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New Tax Efficient Profit Sharing System in Belgium

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The Belgian Government recently introduced a new system of profit share for employees. The system is effective from 1 January 2018, and for profits made in fiscal years ended after 30 September 2017.

Under the regulations, companies (or groups of companies) can tax effectively distribute part of after-tax profits to their workforce. Up to 30% of overall gross payroll cost can be spent, and all employees must be allowed to participate. If the profit share is equal for all, in absolute terms or as percentage of pay, the shareholders can unilaterally decide to share profits. If the profit share is differentiated among the workforce, only objective criteria can be used, the spread is limited to 1/10 and the profit share plan requires a collective agreement (with unions, if there is a union delegation in the company) or a specific deed (subject to administrative scrutiny).

The profit share is only subject to social security tax (at 13.07%) and income tax (at 7%), which means that a pre-tax allocation of 100 generates a net result of about 60-65 for each worker (depending on the size of the company). Regular pay with cost 100 generates less than 35 in the hands of the employee.

This new system has a few drawbacks: it is profit based (so without profit, no distribution), all workers must be allowed to join, self-employed business executives or partners are excluded and differentiation in the profit share renders the system less attractive. Also, it cannot replace existing incentives or benefits. These negative points are mainly due to the fact that the new regulations are introduced as an amendment to (and thus embedded in) a former act on equity compensation and profit share of 2001. That act was never a success in the business community because of its very stringent rules.

On the other hand, the new system in itself is simple, it is easy to introduce (if egalitarian), it enhances flexibility of payroll cost and is without impact on future salary cost. Indeed, the profit share must be confirmed each year and it does not create any vested rights for the participants. It also does not generate any entitlement to derived benefits (vacation pay, Christmas bonus, severance package etc).

It is expected to become a great success among the corporate community notwithstanding the above less favorable aspects. Moreover, it can be used in combination with other incentives or benefits and, under certain conditions, it can be part of a choice-based compensation plan.