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Global Tax Alert

Belgium Parliament approves new Code on Companies and Associations

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Executive summary

The Belgian Parliament approved, on 28 February 2019, the new Belgian Code on Companies and Associations (the Code). For existing companies and associations, the new Code will enter into force on 1 January 2020. Existing companies and associations will have until 1 January 2024 to update their articles of association to comply with the Code. Companies and associations have the possibility to amend their articles of association as from 1 May 2019 in order to meet the new requirements and take advantage of the flexibility provided by the new Code. Companies and associations incorporated as from 1 May 2019 will have to apply the new Code as from their incorporation.

Detailed discussion

Background

With the objective of modernizing and simplifying Belgian Company and Association law, as well as to improve its competitiveness in a European and international context, an extensive legislative reform was launched in 2014. This all-encompassing reform of the old Belgian Companies' Code structurally integrates the non-profit legislation as well. The new Code modernizes the old Belgian Companies' Code, with three key objectives:

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1. Simplifying the existing legislation
2. Providing "supplementary" law (non-binding provisions) and more flexibility for companies in drafting their articles of association
3. Introducing new rules to align with European developments and new trends (e.g., corporate mobility)

Key modifications of the Code

Highlights of the new Code include:

- Reduction in the number of different company types. Specifically, the following legal forms will be eliminated: the agricultural partnership, the partnership limited by shares, the economic interest grouping, the cooperative partnership with unlimited liability and the silent and the temporary partnership.
- Introduction of new civil penalties to replace the former criminal penalties, considered to be ineffective in many cases.
- More flexibility and default rules for the *besloten vennootschap/société à responsabilité limitée* (BV/SRL) – e.g., eliminating the "share capital" concept and introduction of unrestricted transferability of shares.
- More flexibility for the organization of the management of the *naamloze vennootschap/ société anonyme* (NV/SA). Besides a board of directors, the appointment of a single director will now be possible. Furthermore, an optional two-tier system (consisting of a management board and a supervisory board) will be introduced. *Ad nutum* dismissal (i.e., dismissal without restrictions) of a director will become supplementary law.
- Monetary cap on the liability of directors.
- Introduction of plural voting shares for both the BV/SRL and NV/SA.
- Introduction of the "statutory seat theory" (instead of the current "real seat theory"). This will allow Belgian companies to easily move their center of economic interests to other countries without having to relocate their corporate address.
- Emigration and immigration of companies is now explicitly regulated in the Code, with the introduction of a procedure for cross-border conversions.
- Integration of the non-profit legislation in the new Code.
- Associations will be allowed to perform commercial activities from a legal point of view. The sole difference with a company will be the absolute prohibition to distribute dividends or provide advantages to its members or directors.

The new Code will have considerable impact on the entire Belgian corporate and non-profit sector. Timely action is essential for an effective understanding of all the changes and their impact – including the potential tax impact, as well as to accomplish a smooth transition under the new legislation.

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