

More fumbling on the special taxation of secret commission fees

The last years the taxation of commission fees has been the object of different legislative changes and different points of view of the tax authorities. Also the Michel I Government had announced amendments in the coalition. The result is a new scheme in the Program Law. The law confirms the current flexible position taken by the tax authorities. The special taxation will only be used as a safety net.

Starting point of the new scheme

The legislator reasons that the special taxation of secret commission fees only be a compensation, and should not be a penalty. This means that the taxation is less applied, namely only when the beneficiary of the income can't be taxed and the rate of 309% is reduced.

Reporting in the tax return by the beneficiary

This exception already exists for a while under the current regime (i.e. before the changes of the Program Law). If the beneficiary reports the income in his personal tax return, all is OK. No supplementary taxation on secret commission fees has to be imposed.

The Program Law now explicitly adds that also a correct foreign tax return is sufficient to exclude the taxation. Meaning: the beneficiary should not necessarily report the income in Belgium, as long as it is reported somewhere in a valid tax return.

Identification of the beneficiary

The Law introduces a new exception, which holds a further easing of the prior legal exceptions. It is no longer required that the beneficiary is effectively taxed on this income. There is no longer need to prove this. What is required to avoid the taxation, is the unambiguous identification of the beneficiary within 2,5 year following 1 January of the relevant tax year.

The easing of the regulation is here very clear: from the actual taxation of the payer to the identification of the beneficiary.

Lower tax rate

Next to the fact that the taxation is less applied, also the tax rate is reduced. A further easing in other words.

The tax rate is reduced from 309% to 103% when the beneficiary is a private person. If the recipient is a legal person, the rate is even further reduced to 51,5%.

Hidden profits

A further easing includes the new approach of hidden profits.

Hidden profits will no longer be tackled if they are the consequence of the rejecting of professional expenditure. As a consequence also real black turnover is tackled by the taxation of hidden profits.

Expenditure remains deductible

Nothing new under the sun. Expenditure not mentioned on the slips and subject to the special taxation, remains deductible (as it was always the case).

Not all good news: supplementary sanctions

As said above the special taxation on secret commission fees can under the new scheme only have a compensatory character. This leaves the possibility to impose, on top of the taxation, an administrative or criminal sanction.