

MAJOR CHANGES AS REGARDS TAX YEAR 2013

As mentioned in the last issue of the Tax Survey, you will find hereafter an overview of the measures published in the *Belgian Official Journal* on 6 April 2012 at the latest.

As a result, the description takes into consideration the major changes implemented by the **law making various provisions of 28 December 2011** (BOJ of 30 December 2011) and by the **programme law of 29 March 2012** (BOJ of 6 April 2012).

As far as indirect taxes are concerned, this addendum gives an overview of the situation on **1 April 2012**.

1 **New computation of the benefit in kind as regards the provision of company cars**

A new lump-sum computation came into force with respect to the benefit in kind regarding the provision of a company car (also for commuting). It was introduced by the law of 28 December 2011 and modified by the programme law of 29 March 2012.

The new computation applies to benefits in kind granted as from 1 January 2012¹.

1.1 **Computation of the benefit in kind for the beneficiary of the vehicle**

OLD COMPUTATION BENEFIT IN KIND

Since 1 January 2010, the vehicle's CO₂ emission rate has been taken into account in the lump-sum computation of the benefit in kind.

For tax year 2012, the benefit in kind for private use of a company car was computed as follows:

$$\text{Benefit in kind} = \text{number of private km} * \text{CO}_2\text{ emissions/km} * \text{CO}_2\text{eur coefficient}$$

For tax year 2012, the CO₂ coefficient amounted to 0.00216 euro per gram CO₂ for petrol, LPG or natural gas cars, and 0.00237 euro per gram CO₂ for diesel cars.

For the computation of the benefit, the number of kilometres to be taken into consideration per year is generally set at 5,000 km where the distance between home and the fixed place of work (outward journey) is equal to or lower than 25 km, and at 7,500 km where the distance between home and the fixed place of work is higher than 25 km.

The amount of the benefit cannot be lower than 0.10 euro per kilometre taken into consideration.

¹ However, as far as the withholding tax on earned income is concerned, the changes introduced by the programme law of 29 March 2012 (new definition of the catalogue value, including the VAT actually paid and the rebate linked to the age of the vehicle) can only apply to benefits in kind granted as from 1 May 2012. The rules laid down in the law of 28 December 2011 apply to benefits in kind granted between 1 January 2012 and 30 April 2012.

NEW COMPUTATION BENEFIT IN KIND

The benefit in kind is henceforth computed as 6/7th of the catalogue value of the car multiplied by a percentage linked to the car's CO₂ emission rate, that is to say

$$\text{Benefit in kind} = \text{catalogue value} * \% (\text{CO}_2 \text{ coefficient}) * 6/7$$

The basic CO₂ coefficient amounts to 5.5% for a diesel car with a CO₂ emission threshold of 95 g/km and for a petrol, LPG or natural gas car with a CO₂ emission threshold of 115 g/km.

Where the CO₂ emissions exceed the threshold, the basic percentage is increased by 0.1% per gram CO₂ to maximum 18%.

Where the CO₂ emissions are lower than the threshold, the basic percentage is decreased by 0.1% per gram CO₂ to minimum 4%. If the company car is exclusively powered by an electric motor, the CO₂ percentage is equal to the minimum, that is to say 4%.

In no circumstance can the benefit be lower than 1,200 euro, indexed amount for tax year 2013.

VEHICLES CONCERNED

There is no change at this level in comparison to the old system. Are concerned motor cars, twin-purpose vehicles, minibuses and "false" light trucks (that is to say light trucks that do not meet the fiscal definition of the light truck and are, as a result, taxed as ordinary cars).

CATALOGUE VALUE

Only one definition of the catalogue value applies to all company cars, as well new cars as second-hand or leasing cars.

The **catalogue value** is the list price of the new vehicle on the occasion of sales to private individuals, including the options and the *actually paid*² VAT, but excluding reductions, deductions, rebates or discounts.

No distinction is made between options and accessories to determine the catalogue value.

TAKING INTO ACCOUNT OF THE AGE OF THE VEHICLE

The fixed catalogue value is decreased according to the age of the vehicle, by 6% per year to a maximum decrease of 30%. The period as from the date of the first registration of the vehicle is therefore taken into consideration.

2 The (notional) VAT that should have been paid on this list price if the reductions, deductions, rebates and discounts granted were not applied for the calculation of the VAT, is therefore not taken into account.

Period as from the first registration of the vehicle (*)	Percentage of the catalogue value for the computation of the benefit in kind
0-12 months	100%
13-24 months	94%
25-36 months	88%
37-48 months	82%
49-60 months	76%
More than 60 months	70%

(*) Every month started counts for a whole month. For instance: the date of the first registration within the "Direction pour l'Immatriculation des Véhicules"/"Directie Inschrijvingen van Voertuigen" (Department for Vehicles Registration) is 21 March 2012. The percentage of the catalogue value to be taken into consideration amounts to 100% from 1 March 2012 to 28 February 2013 and to 94% as from 1 March 2013.

1.2 **New disallowed expenses for companies**

In the section relating to the deductibility of expenses and disallowed expenses (DE), an extra point must be added to the list of the major DE: car expenses up to 17% of the benefit in kind resulting from the private use of a vehicle made available free of charge (cf. page 81 Tax Survey issue January 2012).

2 **Flat rate of share options for computing the value of the benefit in kind**

(cf. page 31 Tax Survey issue January 2012)

The flat rate used to determine the value of the benefit in kind where share options are granted, is increased from 15% to 18%.

This new flat rate applies to share options granted as from 1 January 2012.

3 **New system as regards energy-saving investments**

(cf. pages 48-50 Tax Survey issue January 2012)

3.1 **Expenses borne for work aimed at energy saving**

The new system comes into force as from tax year 2013. However, it is accompanied with transitional measures.

a) Tax credits for work aimed at energy saving will be abolished as from tax year 2013.

As a result, the following expenses are no longer taken into account:

- maintenance of heating boilers
- replacement of old heating boilers
- solar water heating
- installation photovoltaic panels
- installation of double-glazed window units
- installation of thermostatic valves or of a room thermostat with clock
- energy audit of the dwelling

- b) The tax credit for roof insulation still applies but it amounts henceforth to 30% if the contract has been concluded after 27 November 2011.
- c) End of the carry-over to the following three taxable periods and end of the refundable tax credit.

The possible carry-over to the three taxable periods following the taxable period in which the expenses were borne, has been abolished.

Regarding the tax credit with respect to expenses borne in 2012 for roof insulation, the possible conversion into a refundable tax credit has also been abolished.

- d) A transitional measure has been introduced. The existing measure still applies to expenses actually borne in 2012 for work carried out pursuant to a contract signed before 28 November 2011, including roof insulation : tax credit up to 40%, possible carry-over to the following three taxable periods, conversion into a refundable tax credit.

3.2 Houses with low-energy consumption (passive houses, low-energy houses, zero-energy houses)

The tax credit for passive houses, low-energy houses and zero-energy houses will be abolished as from tax year 2013.

Dwelling houses for which the “passive house”, “low-energy house” or “zero-energy house” certificate was not delivered on 31 December 2011 at the latest, are no longer taken into consideration for the tax credit. The tax credit is still granted for dwelling houses that were certified in 2011 or before.

Transitional measures have however been introduced: certificates for which an application was submitted on 31 December 2011 at the latest and that were delivered on 29 February 2012 at the latest, are considered as certificates issued on 31 December 2011.

3.3 “Green” loans

The tax credit for “green” loans amounts henceforth to **30%** of the interest actually paid after deduction of the State intervention as an interest subsidy. The decrease from 40% to 30% of the tax credit applies to interest of a “green” loan paid as from 1 January 2012.

As a reminder, “green” loan contracts must have been concluded between 1 January 2009 and 31 December 2011.

4 Reform as regards income from movable property

(cf. pages 22-25 Tax Survey issue January 2012)

This reform has already been considered in the chapter relating to the withholding tax on movable property in the last issue of the Tax Survey. It will also apply to the personal income tax as from tax year 2013. The taxpayer is henceforth obliged to report all income from movable property, except for interest and dividends on which the additional levy of 4% has been withheld at source in addition to the withholding tax on movable property. The withholding tax on income from, notably, copyright and related rights is no longer a final tax for income allocated as from 1 January 2012.

As a result, reporting this kind of income in the personal income tax return became compulsory.

As a reminder, the rate of the withholding tax on movable property remains at 15% for other income from capital and movable property than interest and dividends, and for miscellaneous movable income (income from a sublease of real estate, income from hunting, fishing and trapping rights, prizes attached to debenture bonds).

As far as income allocated or made payable as from 1 January 2012, changes to the distinct tax rates applicable to income from movable property in the personal income tax, are the same as those applied to the rates of the withholding tax on income from movable property.

***Tax rates of the main income from capital and movable property
(2012 income vs. 2011 income)***

DIVIDENDS EXCEPT SURPLUSES	2011 income	2012 income
From shares issued as from 1 January 1994 by a public call for funds	15%	21%
From shares issued as from 1 January 1994, provided that the newly issued shares are attributed in consideration of cash contribution, that they are in registered form as from the date of their issue, that they are the object of an open deposit or that they are registered on a securities account with a clearing house	15%	21%
From shares issued by investment companies, except in the case of total or partial repayment of a company's capital or in the case of an acquisition of own shares	15%	21%
From so-called AFV-shares (fiscal advantages shares), but only where such shares are quoted on a stock exchange and where the company paying the income has irrevocably waived the transfer of the benefit resulting from the exemption of corporate tax, or distributed by companies of which a part of the capital has been injected by a PRICAF (*)	15%	21%
Dividends distributed by a cooperative participation company in the context of a participation scheme (Act of 22 May 2001 concerning employee equity participation and employee participation in the profits of their enterprise).	15%	21%
From other shares	25%	25%
LIQUIDATION SURPLUSES	10%	10%
SURPLUSES FROM REPURCHASE OF OWN SHARES	10%	21%
INTEREST, ROYALTIES, LIFE ANNUITIES AND TEMPORARY ANNUITIES		
Income from agreements concluded as from 1 March 1990	15%	21%
Income from agreements concluded before 1 March 1990	25%	25%
Income from some distribution common investment funds	25%	25%
COPYRIGHT	15%	15%

(*) *And of which more than 50% of the shares, representing the majority of voting rights, are in the hands of natural persons.*

5 Changes in thin capitalisation rules

(cf. page 83 Tax Survey issue January 2012)

The new rules aim at changing the system relating to the non-deductibility of interest in the corporate income tax, applicable under some conditions where a certain debt/equity ratio is not met. This ratio falls from 7/1 to 5/1.

There are other changes in thin capitalisation rules:

- the system also applies henceforth where the actual beneficiary of the interest is part of a group to which the debtor belongs. The concept "group" refers to all affiliated companies as defined in Article 11 of the Corporation Code;
- when checking the debt/equity ratio, loans granted by financial institutions established in the European Economic Area, are no longer taken into consideration.

The entry into force will be determined by the King on 1 July 2012 at the latest, by decree debated in the Council of Ministers.

6 Allowance for corporate equity³

(cf. pages 90-91 Tax Survey issue January 2012)

As from tax year 2013, the rate for the notional interest deduction cannot be higher than 3%. For companies recognised as SMEs according to Article 15 of the Corporation Code, the rate of the deduction remains increased by 0.50 point.

7 Capital gains realised on shares

(cf. page 114 Tax Survey issue January 2012)

The tax exemption of capital gains realised on shares is subject to the "upstream taxation requirement" applicable to participation exemption (PE). There is henceforth an extra condition: the shares must be held in full ownership for an uninterrupted period of at least one year.

Capital gains on shares held for less than one year are taxable at 25% (increased by 3% as crisis surcharge, i.e. 25.75%). The system as regards capital losses has not been changed.

The standard rate remains applicable with respect to the taxation of capital gains on shares which are already taxable insofar as the income thereof does not entitle to the deduction for PE.

The new system will apply as from tax year 2013, but it has already been applied, under certain conditions, to capital gains realised since 28 November 2011.

3 Neither the law making various provisions (BOJ of 30.12.2011) nor the programme law (BOJ of 06.04.2012) mentions the other changes planned as regards the system applying to notional interest, that is to say the abolishment of the carry-over and the new calculation in the corporate income tax for the previously built-up stock. Those changes will be subsequently examined.

6 The Tax Survey should not be considered as an administrative circular, no rights can be founded on it.
April 2012 issue.

EXCLUSION OF TRADING COMPANIES

The tax exemption of capital gains on shares and the prohibition on the deduction of capital losses and write-downs on shares, do no longer apply to securities that are part of the commercial portfolio of trading companies.

8 New tax on the entry into service in the Flemish Region

(cf. page 259 Tax Survey issue January 2012)

On 1 March 2012, the tax on the entry into service (TES) was deeply reformed in the **Flemish Region** for individuals and legal entities (with the exception of companies engaged in leasing activities). As from this date, the environmental characteristics of the vehicle are taken into account when determining the tax base: fuel type, Euro standard (air quality) and CO₂ emissions (climate).

8.1 Taxable vehicles

The new calculation of the TES applies to motor cars, twin-purpose vehicles and minibuses that are deemed to be put into service in the Flemish Region. The old system remains applicable to ***the above-mentioned vehicles that are deemed to be put into service by companies, autonomous public undertakings and non-profit organisations, engaged in leasing activities.***

8.2 Tax base

The tax is calculated on the basis of the environmental characteristics of the vehicle, i.e. according to CO₂ emissions and environmental categories based on the Euro 0 to 6 standards. The presence of a particulate filter is also taken into consideration. In some cases, the engine power in fiscal horse-power (HP) or in kilowatt (kW) is also taken into account.

8.3 Tax amount**GENERAL RULE**

The TES is calculated according to the following formula:

$$\text{TES in euro} = (((\text{CO}_2 * f + x) / 250)^6 * 4500 + c) * \text{ACF}$$

where:

CO₂ = CO₂ emissions of the vehicle in g/km, such as measured during the approval of the vehicle in accordance with the European legislation in force;

f = 0.88 for LPG vehicles, 0.93 for natural gas vehicles, 0.744 for as well natural gas vehicles as petrol vehicles and insofar as they have been approved as petrol cars, and 1 for other vehicles;

x = CO₂ correction factor according to technological developments. The x value amounts to 0 g CO₂/km and is yearly increased by 4.5 g CO₂/km as from 2013;

ACF = age correction factor, determined on the basis of the age of the vehicle. The age of the vehicle is based on the date of its first registration in Belgium or abroad. The ACF value is calculated on the basis of the following table:

Age of the vehicle	ACF value
Less than 12 full months	100%
From 12 to 23 full months	90%
From 24 to 35 full months	80%
From 36 to 47 full months	70%
From 48 to 59 full months	60%
From 60 to 71 full months	50%
From 72 to 83 full months	40%
From 84 to 95 full months	30%
From 96 to 107 full months	20%
108 full months or more	10%

c = fixed price (air component) depending on the Euro standard and the fuel type, as shown in the tables below:

Diesel	Euro standard	Amounts in euro
	Euro 0	2,130.32
	Euro 1	625.00
	Euro 2	453.37
	Euro 3	357.23
	Euro 3 + particulate filter	337.66
	Euro 4	337.66
	Euro 4 + particulate filter	331.92
	Euro 5	331.92
	Euro 6	12.25

Petrol, LPG and natural gas	Euro standard	Amounts in euro
	Euro 0	847.31
	Euro 1	378.93
	Euro 2	113.31
	Euro 3	71.08
	Euro 4	17.06
	Euro 5	15.34
	Euro 6	15.34

The TES cannot be lower than 40 euro and higher than 10,000 euro. The TES relating to vehicles put into service for the first time at least 25 years ago, is equal to a lump sum amount of 40 euro.

The amounts of the "c" component (air component) and the minimum and maximum amounts of the TES are adjusted on 1 July of each year on the basis of fluctuations in the general consumer price index.

Vehicles exclusively powered by an electric engine or by hydrogen, and plug-in hybrids are not liable to the TES. A plug-in hybrid is a vehicle powered by an electric engine and a combustion engine and for which electric power is provided to the electric engine by batteries that can be fully charged by a connection to an external power supply.

GENERAL TRANSITIONAL MEASURES FOR THE PERIOD FROM 1 MARCH 2012 TO 30 APRIL 2012 INCLUDED

For vehicles which were or must have been registered from 1 March 2012 to 30 April 2012 included, the TES is equal to the lowest amount resulting from both following calculations:

- a. the calculation as described above;
- b. the same calculation with both following changes:

* the general formula becomes: $TES \text{ in euro} = (((CO_2 * f + x) / 250)^6 * 6000 + c) * ACF$

* as far as the “c” value (air component) is concerned, the following table is used for diesel vehicles:

Diesel	Euro Standard	Amounts in euro
	Euro 0	8,521.27
	Euro 1	2,500.00
	Euro 2	1,813.47
	Euro 3	731.42
	Euro 3 + particulate filter	190.89
	Euro 4	190.89
	Euro 4 + particulate filter	93.72
	Euro 5	93.72
	Euro 6	49.01

TRANSITIONAL MEASURES WITH REGARD TO SECOND-HAND VEHICLES REGISTERED FROM 1 MARCH 2012 TO 31 DECEMBER 2013 INCLUDED BY NATURAL PERSONS

For vehicles registered or which must be registered from 1 March 2012 to 31 December 2012 included, the TES amounts to 33% of the amount calculated according to the new system (see above "General rule") and to 67% of the amount calculated according to the old system (applicable until 29 February 2012). For vehicles registered or which must be registered from 1 January 2013 to 31 December 2013 included, those percentages amount respectively to 67% and 33%.

Those transitional measures apply neither to vehicles exclusively powered by an electric engine or by hydrogen, nor to plug-in hybrids. As a result, those vehicles are not liable to the TES.

Examples

1. A diesel vehicle meeting the Euro 5 standard and with CO₂ emissions of 104 g/km, is put into service for the first time on 2 April 2012. The TES amounts to 124.80 euro.
2. A diesel vehicle meeting the Euro 5 standard and with CO₂ emissions of 104 g/km, is put into service for the first time on 21 May 2012. The TES amounts to 355.23 euro.
3. A diesel vehicle is put into service by a natural person on 2 April 2012. It has the following characteristics: the vehicle was put into service for the first time on 3 January 2011, it meets the Euro 5 standard, its CO₂ emissions are equal to 104 g/km, its fiscal power amounts to 8 HP and the engine power is equal to 81 kW. The TES amounts to 111.24 euro.
4. A diesel vehicle is put into service again by a natural person on 21 May 2012. It has the following characteristics: the vehicle was put into service for the first time on 3 January 2011, it meets the Euro 5 standard, its CO₂ emissions are equal to 104 g/km, its fiscal power amounts to 8 HP and the engine power is equal to 81 kW. The TES amounts to 179.67 euro.
5. A petrol vehicle meeting the Euro 5 standard and with CO₂ emissions of 134 g/km, is put into service for the first time on 2 April 2012. The TES amounts to 122.04 euro.
6. A petrol vehicle meeting the Euro 5 standard and with CO₂ emissions of 134 g/km, is put into service for the first time on 21 May 2012. The TES amounts to 122.04 euro.
7. A petrol vehicle is put into service again by a natural person on 2 April 2012. It has the following characteristics: the vehicle was put into service for the first time on 3 January 2011, it meets the Euro 5 standard, its CO₂ emissions are equal to 134 g/km, its fiscal power amounts to 7 HP and the engine power is equal to 77 kW. The TES amounts to 110.41 euro.
8. A petrol vehicle is put into service again by a natural person on 21 May 2012. It has the following characteristics: the vehicle was put into service for the first time on 3 January 2011, it meets the Euro 5 standard, its CO₂ emissions are equal to 134 g/km, its fiscal power amounts to 7 HP and the engine power is equal to 77 kW. The TES amounts to 110.41 euro.