TAX

5% SEPARATE TAX FOR DIRECTORS' INSUFFICIENT REMUNERATION HAS BEEN BINNED

The law from the end of 2017 that reformed corporate tax introduced a separate tax of 5% if company directors received too little remuneration. However, even before a single corporate income tax return was submitted for assessment year 2019, this separate tax had already been withdrawn. What, exactly, is the truth of the matter?

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WHAT WENT BEFORE?

Required minimum remuneration

As from the financial year commencing 1 January 2018, companies must award a minimum wage of EUR 45,000 to at least one company director who is a natural person. If the remuneration amounts to less than EUR 45,000, it must be at least equal to the result for the taxable period to be able to take advantage of the reduced corporate income tax rate.

For affiliated companies of which at least half of the company directors are the same (natural) persons, the minimum wage amounts to EUR 75,000. These companies can then take into account the total remuneration they award to one of their common directors.

Hubert Hellraeth and Amelia De Grave, BDO Tax

“The threshold of a wage of EUR 45,000 remains a condition for benefiting from the reduced corporate income tax rate.”

Separate tax

Companies that do not meet the minimum wage requirement of EUR 45,000/75,000 were subject to a separate tax of 5%. This would allow the government to avoid a situation in which one man businesses would be transformed *en masse* into companies in order to enjoy the lower corporate income tax rates introduced by the law on corporate tax reform: the basic rate decreases from 33% to 29% in 2018 and to 25% in 2020; 20% for SMEs on the first tranche of EUR 100,000.

The separate tax would be based on the ‘shortfall’ in the company directors’ remuneration. The tax was applicable to the assessment years 2019 and 2020 and was even going to increase to 10% as from the 2021 assessment year. But this doubling had already been discarded by an earlier amendment to the law.

“It is as if the additional 5% levy had never existed.”

WHAT IS ACTUALLY CHANGING?

Minimum remuneration requirement remains for the reduced rate

The separate tax of 5% was also short-lived – and by virtue of the law of 13 April 2019, it died before even a single corporate income tax return for the 2019 assessment year had been submitted. In other words, companies that do not meet the minimum wage requirements will no longer be penalised.

However, the threshold of EUR 45,000 is still a condition for benefiting from the reduced corporate income tax rate. Thus, a company that wishes to make use of a tax rate of 20% on the first tranche of EUR 100,000 must still award a minimum salary of EUR 45,000 to its manager.

EFFECTIVE DATE

The law of 13 April 2019 applies as from the 2019 assessment year, associated with a taxable period that commences on 1 January 2018 at the earliest. The entry into force of the repeal corresponds to the initial entry into force of the withdrawn article – so, it is as if the levy had never existed. ■

DO YOU HAVE ANY QUESTIONS ABOUT THE NEW RULES AND CORPORATE TAX RATES?

If so, please do not hesitate to contact the experts from our ‘Tax’ team: tax@bdo.be