

## Taxation of secret commissions : tax authorities again tighten their position with respect to smoother text of the law

The taxation of secret commission remains a source of worries. At the end of last year it seemed that there was some peace and quiet after years of legislative changes and administrative tolerances. During summer the tax authorities again came up with a circular letter which again tightens the smoother text of the law. What exactly do the tax authorities say?

### Program Law 19 December 2014 : easing of the special taxation

Through the Program Law of 19 December 2014 the regime of the special taxation on secret commissions was significantly smoothed:

The taxation was seen as a compensation, and was no longer a punishment: the rate was reduced to 103% or 51.50%;

The taxation would only be imposed in exceptional cases: no taxation if the beneficiary reported this income in its tax return and not even if the beneficiary could only be identified unambiguously.

### A smooth legislation, but a rigorous circular letter

However the law seems clear, the tax authorities have published a new circular letter during summertime. In this circular letter the smooth starting point of the law is somewhat clarified (read: tightened).

#### *Unambiguous identification of the beneficiary*

According to the law the special taxation can be avoided if the beneficiary can be identified unambiguously, ultimately within two years and six months following 1 January of the tax year. This means that an actual taxation in the hands of the beneficiary is no longer required.

The circular letter is more severe than the law, since it equalizes the 'unambiguous identification of beneficiary' with a Belgian tax return or a similar foreign tax return of the beneficiary. It should however not be a tax return which is filed during the normal filing period, but a return within the (longer) period of two and a half years is sufficient. According to the circular letter this also means that the taxation can only be avoided if the tax authorities receive a written agreement of the beneficiary quoting his identity, national number and the amount of the received benefit. In other words, the tax authorities revert to the old rules under which the beneficiary should report the benefit or has to agree that he will be taxed.

Actually the tax authorities add a supplementary condition which is not in the law.

### *Hidden supplementary profits*

In the past it was not fully clear what was understood by 'hidden supplementary profits'. The Program law has remedied this by explicitly stating that hidden supplementary profits are only subject to the special taxation if these are the consequence of disallowed professional expenses.

The circular letter is more severe than the law, since it states that this limitation does not apply in case of false or fictitious invoices (when a purchase invoice is concerned, it should in principle be booked on the 60-account, and which only impact the gross profit of the company). According to the tax authorities, such an invoice is no professional expenditure. The taxation can consequently be imposed.

### *Reduction of the rate*

In the past, the rate was very high: 309%. Under the new rules the rate was reduced to 103% (when the beneficiary is an individual) or 51.5% (when the beneficiary is a legal person).

The circular letter is more severe than the law, since it explicitly states that the rate of 51.50% only applies when the 'ultimate beneficiary' is a legal person, where the law only speaks about 'beneficiary'. The tax authorities themselves have added the word 'beneficiary'.

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