do not have to register for VAT, but they are also not entitled to deduct VAT from business expenses. In addition, they are not required to submit an annual statement of taxable customers.

### But subject to personal income tax

Personal income tax regulations regard income from sharing activities as 'diverse income'. After deducting an expense allowance of 50%, this income is subject to a separate tax of 20%, which equates to an actual tax burden of 10%. Proof of actual expenses is not allowed.

### Conditions

A number of conditions are attached to the new shared economy scheme, such as:

- ➔ the gross income or generated turnover per calendar year from share economy activities may not exceed EUR 5,000;
- ➔ the services (goods are excluded) are provided outside any professional activity;
- ➔ the services are provided to individuals;
- ➔ the services are offered through an electronic platform that is recognized by the government.

### Entry into force

The new provisions apply to income that has been paid or allocated since 1 July 2016.

## « The obligation to declare payments of more than EUR 100,000 to tax havens is being extended. »

### ESTABLISHMENT AND COLLECTION OF TAXES

#### *Stricter rules on financial transactions with tax havens*

The government is taking measures to make the existing rules for payments to tax havens more efficient.

Therefore, the obligation to declare payments of more than EUR 100,000 by Belgian companies and Belgian establishments of foreign companies to tax havens (states with no or low taxes) is being extended. For example, from now on, the government will not only target payments to natural persons or legal entities in the countries in question, but also payments to:

- ➔ permanent establishments of non-residents that are situated in these states;
- ➔ bank accounts managed or held by a resident/permanent establishment of a non-resident of one of these states;
- ➔ bank accounts managed or held with credit institutions established or with a permanent establishment in these states.

Furthermore, the list of 'states with no or low taxes' (countries that qualify as tax havens) is being expanded to include countries that do not levy corporation tax on income of domestic origin. Countries with a territorial tax system that do not levy corporation tax on income of foreign origin will also be added to the list of so-called tax havens.

In addition, stricter rules are being introduced for the concept of 'states with low taxes'. Henceforth, states where the actual tax burden on income of foreign origin is less than 15% will

also be included in the list of countries. Thus, since July 2016 account has been taken of both the nominal tax rate (the rate actually applied to taxable income when calculating the corporation tax owed and for which the limit is 10%) and the composition of the taxable base or the taxable result (if the taxable base is abnormally composed by international standards and therefore gives a distorted picture of the nominal rate).

The obligation to declare applies even if the state in question is regarded as a state with no or low taxes for only part of the taxable period.

#### *Investigation period of 24 months*

Previously, the taxman used an assessment period of 24 months if it appeared from foreign information that taxable income was not being declared in Belgium. However, a great deal of this foreign information is generated from automatic data exchanges without the data first being investigated. Under the new rules, the assessment period will now also be an investigation period, so that the Belgian tax administration can undertake additional investigations – even if the standard investigation period of three years has elapsed. Furthermore, the phrase 'foreign information' covers more data than it did previously. In addition to information based on an audit or an investigation by a competent authority of another country, all information from abroad – such as spontaneous, mandatory, automatic and structured international exchanges – is now taken into consideration.

#### *Assessment period from 5 to 7 years*

If the investigation reveals fraudulent or malicious intent, then the

assessment period is increased from 5 to 7 years. Concretely, this means that, thanks to this new assessment period, the taxman can go back one year further into the past than he can with the standard fraud period. He also has one to two years more to make the assessment. Two examples:

- ➔ In case of fraud, the income from 2009 that was not declared until 2016 can be taxed (7 years from 1 January 2010).
- ➔ If the undeclared income comes to light through foreign information that the taxman received in November 2016, these data can still be used to make an assessment for the income from 2008.

In addition, the administration has 24 extra months from the day the information is received to make the assessment. Thus, in the second example, that means until November 2018. ■

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# TRANSFER PRICING: NEW DOCUMENTATION OBLIGATION FOR BELGIUM AND THE NETHERLANDS

OBJECTIVE OF BEPS ACTION POINT 13? MORE TRANSPARENCY AND ENCOURAGE COMPANIES TO REVIEW AND DISMANTLE AGGRESSIVE TAX SCHEDULES.

THE BELGIAN PROGRAMME LAW OF 1 JULY 2016 TRANSPOSED THE LONG-ANNOUNCED DOCUMENTATION OBLIGATION FOR TRANSFER PRICING INTO BELGIAN LAW. THIS HAS ALREADY HAPPENED IN THE NETHERLANDS. IN BOTH COUNTRIES, THE OBLIGATION TAKES EFFECT AS OF THE 2017 ASSESSMENT YEAR (OR THE FINANCIAL YEARS THAT BEGIN ON OR AFTER 1 JANUARY 2016). WHAT SPECIFICALLY DOES THIS NEW DOCUMENTATION OBLIGATION MEAN FOR MULTINATIONAL CORPORATIONS IN THE TWO COUNTRIES? WE MAKE THE COMPARISON.

## BEPS LIES AT THE BASIS

The OECD's BEPS action plan – intended to counter tax erosion and profit-shifting (see also our 2016/1 newsletter) – is aimed at establishing greater transparency among multinational corporations through the so-called 'Action Point 13'. These companies must provide information in a consistent way so that tax authorities can carry out transfer pricing risk analyses.

Action Point 13 of the BEPS action plan proposes three-pronged reporting to document transfer pricing: thus, multinational corporations must compile a country-by-country report, a master file, and a local file. The aim of these measures is to create more transparency and encourage companies to review – and, if necessary, dismantle – aggressive tax schedules. That should restore the fiscal balance between large multinationals and SMEs.

Like many other countries, Belgium has also developed measures to

implement BEPS Action Point 13 in its legislation. The more extensive documentation obligations were implemented in the Netherlands in January 2016 in the Income Tax Act, while in Belgium this was done through the Programme Law of 1 July 2016. Here, more specific rules on the form and content of the country-by-country report, the master file and the local file will be enacted by Ministerial Decree.

## COUNTRY-BY-COUNTRY REPORT: BELGIUM VS. THE NETHERLANDS

The country-by-country report provides an overview of the distribution of all income, profits, paid income tax, owed income tax and several other economic indicators. It also includes the main activities of all entities of the business group worldwide. In Belgium, this new legislation applies to all companies with a consolidated turnover of more than EUR 750 million. Those companies are required to provide the Belgian

tax administration with a country-by-country report within 12 months of the closure of the group's consolidated annual accounts.

For the Netherlands, the obligation applies to companies of the same size, i.e. with a consolidated group revenue of at least EUR 750 million achieved in the tax year preceding the year of the country-by-country report. If the ultimate

parent company is based in the Netherlands, it must submit the country-by-country report to the Dutch tax authorities within one year of the end of the (financial) year.

## THE MASTER AND LOCAL FILES

The table below provides an overview of which companies are required to submit a master or local file, under what conditions, and what the penalties are if the documentation obligation is not fulfilled:

### BELGIUM

### THE NETHERLANDS

<i>Who?</i>	A total of EUR 50 million in operating and financial income, excluding non-recurrent income; Or A balance sheet total of EUR 1 billion; or An average annual workforce of 100 full-time equivalents	Only qualitative criterion: At least EUR 50 million in consolidated (net) group revenue.
<i>Language</i>	English (during a tax audit, however, a translation into one of Belgium's official languages may be requested).	Dutch or English
<i>Penalties</i>	Administrative fine, varying between EUR 1,250 and EUR 25,000.	Failure to meet proper administrative obligations (including preparing a local and master file) carries a prison sentence of up to 6 months or a fine of EUR 8,200. Attention: in the case of intent, the penalty is a prison sentence of up to 4 years or a fine of up to EUR 20,500. With regard to the local file and the master file, there is a possible fine of up to 100% of any transfer pricing correction, the reversal of the burden of proof and possible criminal prosecution.
<i>Entry into force</i>	The reporting obligations come into force from the 2017 assessment year, i.e. with the financial year that begins on 1 January 2016 or later.	Reporting obligations came into force from 2016 for financial years that begin on or after 1 January 2016.
<i>Submission deadline</i>	The master file must be submitted within 12 months of the closure of the group's reporting period. The local file must be submitted electronically together with the Belgian tax return.	The master file and local file must be incorporated into the taxpayer's administration within the time limit that applies for submitting the corporation tax return for the year in question.

## « The local file for Belgium differs from the local file proposed by the OECD. »

### **The master file (same for Belgium and the Netherlands)**

Substantively, there are no different requirements for the master file for companies from Belgium or the Netherlands (in contrast to the local file, which does impose specific requirements, see below). The master file places the emphasis on qualitative data and must provide an overview of the multinational group. The file describes, for example (this list is not exhaustive):

- ➔ nature of the business activities;
- ➔ value creation of the group entities;
- ➔ intangible fixed assets;
- ➔ intra-group financial transactions;
- ➔ transfer pricing policy applied for research and development and intellectual property;
- ➔ consolidated financial and fiscal position of the multinational;
- ➔ worldwide allocation of income and economic activities;
- ➔ re-structurings (e.g. acquisitions);
- ➔ all unilateral APAs (Advance Pricing Agreements) and rulings that relate to the allocation of income.

### **The local file – Belgium**

In contrast to the master file, the local file (which in Belgium will be an XML form) focuses on quantitative data and is specific to this country. It comprises two parts:

1. The general part provides information on the local entity, such as the management and organizational structure, the activities, the competitors and other core data.

2. A detailed information form gives the analysis of the transfer pricing of the transactions between the local entity and the foreign entities of the multinational group. This analysis gives the relevant financial information of these transactions, the comparability study and the selection and application of the most appropriate transfer pricing method.

This detailed information form has to be completed only when the threshold of a total of EUR 1 million in cross-border transactions with group entities was exceeded in the last financial year for at least one of the business units within the Belgian group. In that case, the information form must be completed for each business unit that exceeds this threshold.

The local file for Belgium differs substantively from the local file proposed by the OECD. This is because the XML form mainly includes figures. The following, for example, are not requested in the local file: an overview of the industry, detailed information about the company and its products or the functional analysis.

Because the local file required by Belgium differs from the file requested by the OECD, it is recommended that you still prepare a local file in accordance with the OECD guidelines (in addition to the XML form).

### **The local file – the Netherlands**

The local file in the Netherlands

corresponds with the content proposed by the OECD and contains information that is relevant for the intra-group transactions in which the Dutch taxpayer is involved. Of course, the file must include a transfer pricing analysis and also (this list is not exhaustive):

- ➔ the management structure;
- ➔ the relevant intra-group transactions and the volumes;
- ➔ the appropriate transfer pricing method and how this is underpinned;
- ➔ relevant financial information
- ➔ a detailed functional analysis;
- ➔ a copy of APAs and rulings relevant for the transactions described in the local file to which the Netherlands is not party. ■

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# INNOVATION IN BELGIUM AND TAXATION

YOU MAY BE ABLE TO APPLY THE NEW REGIME FOR THE DEDUCTION OF INNOVATION INCOME ON A BROADER BASIS.

WHAT ARE THE REPERCUSSIONS OF THE BASE EROSION PROFIT SHIFTING (BEPS) ACTION PLAN OF THE ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD) FOR THE PATENT INCOME DEDUCTION REGIME? WHAT ABOUT THE FISCAL TREATMENT OF INNOVATION INCOME? AS PART OF AN INVESTIGATION IN CONNECTION WITH THE BEPS ACTION PLAN, THE BELGIAN PATENT INCOME DEDUCTION REGIME WAS SCREENED TOGETHER WITH 15 OTHER SIMILAR FOREIGN REGIMES. AND 'REJECTED'... BUT A NEW AND MORE EXPANSIVE REGULATION WILL REPLACE THE PATENT DEDUCTION REGULATION.

*The conclusion of this screening?* The Belgian patent income deduction does not meet the conditions of the BEPS programme - under Action Point 5 'Harmful Tax Practices'<sup>(\*)</sup> - and must therefore be adapted. The OECD report does, however, allow for the provision of a transitional arrangement for existing users of the system. Our neighboring countries also have to bring their existing favorable regimes into line with the OECD requirements. They too are being given a transitional period of up to 5 years. Luxembourg, Spain and the UK, among others, have already taken action.

## A QUICK REMINDER: THE PATENT DEDUCTION

Belgium introduced the 'deduction for patent income' tax regime with the Law of 27 April 2007. The deduction for patent income applies from the 2008 assessment year and allows companies to exempt from tax 80% of the income they receive from patents. This means that the effective tax rate for this income is being reduced to 6.798% (20% of the normal rate in corporation tax, i.e. 33.99%). The aim was for this tax measure to stimulate innovation through research and development and encourage its protection through patents.

However, since 1 July 2016 the deduction for patent income has no longer been permitted (although a transitional period has been provided until 30 June 2021). In a subsequent phase, the government will develop a new scheme that will apply retroactively from 1 July 2016.

## TRANSITIONAL ARRANGEMENT

In compliance with the OECD report, the Belgian government has made provision for a transitional arrangement. This means that you can still apply the patent deduction to patents for which the patent deduction was granted, or applied for, before 1 July 2016. The same applies to patents or license rights from before 1 July 2016, the patented products or processes of which are further improved. The transitional arrangement applies until 30 June 2021. Income received after this date will fall under the new

## « Software companies will also be able to make use of the new innovation income deduction. »»

system that is being developed. In practice, this means that certain companies will have to apply two systems in 2021: the system valid before 30 June 2021, and the system active after that date.

However, there is a risk that a group of companies will move patents around to make illegal use of the transitional arrangement. To avoid this sort of abuse, the transitional arrangement does not apply to patents acquired directly or indirectly from 1 January 2016 and which were not eligible for the patent deduction (or an equivalent scheme under foreign law) at the transferring company. Furthermore, the transitional arrangement can only be applied by existing users of the system – new applicants are excluded.

### INNOVATION INCOME DEDUCTION: FEATURES

#### Broader scope

You may be able to apply the new regime for the deduction of innovation income (the phrase patent income is no longer used) on a broader basis. For example, the following intangible assets could be eligible for deduction:

- ➔ patents or supplementary protection certificates of which the company is the full owner, co-owner, usufructuary or license or (possibly exclusive) rights holder;
- ➔ a breeder's right of which the company is the full owner, co-owner, usufructuary or license or (possibly exclusive) rights holder and for which the application was submitted at the earliest on 1 July 2016. Or, in the case of an acquired breeder's right which was acquired after 30 June 2016;
- ➔ a copyright-protected computer program that fulfils the terms and conditions laid down by Royal Decree. If this involves delivered work or an adaptation of an existing computer program, the deduction is limited to the part that relates to that derived work or adaptation, and which was created by the company at the earliest on 1 July 2016 (possibly also applicable to internally developed software (for process improvements) that is not marketed).

So, software companies could also benefit from the new regime. For patents, a patent application will henceforth be sufficient for applying the deduction (albeit subject to repayment if the patent is not ultimately granted).

Companies that apply for the deduction must be able to produce the necessary documentation, which must show the

value of the acquired intellectual property (IP) rights that form the basis for the deduction for innovation income.

#### Nexus approach

As stated above, the 'IP regimes' of OECD Member States must meet the conditions of the BEPS programme from 1 July 2016. More specifically, the IP regimes must reflect the changed Nexus approach (resulting from the OECD recommendations).

The tax benefit of the IP regime is made dependent on the scope of the R&D (research and development) activities of that benefit's recipient. Therefore, the focus is on substance (the degree of economic activity in our country), because the qualifying expenditure for developing intellectual property rights will be an indication of the presence or otherwise of substance on the part of the taxpayer seeking to apply the exemption. The Nexus approach excludes all marketing-related intellectual property rights (such as brand names) from any tax benefit.

The following formula is used to calculate the innovation income exemption:

$$\text{qualifying income from IP} = \frac{\text{general income from IP} \times (\text{qualifying R\&D expenditure})}{\text{general R\&D expenditure}}$$

The various components of the formula are briefly explained below:

#### Qualifying expenditure

Qualifying expenditure is IP-related expenditure you incurred from the first taxable period ending on 30 June 2016, either for the product type or service, or for the group of products. This expenditure can be:

- ➔ wage costs;
- ➔ directly attributable costs and depreciation costs (less the costs of acquiring the intellectual property rights);
- ➔ certain costs for outsourcing research and development (see below);
- ➔ expenditure for improving an acquired intellectual property right.

The denominator is automatically increased by 30% (the so-called 'uplift') to a maximum of the figure of the numerator.

### General expenditure

The general expenditure from research and development is:

- ➔ the qualifying expenditure;
- ➔ certain costs incurred for outsourcing research and development costs;
- ➔ and the costs of acquiring intellectual property rights.

The costs incurred by a Belgian company to outsource certain research and development activities to an affiliated company are regarded as non-qualifying expenditure for research and development (unless the affiliated company passes the fee received on to a non-affiliated company without a margin).

Costs that relate to interest payments, costs for the rental or ownership of a building, or costs that do not represent research and development activities are excluded. Expenditure that has no direct link to specific intellectual property rights may be spread pro rata across all intellectual property rights. Expenditure incurred for projects that do not ultimately result in intellectual property rights is also excluded.

In principle, both the general expenditure and the qualifying expenditure must include all costs during the life of the intellectual property right.

### General income

The general income from intellectual property rights is:

- ➔ license fees;
- ➔ fees owed to the company if the goods/services produced/delivered by or for the account of the company are produced/delivered by a third party on the basis of a license granted by the company;
- ➔ compensation owed to the company as a result of infringement of the intellectual property right;
- ➔ amounts received on disposal of an intellectual property right that has the nature of a fixed asset and which arose at the latest in the previous taxable period or was purchased at the latest in the fifth preceding taxable period.

The general income acquired in the year in which the deduction will be applied must then be reduced by the expenditure incurred for the intellectual property right that is attributable to the income from the intellectual property right in a specific year (in the old regime, this was gross income).

So a good 'track & trace' system is essential – which is an administrative challenge for companies that manage various intellectual property rights. Fortunately, companies will be able to regroup intellectual property



rights – either by product type or service, or product group or service – provided they can justify this regrouping.

At the moment that this newsletter was going to press, the Council of Ministers of 2 December 2016 announced its agreement with the definitive measures. The most important features are:

- ➔ The deduction for innovation income will amount to 85% (replacing the 80% patent deduction);
- ➔ Introduction of a special documentation requirement: the taxpayer will need to add a separate form to the declaration, in which he substantiates all of the elements of the new deduction. In addition, he must maintain a file of the necessary documents pertaining to intellectual property rights;
- ➔ Copyright-protected software is now also eligible for the application of the new deduction.

For more information, please refer to the news section on the BDO website.

The following table summarizes the main differences between the two regimes:

	OLD REGIME	NEW REGIME
Scope	Patent income deduction	Innovation income (patents, breeder's rights and copyright-protected software)
Basis for exemption	Gross income	Net income
% exemption	80%	85%
Deduction from	Granting of patent	Patent application Subject to creation of exempted reserve
In the return	Taxable profit after dividend received deduction	Taxable profit after dividend received deduction
Unused deduction transferrable	No	Yes
What about mergers and break-ups	Unclear	Applicable
Nexus restriction	Not applicable (R&D requirement for non-SMEs)	Yes – Nexus restriction purchased IP and payment R&D services to group companies
Research center required	Yes (but not for SMEs)	Implicit via Nexus formula
How to process in tax return	Specific annex	Specific annex
Track & Trace	Income only	Income and costs per IP and if not possible per product or product group All costs from previous taxable periods that end after 30 June 2016

### BRIEF OUTLINE OF INNOVATION INCOME DEDUCTION

The existing system of patent income deductions was repealed on 1 July 2016 to bring it into line with OECD requirements (BEPS). The new 'innovation income' deduction can, if necessary, be extended to software companies, which is a major incentive for these companies to continue to innovate. The new innovation income deduction does require good tracking & tracing of the research and development costs, but this is offset by a sizeable tax-saving.

For more information:

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# BELGIAN MERGERS AND ACQUISITIONS MARKET GROWING STRONGLY

PEAK M&A GROWTH HAS NOT YET BEEN REACHED. 52% OF THOSE SURVEYED PREDICT THAT THE ACQUISITIONS MARKET WILL GROW FURTHER.

2015 AND THE BEGINNING OF 2016 WERE CHARACTERIZED BY A MARKED INCREASE IN THE NUMBER OF TRANSACTIONS ON THE BELGIAN MERGERS AND ACQUISITIONS MARKET. IN ADDITION, THE ACQUISITION PRICES HAVE ALSO INCREASED SIGNIFICANTLY, ACCORDING TO A SURVEY OF 142 BELGIAN M&A EXPERTS CONDUCTED BY THE M&A MONITOR

Demand for mergers and acquisitions (M&A) exceeds supply. This trend is being stimulated by easy and cheap access to financing and more available resources for investment companies. In addition, the prolonged low interest rates have led to family funds, high net worth individuals and foreign investment companies taking an increasing interest in Belgian medium-sized enterprises.

So, it's no surprise that the M&A prices are on the rise across all sectors and company sizes. This is revealed by a survey of 142 Belgian mergers and acquisitions experts that assesses their experiences over the past year. The study was conducted under the leadership of Professor Mathieu Luybaert of the Vlerick Centre for Mergers, Acquisitions & Buyouts in cooperation with BDO Belgium, Bank J. Van Breda & Co., and Gimv.

## BELGIAN ACQUISITIONS MARKET ON AN UPSWING

The global trend towards growth is also being reflected in the Belgian mergers and acquisitions market. Thus, the survey shows that:

- ➔ 65% of those surveyed found that the number of transactions in Belgium had increased over the past year. 50% actually indicated an increase of more than 10%;
- ➔ demand exceeds supply – sufficient financial resources are available from both banks and investment funds, which is boosting demand considerably;
- ➔ peak growth has not yet been reached. Thus, 52% of the respondents expect the acquisitions market to grow further, while just 13% of all experts are predicting a (slight) drop.

## « Transactions in a peaking M&A market are often motivated by over-confidence and herd behavior. »»

"The population is ageing – therefore, so are entrepreneurs. As a result, supply on the mergers and acquisitions market will continue to grow," concludes Wannes Gheysen, Head of Inheritance and Acquisitions at Bank J. Van Breda & Co. "For the seller, an acquisition often means that he or she converts his or her entire life's work into a sum of money for retirement. So, an efficient, liquid market is essential. However, a small or medium-sized enterprise that is for sale also has to prepare itself in good time." The M&A Monitor provides valuable insights to obtain maximum value."

However, Professor Mathieu Luypaert urges caution: "Transactions that take place when the M&A market peaks are generally less profitable. They are often motivated by over-confidence and herd behavior. Typically, the most attractive deals are concluded at the start of a wave of acquisitions – after that, you're left with companies that don't fully meet the ideal selection criteria."

### DRIVERS: STRATEGIC VERSUS FINANCIAL

The question is: what motives lie behind the recent wave of mergers and acquisitions? These drivers differ depending on the type of buyer.

For strategic buyers they are:

- ➔ creating economies of scale;
- ➔ opening up new geographical markets;
- ➔ cross-selling of products or services;

- ➔ acquiring new technology;
- ➔ creating better purchase conditions.

For financial buyers (investment funds) they are:

- ➔ buy-and-build strategy;
- ➔ increasing income and profit margin.

In contrast to international findings, Prof. Luypaert finds that financial buyers have an important role to play in the increased acquisition activity in Belgium. "We find the cause in the increase in family investment funds and high net worth individuals combined with low interest rates. In addition, we are also seeing an increase in the number of interested foreign investment companies that have more resources and are looking beyond their borders for interesting deals."

### PRICING

From the M&A Monitor survey, there appears to be a significant increase in the acquisition prices. In 2015, an average of 6.1 times the EBITDA value was paid, while in 2014 that was 5.6 times, and 5.0 in 2013.

The EBITDA value are the company's profits, before tax, interest payments, write-offs and impairments.

The EBITDA is a measure of the company's operational cash flow.

In the smaller deals segment (less than EUR 5 million), prices remained more or less stable: on average, 4.6 times the EBITDA was paid.

With larger transactions (more than EUR 100 million), the prices are an average of 8.5 times the EBITDA, with peaks of 12.1.

Almost 50% of those surveyed also admit that the price finally agreed for the deal was higher than the initial offer. Just one in four reached a sale price that was lower than the first offer. In the vast majority of deals, that difference was less than 30%.

### HOW ARE THE DEALS FINANCED?

With the exception of the smaller deals, there has been a sharp rise in debt financing. This confirms that the current explosion in the acquisitions market is being driven largely by cheap and easily obtained bank loans. The amount of debt financing among acquiring companies is generally three times the EBITDA, but this can be as much as five times the EBITDA for the largest companies.

42% of all acquisition transactions are financed by a vendor loan. This form of financing, in which the seller is prepared to temporarily lend the buyer part of the sale price, accounts for an average of 16% of the total deal price.

31% of the deals involve the use of an earn-out, in which payment of the sale price is partially deferred and depends on the future operating result.



## THE M&A PROCESS

Although the evolution of the market is mainly driven by demand, the survey reveals that 68% of all deals are initiated by the seller. There are some notable findings:

Almost half of all transactions are carried out via an auction. Moreover, this is especially the case for the larger deal segment. 80% of deals above EUR 100 million are secured in this way.

In just over 30% of the transactions, the selling party itself has an examination of the books or vendor due diligence out to enable the process to run more smoothly. Here too, this amounts to 68% for the larger deal segment.

On average, the entire transaction process takes between four and six months.

Competition on the demand side has risen sharply, especially in the medium-sized segment. On average, there are four bidding parties. That number rises to seven for large deals involving more than EUR 100 million.

Despite the high deal price, interest here is often greater because the company in question enjoys more visibility and has stronger networks, and more foreign players are interested and greater economies of scale are possible.

## BUBBLE?

The M&A Monitor reflects very clearly the current, relatively intense M&A activity in Belgium. However, the question remains as to whether this trend will continue. "Due to the continued negative interest rates and the forthcoming reform of Belgian corporation tax, it's very difficult to get a clear picture of how the valuation ratios and financing structure will evolve," says Veerle Catry, Partner at BDO Belgium. "This puts the parties under even more pressure to find the right balance between return and risk acceptance when concluding a deal."

Peter Maenhout, Managing Partner at Gimv: "The M&A Monitor survey touches on a number of important issues: the availability of bank financing and rapidly available liquid assets for investment companies

as the main driving forces behind the increasing number of mergers and acquisitions; the increasing valuations, the use of bank financing, etc. We can add to this the increasing uncertainty concerning regulations and tax legislation. Are we heading for an irrational bubble of mergers and acquisitions? Finally, this is a market where discipline, patience and a strong focus on the basics are central." ■

**For more information:  
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# CULTURE CLUB 4 YOU(TH) - GIVE YOUNG PEOPLE THE CHANCE TO DREAM!

CULTURAL EXPERIENCE IN A CHILD'S DEVELOPMENT IS A FUNDAMENTAL RIGHT

TOGETHER WITH THE MUSIC HALL FOUNDATION AND PLAN BELGIË, BDO HAS BEGUN A NEW AND UNIQUE SOCIALLY COMMITTED PROJECT, A PROJECT IN WHICH SCHOOLCHILDREN FROM ALL WALKS OF LIFE GET TO EXPERIENCE A LITTLE TASTE OF CULTURE, AND ARE ENCOURAGED TO PURSUE THEIR DREAMS THROUGH AN ACCOMPANYING EDUCATIONAL PROGRAMME. THAT IS CRUCIAL, BECAUSE THE YOUTH OF TODAY ACTIVELY HELP BUILD OUR FUTURE.



“ WITH A LITTLE BIT OF – EDUCATIONALLY SUBSTANTIATED – CULTURE WE ARE TRYING TO RAISE AWARENESS OF DIVERSITY AND CHILDREN’S RIGHTS AMONG YOUNG PEOPLE,,

The partners are busy preparing to bring together around a thousand schoolchildren on Friday, 10 March 2017, in the Stadsschouwburg Antwerpen for a unique musical about the life of Charlie Chaplin. An experience they will never forget!

## WHO ARE THE PARTNERS?

### *The Music Hall Foundation*

Through its Foundation, the Music Hall is striving to support people who cannot enjoy culture without extra help. After all, everyone has a right to culture, and cultural participation can be used to combat poverty and social exclusion.

**Geert Allaert**, CEO of the MHF, says: *“Poverty isn’t just a question of income, but of a whole set of exclusions. And, unfortunately, poverty doesn’t exclude anyone, not even young people. The reality is hard: if you don’t have sufficient funds, you can’t participate fully in social life. Nevertheless, a social network and new contacts are necessary to be able to build for the future, and to avoid social isolation. The MHF and its partners help people enjoy all the wonderful things that culture has to offer. This makes them less vulnerable in society.”*

### *Plan België*

Plan België is an NGO that has worked with, and for, the most vulnerable children and their communities in the Southern hemisphere since 1983. The organization fights poverty, injustice and inequality, and gives children the chance to claim their rights and change their environment.

**Sandra Galbusera**, Program Director at Plan België: *“Children’s rights are very topical in Belgium too. Even here, the world of children can still be greatly improved. We are thinking of the new developments involving refugee children, who are now finding their way into the Belgian educational system. So, Plan België wants to move children’s rights further up the agenda in our country.”*

## WHEN DREAMS COME TOGETHER

Because BDO believes in our children, in our youth – they are our future! – BDO Belgium came into contact with both parties and found out about their projects.

And so an exciting new project arose. Imagine if BDO, the Music Hall Foundation and Plan België could fill a hall with school-age youth from all across Belgium and let them soak up a new musical. Imagine if we could offer all those children an educational programme, while informing them and their schools about issues related to diversity and children’s rights.

*“Social commitment is very strong at BDO,”* says **Hans Wilmots**, CEO of BDO Belgium. *“When BDO got to know the two parties, we immediately saw a clear synergy, because culture is a fundamental right of children. We sat down with both of them and immediately came up with an exciting new initiative that we’re very happy to support. If, on the one hand, we can give a large group of young people a cultural experience and, on the other hand, we can raise their awareness and involve them in the story, then we are contributing to their future.”*

## UNIQUE COOPERATION

The right approach was found through a unique partnership. Through its Foundation, the Music Hall is making its auditorium and cast available, while BDO will provide financial support for the initiative. All schoolchildren can take part completely free of charge – which makes the project accessible to all. In turn, Plan België will offer schools an educational programme to prepare for the outing.

As the first presentation, the partnership very deliberately chose the ‘Charlie Chaplin’ musical. After all, there are many similarities between the figure portrayed by Charlie Chaplin and our (often vulnerable) young people: both are small and sometimes have the sense of being the underdog, while they are complex, a bit ‘different’, and feel rather misunderstood – but they’re filled to the brim with talent!

Plan België immediately had a number of young people start thinking creatively about the project. Based on their input, a well-developed lesson folder is now being prepared on the subject. Through Plan, schools can sign up for the teaching programme that is linked to the musical: ‘Get a Move On – because Musical sounds better with Youth’. There is already considerable interest!

‘Charlie Chaplin’ is the first joint project from an entirely Flemish perspective. The aim is to repeat the project – but then specifically for French-speaking schools – in the autumn of 2017 or early in 2018. If the project is successful – and everyone is convinced it will be – then other companies can also get involved. The MHF has developed different types of packages, so that any company can invest in our youth. ■

# BDO IS WRITING...

... 2 BOOKS! A WORK ON THE NEW FISCAL AND SOCIAL BENEFITS FOR SMES IN 2016. AND A TOME OF MORE THAN 500 PAGES ON DELICATE ISSUES IN FAMILY BUSINESSES.

## BECAUSE THE SMALLEST BOXES CONTAIN THE FINEST BISCUITS



The term 'SME' covers a much broader spectrum than many people think. But everyone agrees about the common denominator 'small'. And precisely because of this small scale, the government wants to reduce the

tax burden for SMEs, give them more flexibility and pursue a policy that is better aligned to their size.

All of which translates to fewer obligations, simplified accounting, benefits in terms of social security, taxation, etc. Our colleague Frederik De Roo explains everything clearly in his book *Nieuwe fiscale en sociale voordelen voor kmo's in 2016* (New fiscal and social benefits for SMEs in 2016).

**Elsie Beheydt**, manager of Krial, a manufacturer and fitter of 'sectional gates', was the first to read the book: "Frederik, I love the fact that you share your tax knowledge in your books. Obviously, the second part of the book (the benefits for SMEs) was the most interesting for me. Many of the topics dealt with are familiar to me, partly because of our situation and partly through discussions with BDO's experts. I read certain things several times to understand them fully. And I can well imagine that it's not always easy for entrepreneurs who are less accounts-minded. But then, of course, BDO is there to provide further clarification. Too often, entrepreneurs don't know what specific measures are available to them – they focus first of all on the day-to-day management of their business. After all, without a well-run business, no sales, no profit, no happy entrepreneur. Good support is therefore vital, so that everyone can focus on what they do best.

*The book is undoubtedly an interesting reference work that shows the way in the*

*new measures. It's not easy to stay up-to-date in the tax world, and I'm glad we can count on people who are experts in the subject and, in addition, can explain it in clear language to tax 'laypeople'. We're a little too big for a micro-company, but I find it extremely positive that, as you rightly say, more measures are finally being introduced to support SMEs and other small businesses. Too often, the SME is 'milked' while large multinationals receive fantastic gifts – for fear that they might take jobs abroad if Belgium (rightly) makes them pay taxes.*

*But that belongs to another discussion. It is – and will remain – a fact that starting entrepreneurs can use a helping hand if they want to become (and stay) successful. Anyway, daring to start up in these economically uncertain times deserves a reward in and of itself. My brother Lode and I had the chance to join a well-run company. I honestly don't know if I'd have the nerve to start a company from scratch. But we'll never know." ■*

**For more information, or to order the book:**

**Contact author Frederik De Roo, [frederik.deroo@bdo.be](mailto:frederik.deroo@bdo.be)**

## OF POTATO FARMERS AND LEVERS

The impact of family businesses on the world economy is colossal. So, it's important that they are well managed. But that requires a specific approach, because each family business experiences both stumbling blocks and opportunities that are alien to non-family businesses.

Based on their many years of professional and academic experience with family businesses, Hans Wilmots (CEO of BDO) and Rik Donckels (Emeritus Professor at KU Brussel) have written a reasoned guide on how to deal with 'Delicate kwesties in familiebedrijven' (Delicate issues in family businesses). On the one hand, it's a compelling read that tells the story of potato farmers over 5 decades. On the other hand, it's a work reference that provides levers to support the recognizable examples from the story.

**Michèle Sioen**, CEO of textile company Sioen Industries, introduces the book and writes:

*"(...) Although many family businesses are small companies, that does not mean they cannot become large. They are subject to the same commercial challenges as all companies: to find the right balance between continuity and performance. But they are unique in one specific way: the intertwining*

*of the interests of the business and the family. This emotional attachment to the business and the influence of the family culture determine the strengths, but the weaknesses as well. (...) The impact of the positive forces depends largely on the intensity with which the family manages to retain solidarity and maintain the cultural (including family) values. On how it can avoid and tackle 'delicate issues' and convert them into positive levers.*

*project and tells a timeless story in which many readers will recognize themselves. In the end, the compelling read also becomes a work reference. In part 2, Hans and Rik provide readers with 14 levers that can help strengthen the fundamentals of business in a complex world of consolidation and internationalization.*

*Did I underestimate the task when, in 2005, I took over the reins from my father as CEO of Sioen Industries?*



*(...) This unique DNA string provided the impetus for the thinking of Hans and Rik. Both men are tried and tested in the ins and outs of family businesses and, based on their considerable experience, come to the conclusion that durability is the ultimate goal of every family business. (...)*

*This book outlines the traditional basics for a durable family entrepreneurial*

*I don't think so. I can only confirm that even I draw strength, energy and inspiration from the lever that makes our family business so unique: the family itself." ■*

*For more information, or to order the book: **Contact author Hans Wilmots, [hans.wilmots@bdo.be](mailto:hans.wilmots@bdo.be)***

# BDO IS ALWAYS ON THE LOOKOUT FOR NEW TALENT

## BDO IS CURRENTLY LOOKING TO FILL THE FOLLOWING POSITIONS

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- *Supervisor Tax (Hasselt)*
- *Senior Legal Advisor (Liège)*
- *Senior Tax Consultant (Brussels Airport, Antwerpen, Gent)*
- *Senior Transfer Pricing Consultant*
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- *Accounting Assistant (Liège)*
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- *Senior Consultant OPM*

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