DLA PIPER

SPOTLIGHT ON BELGIUM

TRENDS IN THE LEGAL LANDSCAPE

ISSUE 2, 2013

ISSUE HIGHLIGHTS

INTRODUCTION

Welcome!

We are delighted to present you the second edition of Spotlight on Belgium, DLA Piper Belgium's quarterly newsletter which aims to inform you about current legal developments that could affect your business.

As the legal and political vacations drew near, the legislator has not been idle: a multitude of new decrees, acts and rules have entered into force. We are pleased to report that we have matched the legislator's productivity, as evidenced by this newsletter: Jacques Richelle and Manuela Baldan discuss the "New Act" on **security interests on movable assets**, Jean-Michel Detry and Dodo Chochitaichvili contribute an article on the **recently adopted new Arbitration Act**, Michaël Bollen and Marc De Munter study the impact of the new **anti-abuse provision in tax matters** on the real estate sector, and Barteld Schutyser and Annelies Verlinden discuss the Royal Decree which introduced **new rules on the conclusion of public contracts**.

Looking further ahead, Dominique Devos outlines the **preliminary draft of the environmental integrated permit**, which is to be passed before the 2014 elections, and Ilse Van de Mierop, Arnaud Houet and Olivier Lemahieu discuss a draft bill which was recently submitted to the Belgian Parliament, which aims to **revise the three-year-old law on the continuity of enterprises**.

Broadening the scope from new acts and decrees to the legal framework as a whole, Patrick Van Eecke and Antoon Dierick shed light on the European Commission's "**Law 2.0**" efforts to deal with the rapid technological advancements our society experiences.

In addition, our lawyers have thoroughly studied important court decisions. Denis-Emmanuel Philippe sketches the impact of a ruling of the Belgian Supreme Court of 15 March 2012, which complicates the **application of the deferred taxation regime**.

Lastly, keeping an eye on the shop floor even in this vacation period, Veronique Falcone discusses the **freedom of movement of workers in relation to language regulations**, and Frédérique Gillet elucidates the **0% wage cost margin** for 2013-2014.

We are convinced that the contents of this issue illustrate DLA Piper's drive to bring you up-to-date, relevant information – and also, that they will enable you to enjoy your holidays, in the assurance that we keep an eye on any legal developments that may have an impact on your organization.

Wishing you a re-energizing summer break,

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Belgian Legal Awards 2013 **Belgian Law Firm of the Year**

FLEMISH DECREE ON THE USE OF LANGUAGES IN SOCIAL RELATIONS CONTRARY TO THE FREEDOM OF MOVEMENT OF WORKERS

The Flemish Decree of 19 July 1973 imposes the use of Dutch for all employment relations when an employer's place of business is located in the Dutch-speaking language region. All acts and documents that are contrary to the provisions of this Decree are null and void. This nullity shall be determined by the court of its own motion. However, the Decree provides that a finding of nullity cannot adversely affect the worker.

Similar requirements are laid down in the employment law provisions of the Walloon Decree applicable in the French-speaking language region. When the employer's place of business is located in Brussels, the use of Dutch is imposed for the Dutch-speaking personnel and the use of French for the French-speaking personnel. All acts and documents which are not drawn up in the required language must be replaced. Accordingly, these acts and documents will then apply with retroactive effect.

A reference for a preliminary ruling was brought before the European Court of Justice[1] by the employment tribunal of Antwerp. The dispute involved a Dutch national resident in the Netherlands and a company part of a multinational located in the Dutch-speaking language region. The employment contract between parties was drawn up in English. Termination modalities were agreed upon between parties, and the employer decided to invoke these termination modalities when he terminated the employment contract. However the employee did not agree with the severance payment he received and claimed that the employment contract was null and void. Concerning the employer, he considered that the Flemish Decree is contrary to the freedom of movement of workers.

In its judgment, the ECJ confirmed that the Flemish Decree constitutes a restriction on the freedom of movement of workers. Such legislation can have a "dissuasive effect" on non-Dutch employees and employers from other Member States. **A restriction on the freedom of movement of workers may be allowed only if the legislation pursues a legitimate objective in the public interest**. In the case at hand, the Belgian government invoked the following justifications: 1) the protection and promotion of the language 2) the protection of employees and 3) the effectiveness of administrative controls.

The ECJ ruled that these all constitute legitimate objectives, but the sanction provided in the Flemish Decree is not proportionate to the objectives pursued.

According to the ECJ, legislation which, on top of the use of the official language, would allow the use of a language known to all parties concerned, would be less prejudicial to the freedom of movement of workers. Since the sanction in the Brussels region is much less severe, there are reasonable arguments for the view that the legislation applicable in Brussels would be considered valid from a European point of view.

Logically, the decision of the ECJ only applies in situations which fall within the scope of European law and thus not in purely internal situations. As a result, the Flemish and Walloon legislators will need to adapt their respective legislations accordingly. So far, it is not known if amendments will be made to the entire legislation or if only cross-border situations will be contemplated.

[1] European Court of Justice, 16 April 2013, C-202/11, available on http://curia.europa.eu.

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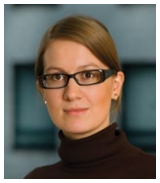

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EMPLOYMENT

0% WAGE COST MARGIN FOR 2013-2014

THE ROYAL DECREE FIXING THE WAGE COST MARGIN FOR 2013-2014 HAS BEEN PUBLISHED IN THE OFFICIAL GAZETTE OF 2 MAY 2013

The wage cost margin is regulated by the Act of 26 July 1996 to promote employment and preventively safeguard competitiveness.

This Act aims at preventively adapting the evolution of the wage cost in Belgium, taking into consideration the expected evolution of the wage cost within our main trade partners (i.e. in Germany, in the Netherlands and in France).

During the federal government agreement on the budget for 2013, the Belgian government decided that no wage increase could take place in 2013-2014, consequently, no inter-professional agreement 2013-2014 was possible for the trade unions.

As the trade unions could not come to an understanding on the draft inter-professional agreement 2013-2014, the departing government had to implement the maximum wage cost margin in Belgium for the years 2013-2014 through Royal Decree of 28 April 2013, which came into force on 2 May 2013.

The wage cost margin is currently fixed at 0%, meaning that no conventional increase of remuneration is possible in 2013-2014. Increases because of indexation or change of position on the wage scale, provided this remuneration scale is incorporated in a collective bargaining agreement, remain possible. According to Article 10 of the Act of 26 July 1996, the following are not taken into consideration for the application of the wage cost margin: beneficiary participation/benefits from employee participation plans, salary increase to increase in workforce, premiums and contributions in a social pension plan and innovation premiums. Without this being exhaustive, according to the Belgian Federal Public Service Employment, Labour and Social Dialogue, the following wage increases are acceptable: the collective bonus plan as provided by CBA n°90 and the wage increases viewed as omitting the difference of wages between male and female workers. We should nevertheless add that these last two exceptions are not (yet) incorporated in the Act of 26 July 1996.

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NEW ACT ON SECURITY INTERESTS ON MOVABLE ASSETS

INTRODUCTION

On 30 May 2013, Belgium adopted a new act on security interests on movable assets (the "**New Act**"). The New Act aims at significantly modernising and simplifying the current legal framework of security interests on movable assets.

Some of the most important changes introduced by the New Act include: (i) the creation of a non-possessory pledge, (ii) the abolition of the current form of pledge over business assets ("*gage sur fonds de commerce*"/"*pand op de handelszaak*"), (iii) the simplification of the enforcement procedure and (iv) the possibility to create a pledge in the name of a security agent.

These new rules on security interests on movable assets will enter into force by 1 December 2014 at the latest and are expected to facilitate the financing of inventory, equipment, stock and related receivables.

CREATION AND PERFECTION OF A NON-POSSESSORY PLEDGE

Under the current Belgian legal framework, a pledge over movable assets can only be created if the assets are removed from the pledgor's possession and placed under the control of the pledgee or a third party pledgeholder.

Given the need for dispossession, a possessory pledge proves to be highly impracticable if the pledged assets are to be used in the pledgor's day-to-day business.

The New Act provides that a pledge on movable assets can be created by means of a pledge agreement between the parties and perfected by either (i) registration of the pledge in a newly created national pledge register called the "National Register of Pledges" or (ii) dispossession of the pledges assets. The registration in the National Register of Pledges will be valid for a renewable term of ten years.

ABOLITION OF THE PLEDGE OVER BUSINESS PLEDGE

Given the new form of non-possessory pledge, which may cover any type of movable assets, the specific pledge over business assets ("*gage sur fonds de commerce*"/"*pand op de handelszaak*") is no longer necessary and is abolished.

Existing pledges over business assets will only keep their ranking if they are registered in the National Register of Pledges within a period of twelve months after the New Act comes into force.

ENFORCEMENT OF THE PLEDGE

Under the New Act, the enforcement of the pledge will be more efficient. If an event of default occurs, the New Act allows the pledgee to immediately enforce the pledge, without prior court authorisation (as is already the case for financial instruments and cash).

Enforcement can take the form of a public or private sale, the lease of the pledged assets or, if so agreed in the pledge agreement, the appropriation of the pledged assets by the pledgee. In the absence of an appropriation clause, the parties can still validly consent to appropriation in a later agreement.

SECURITY AGENT

Under the New Act, a pledge can be created in the name of a security agent, for the account of one or more beneficiaries (as is already the case for financial instruments and cash). This pledge will be valid and effective towards third parties, such as lenders, if the identity of the beneficiaries can be determined on the basis of the pledge agreement.

The security agent can exercise all rights of the beneficiaries and, unless agreed otherwise, the security agent and the beneficiaries can be held jointly liable.

Therefore, upon the entry into force of the New Act, the use of parallel debt structure will no longer be required for pledges over movable assets.

CONCLUSION

The New Act significantly reforms and simplifies security interests on movable assets. By doing that, it aims to introduce more business-friendly rules in the Belgian legal system.

However, the New Act raises a number of practical issues, including the uncertainty raised by the fact that the absence of registration of a pledge will not be conclusive as to the absence of pledge (in the event of dispossession).

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INSURERS AS REAL ESTATE LENDERS

Certain insurance groups are currently being incentivised by several factors to move into the real estate lending space. Bank financing has become much more difficult to attain for the majority of borrowers. For insurance groups, who have traditionally been involved in direct property investments, it can be seen as an alternative source of growth, as bonds are providing only low yields, and certain sectors of the real estate debt market provide a risk diversification opportunity which naturally suits them well. Certain insurers are gearing up towards infrastructure and commercial property.

At the moment, direct lending by insurance companies needs to be structured in such a way that it complies with existing regulations, and takes account of the on-going policy developments of Solvency II. Although its first drafts looked more favourable, under later drafts, **lending is expected to be relatively attractive**, as commercial property debt would be treated in a broadly equivalent manner to corporate bonds.

However, **there remain a number of other barriers to direct lending by insurers**, including the illiquid nature of real estate loans. Additionally, loans by insurance groups do not naturally fit with syndication. Further, few insurance groups possess the in-house expertise and infrastructure to deal with lending to commercial real estate, which may require outsourcing of investment management and higher costs. From an borrower/investor perspective, be on the look-out for "make whole" provisions which long-term lenders such as insurers will usually require in case of prepayment. Finally, currently much of the commercial real estate market is not yet attuned to the structure of lending that insurance groups provide.

Surveys conducted in neighbouring markets indicate that insurance groups will typically be looking to lend € 50 million or more, for terms of minimum seven to ten years, sometimes at higher maximum loan-to-value ratios than the current market average, for retail and office spaces in prime locations.

Summarised, there is increased interest from both insurers and investors/borrowers in structuring property loans from insurance groups. When appropriately constructed, these could provide a unique source of yield to support insurers' asset/liability matching strategies, and offer opportunities to counter the fall in supply of real estate bank debt.

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A EUROPEAN LEGAL FRAMEWORK FOR INFORMATION SOCIETY: TOWARDS LAW 2.0?

INTRODUCTION

Bill Gates once said that "*(t)he day is quickly coming when every knee will bow down to a silicon fist, and you will all beg your binary gods for mercy*". Although this may be somewhat of a witticism, no one doubts that technological evolution plays a substantial role in everyday life. Just to name a few, the rise of social media, smartphones and tablets and the apps that are designed for them indeed creates new possibilities on an almost daily basis whilst simultaneously posing social, economic and political questions. At least as important are the legal issues related to this evolution.

With the changeover to the new millennium, and in the aftermath of the dot-com hype, a legal framework was created on European (and subsequently national) level in order to allow governments, civilians and undertakings to act within the virtual environment. Examples are the legislation on electronic commerce, electronic invoicing, e-privacy, e-money and electronic signatures. As it turned out that the proposed measures were soon outdated by new technological evolutions, the EU legislator was necessitated to frequently adapt the existing framework on a case-by-case basis, **resulting in a patchy legal framework**.

Recent technological evolutions and trends, some of them discussed below by way of example, bring along new legal concerns which are not yet addressed and do not fit within the legal framework currently in force. The EU legislator tries to tackle some of these issues on an "ad hoc" basis, e.g. the recent legislative requirements on the use of cookies on computers or other devices, but a global policy did not exist until recently. As such, there was an element of truth in Mr. Gates' quote as the EU legislator now seems to be huffing and puffing to catch up with and to regulate trends, often existing already for quite some time.

The European Commission is aware of this problem and has prepared **an action plan, called the Digital Agenda for Europe**. This action plan with the intention of presenting a global strategy must ultimately result in a boost and further development of digital technologies. This strategy includes a modernization of the currently existing legal framework. The Digital Agenda for Europe is discussed in brief further below.

SOME RECENT ICT TRENDS AND LEGAL CHALLENGES

According to Neelie Kroes, Vice-President of the European Commission and responsible for the Digital Agenda, "*(a)n Internet of Things with intelligence embedded into everyday objects is the next big thing*", which the EU should support. Internet of Things refers to the evolution where more and more daily objects are being equipped with electronic technology which allows these objects to capture data about the real world and to output such information. A car telling its owner that the car should be maintained, a fridge reporting that you've run out of milk, etc. Although the development of the Internet of Things is supported on an EU level, the Digital Agenda mentions **several concerns including privacy, liability and (internet) security**. Ethical questions are raised as well as more and more personal data become public good, as a result of which the border between private and public spheres becomes blurred. On the subject of Internet of Things, several initiatives have already been launched by the European Commission, such as a Communication (with an action plan) and a Recommendation (on privacy and data protection principles in applications supported by radio-frequency identification), both issued in 2009.

INTELLECTUAL PROPERTY & TECHNOLOGY

The coming into existence of **new internet intermediaries** is an important trend as well. Telecom operators allow the user to make a physical connection with the network, whereas internet access providers identify the user with an IP address and give the user access to the internet. On a third level, several intermediaries are active who offer internet services (e.g. hosters and caching providers). Recently, the intermediaries of the third level are accompanied by internet giants such as internet search engines, social media providers, retailers, auction sites and online encyclopedias. These new intermediaries and the role they fulfill raise questions concerning liability regarding incorrect information, placement of content which violates intellectual property, liability for user generated content, the applicability of the liability exemptions under EU law to these intermediaries, etc. Such issues also bring along concerns relating to applicable law and competent courts.

When discussing recent ICT trends, **cloud computing** cannot go unnamed. Being one of the most eye-catching buzzwords of the latest years, cloud computing refers to a form of computing allowing to access applications and data through the means of intermediaries that offer services over the internet. Cloud computing offers advantages such as scalability, economics of scale and the use of internet to optimize the solution. Although undoubtedly advantageous for users (often undertakings), cloud computing also entails certain challenges on the level of data protection, liability in the event of loss, confidentiality, data portability, vendor "lock-in" and others. On a European level, there have been several initiatives to deal with such issues. In May 2011, the European Commission launched a public consultation on cloud computing of which the findings were presented in a report of December 2011. Working Party 29, an advisory body for the European Commission with respect to data protection legislation in the EU, also issued an opinion on cloud computing.

A visual example of the **digitalization of the production** process is 3D printing. With a click on the computer mouse, a digital file is sent to the 3D printer (as is the case with a 2D printer) which then prints layer by layer until a tangible object is created according to the computer model. Several personalized accessories (e.g. a hearing aid which must be tailored to specific personal features) are already manufactured in this way. The exploded Aston Martin 1960 DB5, a rare and expensive model, in James Bond's newest Skyfall was a 3D printout of the original. But this new production process raises a lot of questions too. Intellectual property on the product manufactured for one. Product liability may pose legal challenges as well as several entities are involved (manufacturer of the printer, the product with which the object is made, the manufacturer itself selling on the manufactured goods, etc.).

DIGITAL AGENDA FOR EUROPA

The purpose of the Digital Agenda is to tackle new legal issues, some mentioned above, in a way more holistic than the ad hoc approach that has been generally the case up until now. The Digital Agenda consists of seven "pillars" and an international aspect, each containing several action points (101 action points in total). The first pillar is the establishment of a "Digital Single Market", including several propositions of changes to the existing legal framework amongst others the adaptation of the Privacy Directive which resulted in a proposition of a Regulation, currently being discussed in the European Council and expected to enter into force end of the year 2014. The Directive on Electronic Commerce is likely to be changed as well, by means of which the Commission intends to boost consumer trust in cross-border purchases of products and services. Another point of attention is the establishment of a Single European Payment Area and further facilitation of electronic invoicing. Other points of attention are the simplification of a pan-European license on online works, the proposition of a Charter of EU online rights, a proposal on online dispute resolution platforms, etc.

The second and third pillar are "Interoperability & Standards", including technical and operational action points which must lead to a better framework for normalization, standardization and interoperability,

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and "Trust & Security" with a particular emphasis on fighting cybercrime and supporting cyber safety. "Fast and ultra-fast Internet access" and "Research and innovation" are pillars four and five. Action points on "Enhancing digital literacy, skills and inclusion" (pillar six) are intended to tackle issues related to the digital divide and lays emphasis on enhancement of skills, introducing people to the digital world, education, etc. Pillar seven, "ICT-enabled benefits for EU society", is intended to support the role of ICT in reducing energy consumption, supporting ageing citizens' lives, revolutionizing health services and delivering better public services.

In December 2012, the European Commission has distilled from its 101 action points, seven priorities for the digital economy and society, to be achieved during the years 2013 and 2014. Particularly from a legislative point of view, it is important to note that the Commission proposes to deliver a strategy and draft Directive on cyber-security. Further, it intends to promptly commence the updating of the EU's copyright framework.

CONCLUSION

The currently existing legal framework needs a thorough update so as to avoid it losing its relevance in an ever changing technological environment. The European Commission tries to upgrade the legal framework to a version 2.0 by revising several existing legal instruments and proposing new initiatives. Respecting policy principles such as technology neutral legislation and co-regulation must ensure the long-term validity of the legal provisions. However, the question arises whether maintaining a dual legal regime for the offline and online world is still necessary, given the on-going convergence between these two worlds. Separate legal conditions for online electronic contracts, signatures, payments and others seems to be a sign of an out-of-date view on reality neglecting to take into account the increasing convergence between these two worlds. In our view, we are likely to expect within a few years a legislation 3.0, acknowledging such convergence.

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BELGIUM ADOPTS A NEW ARBITRATION ACT

The Belgian Parliament has adopted a new Arbitration Act, which is based on the UNCITRAL model law.[1] The new Act, published on 28 June 2013 in the Official Gazette, will apply to arbitration proceedings commenced after 1st September 2013.[2] By adopting a progressive Arbitration Act whilst keeping some Belgian idiosyncrasies, Belgium has demonstrated its intention to be a good modern forum for arbitration and an attractive place for users of international arbitration.

The new Arbitration Act reforms the section of the Belgian Judicial Code which deals with arbitration proceedings (art. 1676 to art. 1723), without making a distinction between domestic and international arbitration. The following changes are of particular interest:

- **Clarification of the double criterion** for arbitrability (art. 1676§1 of the Judicial Code): disputes may be arbitrated when (i) the dispute is of a financial nature, i.e. of monetary value, or (ii) the dispute is not of a financial nature but the parties can agree on the subject of the dispute.
- **Suppression of the double instance of jurisdiction** (art. 1680§5 of the Judicial Code): under the current regime, an arbitral award may be challenged before the Tribunal of First Instance of the seat of arbitration. An appeal against the decision of the Tribunal of First Instance may be lodged before the Court of Appeal, and the decision of the Court of Appeal may, in turn, be challenged before the Court of Cassation if the conditions for such a challenge are met. Under the new Act, there will be no possibility to lodge an appeal against a decision of the Tribunal of First Instance, but a challenge before the Court of Cassation will still be available. However, challenging the arbitral award is allowed only on the basis of a number of limited grounds relating to technical or procedural aspects of the arbitration as opposed to the merits of the case (art. 1717 of the Judicial Code). In addition, the new Act provides that if the award can be "saved", i.e. the award can remain in effect but requires some amendment, the Tribunal of First Instance can send the award back to the arbitral tribunal in order for the tribunal to revise it and eliminate the ground for annulment.
- **Clarification of the fact that interim measures can now be ordered by the arbitral tribunal** on the request of one of the parties, save for the conservatory attachment of assets (art. 1691 of the Judicial Code). Interim measures can be ordered in the form of an arbitral award or in another form, such as a procedural order. This provision is in line with Belgian arbitration practice and in accordance with the concepts of flexibility and efficiency that must govern any arbitration.
- **Despite the existence of concurrent arbitration proceedings, interim measures can be granted** by the President of the Tribunal of First Instance in the course of summary proceedings, during which urgency must be demonstrated. The President of the Tribunal of First Instance also has jurisdiction over all measures necessary for obtaining evidence and the nomination, dismissal or replacement of an arbitrator. There is no right to lodge an appeal against decisions of the President of the Tribunal of First Instance, except where the President decides not to appoint or not to replace an arbitrator (art. 1680§1-§4 of the Judicial Code).

[1] On 16 May 2013, the Chamber of Representatives unanimously adopted the draft Arbitration Act. The Senate had until 3 June 2013 to evoke the Act for further review, but did not evoke it.

[2] Act of 24 June 2013 amending the sixth section of the Judicial Code on arbitration. The text of the draft Act is available in French and in Dutch at: http://www.lachambre.be/FLWB/PDF/53/2743/53K2743001.pdf

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- **Introduction of principles** according to which in any arbitration, the arbitral tribunal must ensure that each of the parties shall be treated equally, that the rights of defense are duly respected and that the parties do not behave in an unfair manner (art. 1699 of the Judicial Code).
- **Confirmation that the arbitration agreement does not necessarily have to be in written form**, provided that its existence can be proved by the party alleging the existence of the arbitration agreement (art. 1681 of the Judicial Code).
- The enforcement of an arbitral award is now subject to a **period of limitation of ten years** from the date of the notification of the award (art. 1722 of the Judicial Code).

The provisions above demonstrate that the aim of the new Arbitration Act is ambitious – it constitutes a wide-ranging reform of the section of the Judicial Code on arbitration in light of the UNCITRAL model law and current Belgian arbitration practice. Those innovations will promote Belgium to be used as a seat for international arbitrations, primarily in Brussels as a multicultural and multilingual city. The Belgian legislator took into consideration the fact that the effectiveness of an arbitration is often measured by its speed and has sought to ensure that the possible intervention of a state court will not cause delays to the arbitration proceedings, and that the possible challenge of an arbitral award will be faster and handled in a more efficient way.

It should also be noted that the Belgian Center for Arbitration and Mediation (the CEPANI) adopted new Rules of Arbitrations which apply to arbitration proceedings commenced after 1st January 2013.[3]

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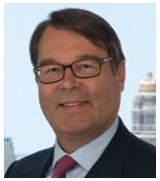

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[3] The text of the CEPANI Arbitration Rules is available in English at: http://www.cepani.be/upload/files/reglement-arbitrage-en.pdf

EEN VLAAMSE (PERMANENTE) OMGEVINGSVERGUNNING: WEER EEN STAP DICHTERBIJ

Op 19 april 2013 heeft de Vlaamse Regering het voorontwerp van decreet betreffende de omgevingsvergunning een eerste keer principieel goedgekeurd. Met dit decreet zal Vlaanderen een omwenteling teweegbrengen in het verlenen van vergunningen.

Geïntegreerde vergunning

Het is de bedoeling een geïntegreerde vergunning tot stand te brengen, genaamd de 'omgevingsvergunning' waarin zowel **de milieuvergunning (of melding), de stedenbouwkundige vergunning (of melding) als de verkavelingsvergunning geïntegreerd worden**. Voor de realisatie van projecten in Vlaanderen die betrekking hebben op het exploiteren van een ingedeelde inrichting of activiteit, het uitvoeren van stedenbouwkundige handelingen en/of het verkavelen van gronden zal voortaan slechts één vergunningsaanvraag moeten ingediend worden. Mogelijks zullen later ook nog andere in Vlaanderen bestaande vergunningen of machtigingen geïntegreerd worden in de omgevingsvergunning (bv. de natuurvergunning of de kapmachtiging).

Voortaan nog slechts 2 procedures

De integratie van deze vergunningen en/of meldingen wordt ook doorgetrokken in het procedureverloop. Voortaan zullen er nog slechts twee procedures bestaan: een gewone vergunningsprocedure en een vereenvoudigde vergunningsprocedure. Het grote verschil tussen beide procedures is het al dan niet organiseren van een openbaar onderzoek. Dit is niet nodig bij een vereenvoudigde vergunningsprocedure en altijd bij een gewone procedure.

Voor het overige zijn beide procedures vrij gelijklopend. Ze bevatten allebei steeds één adviesronde. In bepaalde gevallen zal een omgevingsvergunningscommissie alle uitgebrachte moeten verwerken in één geïntegreerd advies.

Vooroverleg en bestuurlijke lus

Voor bepaalde inrichtingen zal een vooroverleg kunnen georganiseerd worden met de bevoegde overheid om na te gaan welke bijsturingen eventueel noodzakelijk zijn alvorens de vergunningsaanvraag kan ingediend worden. Daardoor kunnen mogelijke knelpunten reeds vooraf geremedieerd worden. Daarnaast wordt eveneens een **'administratieve lus'** mogelijk gemaakt: de vergunningverlenende overheid kan onder bepaalde voorwaarden ambtshalve overgaan tot remediëring van eventuele procedurefouten. Ook kan de vergunningsaanvrager onder bepaalde voorwaarden na het openbaar onderzoek of tijdens de administratieve beroepsprocedure nog wijzigingen aanbrengen aan de vergunningsaanvraag. In dergelijk geval kan een nieuw advies of een nieuw openbaar onderzoek noodzakelijk zijn.

- De permanente omgevingsvergunning kan een garantie zijn voor exploitatie op lange termijn.
- Vlaanderen zet in op een eenvoudigere vergunningsprocedure die meer rechtszekerheid moet bieden
- Door de omgevingsvergunning zullen vergunningen niet meer periodiek moeten hernieuwd worden.
- De overheden zullen verplicht moeten samenwerken met het oog op de aflevering van de omgevingsvergunning.

Vervaltermijnen

Eveneens belangrijk is dat de in het decreet ingeschreven termijnen hoofdzakelijk vervaltermijnen zijn. Na het verstrijken van de voorziene termijn verkrijgt de aanvrager **zekerheid of zijn aanvraag of beroep al dan niet ingewilligd werd**. In de actuele wetgeving gelden voornamelijk zogenaamde termijnen van orde en dit leidt in de praktijk vaak tot aanzienlijke vertraging bij de realisatie van projecten, hetgeen op zijn beurt weer belangrijke financiële gevolgen voor de aanvrager kan meebrengen.

Permanent karakter van de vergunning

Een essentiële vernieuwing is dat de omgevingsvergunning in de overgrote meerderheid van de gevallen een permanent karakter zal hebben. Slechts in een aantal limitatief opgesomde gevallen zal mogelijk zijn om de duur van een omgevingsvergunning te beperken. Momenteel kan een milieuvergunning maximaal voor 20 jaar verleend worden. Wenst men nadien verder te exploiteren, dan dient een hervergunningsaanvraag ingediend te worden. Dit zal onder het stelsel van de permanente omgevingsvergunning komen te vervallen. Het decreet voorziet een overgangsregeling waarbij bestaande milieuvergunningen onder bepaalde voorwaarden op verzoek van de exploitant kunnen **omgezet worden in een permanente omgevingsvergunning**. Voor vergunningen die niet aan deze voorwaarden voldoen, zal na inwerkingtreding van het decreet een nieuwe vergunningsaanvraag ingediend moeten worden om een permanente omgevingsvergunning te kunnen verkrijgen.

Mogelijkheid tot bijsturing van de vergunning

Het permanent karakter van de omgevingsvergunning betekent evenwel niet dat er geen bijsturing van deze vergunning meer mogelijk zal zijn. Integendeel, het voorontwerp van decreet voorziet enerzijds **een systeem van evaluaties** op bepaalde tijdstippen als gevolg waarvan een deel of het geheel van de milieuvoorwaarden zal kunnen plaatsvinden en zet anderzijds in op een versterking en uitbouw van mogelijkheden om in te grijpen op een lopende vergunning.

Verdere uitwerking van het ontwerp

Tot slot dient opgemerkt te worden dat het voorontwerp van decreet nog niet definitief is. Momenteel wordt nog druk gesleuteld aan het voorontwerp van decreet. Er werd intussen eveneens een aanvang genomen met de uitwerking van een uitvoeringsbesluit bij het decreet.

Het is de bedoeling dat het decreet voor de verkiezingen van **juni 2014** goedgekeurd wordt door het Vlaamse Parlement. Wanneer het effectief in werking zal treden is nog niet bekend.

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NEW RULES ON PUBLIC CONTRACTS IN FORCE ON JULY 1, 2013

The cat is out of the bag. The Council of Ministers has approved a Royal Decree which states that the **new rules on the conclusion of contracts with the government** ("public contracts for works, supplies and services") will enter into force on July 1 of this year. The Royal Decree, dated 2 June 2013, has, at the time of writing this article, been published in the Official Gazette (Official Gazette of 5 June 2013).

As a consequence of this Royal Decree, the existing law and the four executing Royal Decrees relating thereto will be replaced by a new law and four alternative executing Royal Decrees. Three Royal Decrees define in detail on the basis of which rules the public contracts must be awarded in the traditional sectors, the particular sectors of public enterprises and the particular sectors of private enterprises. The particular sectors are the **sectors of transport, energy (electricity and gas), water supply and postal services**. The conclusion of contracts in these sectors is governed by special rules which take into account the fact that also private enterprises, such as Electrabel, which must also apply the rules, are active in these sectors. Finally, there is just as before, a fourth Royal Decree which defines the standard contractual conditions which are applicable to contracts with the government.

The three key words which define the new rules are scaling-up, flexibility and complexity.

SCALING-UP

Probably the most important innovation of the new rules are the **introduction of two new techniques** which may profoundly affect the way the authorities purchase work, supplies or services. It concerns the technique of the framework agreement and the technique of the purchase center ("*aankoopcentrale*"/"*centrale d'achat*") or contract center ("*opdrachtencentrale*"/"*centrale de marchés*").

The framework agreement always existed in the Belgian law on public contracts. Such agreements were generally known under the name purchase order ("*bestelopdracht*"/"*attribution de marché*") or *marché stock*. Its existence is now made official. It becomes also possible to conclude a framework agreement with multiple parties, both on supply side and on demand side. The awarding of subcontracts that fall within the framework agreement take place either on the basis of the ranking of those parties or on the basis of a limited form of competition, a "mini-competition".

A second major innovation is the **purchase or contract center**. Purchases or contract centers are contracting authorities who purchase for other contracting authorities, either as *wholesaler* (purchase center) or as mere mandatory (contract center). If a purchase is placed through a purchase or contract center, the contracting authority may freely purchase through the purchase or contract center without itself having to organize another competition.

Both framework agreements as well as purchase or contract centers will inevitably cause scaling-up (the placement of large orders by several authorities simultaneously). Scaling-up will have as a consequence that public purchasers will be professionalised. Gradually entities will arise that will do nothing other than enter into contracts for authorities.

The downside is that the **risk of abuse** is real. Framework agreements can be placed in the market which have such a broad subject that it is no longer transparent what can be purchased under the agreement. If the framework agreement is then again placed by a purchase or command center or is, on the demand side, a multi-party agreement, several authorities can simultaneously make use of the framework agreement. The duration of the framework agreement (at least in the traditional sectors) is however limited to 4 years.

LITIGATION & REGULATORY

FLEXIBILITY

A second key word for the new regulations is flexibility.

The Belgian lawmaker made use of his freedom to supple the use of the negotiating procedure for smaller commands (below the European thresholds). The use of the negotiating procedure with publicity becomes the standard for supplies and services and will also become possible for works with a value equal to or less than € 600.000,-. Similarly, the negotiating procedure without publicity is made more flexible. The thresholds will be increased to € 85.000,- (traditional sectors) instead of € 67.000,-. Furthermore, the negotiating procedures without publicity will become possible for a larger number of service commands than previously was the case.

Inconvenient rules such as the rules on price revision will be adjusted. Based on these rules, the price revision formulas always had to be limited to 80% of the price and had to reflect the main components of the cost price. Price revision formulas that, for example, referred to the health index, were forbidden. These restrictions on the use of the price revision formulas have worried many real estate professionals, especially for contracts with a long duration. The flexibility is therefore already a good thing.

COMPLEXITY

The main problem for the new rules on public contracts is that the Belgian lawmaker tried to create a system that offers something for everyone. Almost all existing rules are maintained. At the same time, the Belgian lawmaker provides for new possibilities with respect to simplified negotiation procedures, options, free options, the awarding of lots, the competition of works… The lawmaker tried to regulate all these new possibilities in detail. The result is a very complex regulation consisting of several hundred pages of text. It is clear that **this complexity undermines the objective of greater flexibility**. It would have been preferable if the Belgian lawmaker created a regulation which contained only the most essential principles. It would have been better if the application of these principles was the subject of a number of recommendations and tender specifications established by specialists. Such tender specifications give the authorities a better indication than what has become a crisscross of large and small rules. This approach would have avoided that the authorities put specifications on the market that contain conditions that are not in conformity with the market.

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REAL ESTATE TRANSACTIONS BY "SHARE DEALS". WHAT IS THE IMPACT OF THE NEW ANTI-ABUSE PROVISION IN TAX MATTERS ?

"In the legal doctrine, it is generally accepted that share deals regarding real estate companies are still possible."

"It seems that the Ruling Commission has concerns with "passive" real estate companies"

One of the most important evolutions for the real estate sector during the previous years has been the introduction of the new general anti-abuse provision, both in the Income Tax Code and in other codes. This mainly concerns the rewriting of article 18, § 2, of the Registration Duty Code. Does this have an impact on "share deals" or transactions concerning shares in real estate companies?

In summary, the consequence of the anti-abuse provision is that a legal act (or a series of legal acts realizing a same transaction) is not enforceable towards the tax administration, if the tax administration can prove that the taxpayer engaged in "tax abuse", by putting himself consciously outside the scope of a taxing provision or by putting himself within the scope of a tax advantage, each time in contradiction with the objective of the applicable legal provision. **The taxpayer must prove that the choice of his legal act or the series of legal acts is justified by other objectives than avoiding registration duties**. If he does not succeed or if the non-tax objectives are clearly insignificant, the legal act will be taxed as if the tax abuse did not take place.

After a first general comment on the new wording of the anti-abuse provision in a circular letter of 4 May 2012, the tax administration provided further explanation on the circumstances in which the anti-abuse provision can apply in the field of registration and succession duties, in the circular letter 8/2012 of 19 July 2012, which has in the meantime been replaced by the circular letter 5/2013 of 10 April 2013. This circular letter provides for a **"black" list and a "white" list of legal acts**, according to whether these legal acts can be considered as tax abuse or not. These lists are not limitative.

Whereas the split acquisition of a long lease right ("*emphytéose*"/"*erfpacht*") and the residual rights ("*tréfonds*"/"*residuaire zakelijke rechten*") by related companies, is now for instance on the black list, the transfer of shares in real estate companies is not explicitly mentioned in either lists. According to the circular letter, the legal acts which are not mentioned on both lists are not *per se* "safe" or "suspect".

In the legal doctrine, it is generally accepted that share deals regarding real estate companies are still possible. Reference is among others made to the administration's position concerning registration duties which applied before 1 June 2012 (date of entry into force of the new anti-abuse provision), i.e. the simultaneous transfer of all shares in a company by shares or a private limited liability company is "in principle" not considered to relate to the patrimony of the company, even if the main asset of the company is a building located in Belgium, so that no proportional registration duty is due on such share transfer.

One caveat should, however, be made, i.e. when particular circumstances arise, from which the tax administration could deduct that the agreement concerns in fact the underlying real property and not the shares. In this case, the proportional registration duties which apply on a real estate sale could be applied. Generally, the following indicators are among others taken into consideration:

- the signature by the parties of a (preliminary) agreement by which the company's building is purchased "for free and clear of all charges";
- the small time gap between the contribution of the building into the company's capital and the transfer of the newly issued shares;

- the fact that the transfer of shares was already agreed at the time of the incorporation of the real estate company; etc.

Generally, it could be deducted from what precedes that when the case or the file shows that the parties did not intend to sell the building, but to acquire the control over the company *in going concern*, the share transfer cannot be disputed. This position is also shared by the Ruling Commission in several advance rulings, issued prior to 1 June 2012 (date of entry into force of the new anti-abuse provision). Other (tax and legal) arguments could be found in legal doctrine to affirm that the transfer of shares concerning a real estate company cannot (by definition) be qualified as tax abuse.

The above considerations should still be made in assessing whether or not a "share deal" is caught by article 18, § 2, of the Registration Duty Code.

Considering the fact that transactions concerning shares in real estate companies are not *per se* suspect, parties will need to provide for the necessary security measures and to respect consistently the conditions and the formalities of a share deal and to document the transaction accordingly. This is particularly **important for companies whose sole asset is real estate** (in particular a single building instead of a portfolio of buildings – *cf. below*), for companies whose real estate was contributed shortly before the share transfer, etc.

What is today the position of the Ruling Commission with regard to "shares deals" under the new anti-abuse provision ? The Ruling Commission cannot give a ruling on the question whether or not the administration is going to apply the anti-abuse provision. However, the Ruling Commission can answer the question whether or not the choice for a particular legal act (or a series of legal acts) is justified by other objectives than avoiding taxes.

Up to now, the Ruling Commission has not decided on its role in the context of the anti-abuse disposition in an (published) recommendation or an explanatory note. However, it seems that the Ruling Commission has concerns with "passive" real estate companies, whose only asset and only activity is to hold real estate, such as companies which hold the residual rights on a building encumbered with a long-lease right and which do not develop any activity with these residual rights, nor derive any substantial profit from these residual rights. This could also apply to a company holding a single building irrespective of whether or not it is exploited. It seems therefore that the Ruling Commission is going to approach passive real estate companies and special purpose vehicles with only single property as asset with the necessary caution, and is going to cast a critical eye on the non-tax reasons put forward. We therefore advise to take what precedes clearly into consideration before presenting a transaction to the Ruling Commission.

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BELGIAN DRAFT BILL SEEKS A WORK AROUND FOR ITS LAW ON THE CONTINUITY OF ENTERPRISES'?

A DRAFT BILL RESULTING FROM AN EVALUATION OF THE THREE-YEAR-OLD LAW ON THE CONTINUITY OF ENTERPRISES (LCE) *(WET CONTINUÏTEIT ONDERNEMINGEN OR LOI RELATIVE À LA CONTINUITÉ DES ENTREPRISES)*

Three years after the introduction of the Belgian Law on the continuity of enterprises of 31 January 2009 (LCE), the Belgian government took stock of the results in practice of the law. One of the major problematic findings is the outcome of the proceedings introduced on the basis of the law: a large majority of the companies resorting to the LCE in the end enter into bankruptcy or liquidation after all. However, partly due to bearish economic circumstances, the government believes it is too soon to hit the heart of the LCE.

THE LCE – A SHORT RECAPITULATION

The LCE was introduced in 2009 to remedy the lack of success of the former law offering tools to companies in financial distress to avoid bankruptcy. This article focuses on the formal restructuring procedure (*"gerechtelijke reorganisatie"* or *"reorganization judiciaire"*) that was introduced by the LCE.

The legislator provides three different options of formal restructuring procedures.

First of all the LCE provides the possibility for a debtor to negotiate an **agreement** with at least two of its **individual creditors** which can then be ratified by the court which involves the exclusion of some of the grounds for a bankruptcy receiver (if the business would be declared bankrupt after all) to reverse the effects of such an agreement.

Secondly, the LCE provides a court-based procedure which enables the debtor to present a **restructuring plan** to **all of his creditors** which is then put to the vote on a 'meeting of the creditors' in court. The procedure also involves that is granted by the court a term within which it should prepare the restructuring plan and that during this term the business is protected from its creditors. Such restructuring plan often entails the remission of a part of the debt. However it is important to mention that the LCE entails some specific rules which involve a better protection of some privileged creditors.

Thirdly, the LCE provides a court-based procedure which is aiming to safeguard the continuity of the business or a part of the business of an enterprise rather than safeguarding the legal entity itself (if it would turn out this legal entity cannot be saved), compared to the procedure mentioned above here which is rather aiming to safeguard meanwhile the legal entity. This **procedure of a transfer under supervision of the court** involves the indication of a mandatary of the court which has then the task of organizing the sale of the assets of the company in the aim of preserving the continuity.

RESTRUCTURING

THE DRAFT BILL

To optimize the model and reduce improper use, the current modifications involve among others, an increased regulation of the filing of a request, better information of creditors, the development of an electronic file and a greater involvement of financial experts from the start of the procedure.

The law was voted already in the Chamber on May 2, 2013 and was send to the Senate to be discussed there. It is likely that the draft bill will become a law before the summer recess of the Belgian Parliament. The most important changes proposed by the draft bill as amended by the Chamber are the following.

1. The filing of a request : new requirements

In order to avoid abuses, the draft bill proposes to introduce a tax of a € 1000 (instead of formerly € 60) which is due at each filing of a request, the automatic dismissal of the request in case not all mandatory annexes are added to the request and the obligation to file all annexes on the same moment of the request (instead of formerly allowing for some annexes to be filed two weeks later). If the debtor does not comply with these requirements he will no longer be able to use the tools provided by the LCE.

2. The 'fortified' role of the enterprise's accountancy experts

First of all, the draft bill as amended by the Chamber proposes to fortify the role of the accountancy experts (an external accountant or a company's statutory auditor) at the precautionary stage by imposing for instance an information obligation towards their client (and even towards the court if their client does not take the necessary measures) 'in case the continuity of the business of their client is threatened'.

Furthermore, the draft bill aims to change some requirements applied to the following documents which are part of the mandatory annexes which should be filed with the introductory request which aim to fortify the role of the accountancy experts:

the annex relating to the accounting situation reflecting the assets and liabilities and income statement of the debtor dated no older than three months must be prepared "*under the supervision of an external accountant, an external tax accountant or an auditor*"; and

the annex relating to the budget containing an estimate of revenue and expenditure for the duration of the period during which the debtor will enjoy protection from its creditors must be "*prepared with the assistance of an external accountant or an auditor*".

3. Improvement of the transfer of information to the creditors

The draft bill provides to add some abilities for the court to impose additional information obligation upon the debtor as for instance the obligation to file to the court an updated list of creditors and for the court to allow the creditor to communicate electronically with its creditors.

RESTRUCTURING

Though most importantly the draft bill proposes to add the 'fact that the information provided by the debtor is clearly incomplete or incorrect' as a ground for the court to terminate the formal restructuring procedure to which the debtor was allowed (instead of formerly limiting this possibility to the 'fact that the recovery of the continuity of the business or a part of the business of the debtor has clearly become impossible').

While these changes will most probably help to prevent the abuse of the tools of the LCE, we believe that these changes may meanwhile restrain the debtor in financial distress (acting in good faith) to appeal to the tools of the LCE. For instance the 'fortified' role of the accounting experts and the increased tax to be able to file a request will inevitably involve an increased cost price of the LCE's procedures. The legislator seems to turn away a bit of its initial point of departure, namely to set the threshold for debtors to enter the procedure as low as possible.

4. Position of the employees in case of a transfer under supervision of the court

The draft bill proposes to adapt the legal framework to the 'collective labor agreement' (*CAO* or *CCT*) nr. 102 which specifically intends to regulate the procedure of the transfer of some or all of the employees in case of a transfer under supervision of the court. Indeed, the employer organizations and the trade unions concluded this collective agreement at the end of 2011 long after the law on the continuity of enterprises became effective. The draft bill proposes to adapt the law in a way that it provides a general framework and that for the more detailed regulation it refers to the applicable collective agreement.

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TRANSFER OF BUSINESS ASSETS: BELGIAN SUPREME COURT MAKES THE APPLICATION OF THE DEFERRED TAXATION REGIME MUCH MORE DIFFICULT

The transfer of a business may be structured as a share deal or an asset deal. One of the major constraints of the asset deal, for the Belgian company/transferor, is that the capital gains realized are, as a rule, immediately taxable at the ordinary corporate income tax rate of 33,99%.
By contrast, in case of a share deal, the capital gain realized upon disposal of the shares in the company exploiting the business is, in principle, exempt (Art. 192 ITC). In practice, when the transferor does not have sufficient tax deductions (e.g., carried forward tax losses, notional interest deduction, dividend received deduction, etc) to offset the capital gains realized upon transfer of business assets, the question often arises whether the so-called deferred taxation regime may apply (Art. 47 ITC). As will be seen below, based on a ruling of the Belgian Supreme Court of 15 March 2012, the application of the spread taxation regime on capital gains realized upon disposal of goodwill (in the framework of the transfer of business assets) is far from straightforward.

I. THE DEFERRED TAXATION REGIME: DESCRIPTION OF THE MECHANISM/ ADVANTAGES

Pursuant to Article 47 of the Belgian Income Tax Code ("ITC"), it is possible to apply the deferred taxation on capital gains realized on fixed tangible and intangible assets which are, at the time of the disposal, owned by the company for at least 5 years.

The taxation of the capital gains realized will only benefit from the deferred taxation if the entire selling price (i.e. not only the capital gain realized) is reinvested in intangible or fixed tangible assets which can be depreciated (e.g. not land). The total reinvestment must in principle be implemented before the end of the third year following the first of January of the year during which the assets were sold. The term for reinvestment is increased to 5 years in case of reinvestment in real estate (other than land), planes or ships.

If the above-mentioned conditions are met, the capital gain may be taxed over the lifetime of the newly acquired asset (e.g. 33 years in case of reinvestment in real estate). The application of this mechanism has the great advantage of **improving the transferor's liquidity and relieving him from cash flow problems**.

II. DIFFICULTY OF APPLICATION OF THE SPREAD TAXATION REGIME IN CASE OF TRANSFER OF "GOODWILL"

In the case of a transfer of business assets (*"cession de fonds de commerce"/"overdracht van handelszaak"*), the capital gain realized by the transferor often relates to the "goodwill". The value of the "goodwill" normally corresponds to the part of the price paid by the purchaser which exceeds the net book value of the assets transferred. Generally, the "goodwill" purports to intangible assets such as clientele, patents, trademarks, the earnings power/ profitability of the business transferred, etc.

In this context, it is key to stress that, based on the text of Art. 47 ITC, capital gains on intangible assets (e.g. "goodwill") may only be eligible for the deferred taxation regime provided that said assets have been activated and that the depreciations have been fiscally deducted. Consequently, **capital gains realized on e.g. *self-established* clientele may in principle not benefit from the deferred taxation regime** (see Liège 13 June 2012, *JDF* 2012, 319). This may be explained by the fact that self-established clientele/goodwill may not be activated in the assets side of the balance sheet (and, consequently, not be depreciated) of the transferor (cfr, however, the recent opinion of the Belgian Commission

of Accounting Standards 2012/13, which sets out strict conditions for the activation of self-established intangible assets). Concretely, this implies that only capital gains realized on clientele which has previously been *purchased* (i.e., intangible assets which have been activated by the transferor), are eligible for the deferred taxation regime.

III. IMPOSSIBILITY TO APPLY DEFERRED TAXATION FOR FULLY DEPRECIATED "GOODWILL"

In a ruling of 15 March 2012, the Belgian Supreme Court has made the application of the deferred taxation regime **even more difficult** than it already is!

According to the Court, even the activation of the goodwill does not guarantee the application of the spread taxation Regime: it is also necessary that the goodwill transferred corresponds to the goodwill that was previously activated. Hence, if the goodwill is completely depreciated at the moment of the transfer, this condition would not be met (for a deeper analysis, see D.-E. PHILIPPE and E. CASSAER, "Cassatie maakt gespreide belasting bij overdracht ruling moeilijker", *Fisc. Act.,* 2013, 2-5).

The consequences of this arrest can be far-reaching. Let us assume that a Belgian company acquired a business in 2000 and paid € 500.000 for the goodwill. In 2010, this goodwill was completely amortized. If the Belgian company sells his business in July 2013 for € 2.000.000 (including a goodwill of € 1.500.000), the capital gain realized upon disposal of the goodwill would not benefit from the deferred taxation regime.

Based on this case-law, the application of the spread taxation regime upon transfer of business assets will become increasingly difficult. This jurisprudential position adds, in our view, a condition (for the application of the spread taxation regime) that is not foreseen by the text of Art. 47 ITC. This situation is unfortunate, as it potentially hinders economically sound transfers of business.

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PUBLICATIONS

Antoon Dierick is the co-author of 'Consumentengeschillen binnenkort beslecht via internet', published in issue 269 (2013) of *Juristenkrant*. In the article, he discusses the the approved EC proposal regarding the creation of an online dispute resolution platform for B2C e-commerce transactions which aims at enhancing consumer trust in cross-border online transactions.

Denis-Emmanuel Philippe has written an article on the application of the deferred taxation regime in the framework of the transfer of business assets (Fisc. Act., 2013, 2-5).

Koen de Maeyer co-authored *Anti-fraudebeleid in de onderneming. De taken en verantwoordelijkheden van bestuur en commissaris* (UGA 2012). His contribution focuses on the civil liability of directors and members of the supervisory board in the context of fraud within the trading partnership.

Mathieu Higny contributed 'Développements jurisprudentiels récents en bail de droit commun et en bail de résidence principale' to *Contrats spéciaux* (Anthemis 2013) in the series *Recyclage en droit*, which compiles the lectures and colloquiums of the Centre des Facultés universitaires catholiques pour le recyclage en droit.

EVENTS

PAST EVENTS

Carole Maczkovics gave seminars on state aid in the transport sector on 5 and 6 May at the European Institute of Public Administration in Maastricht.

Dominique Devos hosted a seminar on local and regional taxes on 17 May in Ostend. He spoke about the recent changes in the Flemish regional taxes, such as waste water taxes, taxes on distressed property. His contribution will shortly be published by Die Keure.

On 21 May, **Julie De Bruyn** presented recent developments in European legislation concerning data protection to DLA Piper clients in Paris.

Pierre van Ommeslaghe participated in the colloquium organized by the Conférence du Jeune barreau de Bruxelles on 30 May, entitled 'La vente, développements récents et questions spéciales', and presented the summary report.

On 11 June, **Koen Vanderheyden** and **Daniella Goumdiss** spoke during a workshop which was jointly hosted by DLA Piper UK LLP and Thomas Murray. In the workshop, experts from both companies addressed the key elements and current status of the European Market Infrastructure Regulation (EMIR), complemented by changes in the Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR), and changes to the Capital Requirements Directive (CRD IV) and their related rulemaking, which regulated the mandatory clearing and reporting of OTC derivatives in the EU. They also expressed the latest rulemakings under the DODD-FRANK Act and their impact on European institutions.

Dominique Devos hosted a webinar together with Arcadis on Thursday 13 June on the upcoming integrated environmental permit. Slides of this presentation are available upon simple request.

Denis-Emmanuel Philippe has given a seminar in Luxembourg on the tax regime of holding companies in Luxembourg on 20 June (hotel Sofitel).

Carole Maczkovics presented a seminar on competition law issues in regulated network industries organized by the International Bar Association and the International Association of Young Lawyers between 20 and 22 June.

UPCOMING EVENTS

Dominique Devos will present a webinar at 10 September on the new legislation in Flanders on co-financing for soil sanitation. Invitations will follow soon. If interested please send an e-mail to sofie.crabbe@dlapiper.com.

On 18 and 19 November, **Johan Mouraux** will participate in the Benelux Infrastructure Forum held in Amsterdam, which brings together key professionals in the PPP, maintenance and infrastructure sectors.

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