

CORPORATE INCOME TAX REGIONALISATION
FEASIBILITY, COMPLIANCE ISSUES AND EU REQUIREMENTS
THE BELGIAN CASE

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KULeuven

Steunpunt beleidsrelevant onderzoek

– Begroting en fiscaliteit¹

¹ Within the framework of the Steunpunt, Ms. An Kuypers and Ms. Valérie Oyen have contributed to some of the findings of the study.

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1. INTRODUCTION

1.1. This report contains a summary of the findings of a study conducted on behalf of the Flemish Minister for budgetary affairs.

The developing of the analysis up to its present level of depth, has been entrusted to the “Steunpunt beleidsrelevant onderzoek – Begroting en fiscaliteit 2007 – 2011) that has been formally recognised (and is funded) by the Flemish Government since the beginning of 2007.

1.2. The basic aim of the study was to determine whether some form (and in case of a positive answer, which form or model) of regionalisation of part of corporate income tax rule setting powers is:

- in conformity with the EU law requirements, essentially the requirements relating to regional aid;

- feasible to be implemented, in the sense that it would not create a particular burden on Belgian companies (essentially in terms of compliance requirements), or at least not a burden that would be disproportionate to the intended advantages resulting from the additional economic policy tool made available to the regions;

- feasible to be implemented in the sense that it does not lead to company migration between regions. Indeed, the regional measures should not be applied on the basis of where the seat of a company is located, because changes of seat within one country can be effected in a tax neutral way (unlike changes of seats across borders). As a result, the regional rules should be applied with respect to the income generated in the region by companies wherever they are located (as well as to branches of foreign companies established in that region).

The study reaches the conclusion that indeed three models of regionalisation can be developed that are feasible and EU consistent.

1.3. The question whether a feasible model of regionalisation that is in conformity with EU requirements, should actually be implemented, is a political issue that is as such not dealt with in the study. Obviously the findings of the study constitute important input in relation to the political issue. But the political issue essentially depends on the view that is taken in regard to the need to allow the regions to use corporate income tax as an economic policy tool in a manner that is different from the approach adopted on the federal level.

Policy wise, certain regionalisation models enable a region to opt, for instance, for rate cuts as opposed to a subsidy based policy, whilst other regions could maintain higher rates in combination with the use of different tools of economic policy. Also, a region could individually decide to free up budget space to finance corporate tax cuts that could not be agreed upon on a federal level.

One additional import feature in the policy related discussion is the manner in which the financial impact of the use of its corporate income tax autonomy by a region, actually affects

its level of financing, and the manner in which this occurs. Transferring a proportionate part of the corporate tax revenue as such to the regions, the amount of which is impacted by the regional tax rules, would most likely be the approach most in line with a federal state model (see e.g. the Swiss example). However, proceeding in this manner would require drastic changes to the manner in which special law on the financing of the regions (“Financieringswet”) would have to be construed. On the contrary, allowing the regions to introduce, for instance, rate discounts on a basic federal rate, can be inserted in the Financieringswet in a relatively simple manner.

1.4. Regionalisation in the area of corporate income tax can be realised through a variety of models conferring certain powers to the regions, including:

- directly allocating to the regions part of the revenue generated by the corporate income tax. This model would purely act within the limits of the Financieringswet, and could be done by increasing the regional financing envelope, or in replacement of existing financing on a different basis. While this could lead to additional financial means for the regions or alternatively, only to subject the regional budget to the volatility of corporate income tax revenue, this approach would not actually provide the region with an additional economic policy instrument. For this reason this approach is not further developed in the study in an independent manner e.g. other than as a possible or necessary add-on to the other regionalisation models;
- allowing the regions to introduce economic policy related specific tax deductions (hence impacting the taxable basis of the companies) or tax credits;
- allowing the regions to introduce discounts (and possibly up counts) on the general federal tax rate that as such remains unaffected;
- providing for a reduced basic federal income tax rate, next to which the regions may introduce their own regional tax rate.

This overview will firstly present the three different models for regionalisation that have been developed in some detail in the study. It will then take into consideration the EU issues. Finally, the overview will present the approaches that have been developed in order to make any of the three models feasible in terms of added complexity and compliance requirements. In this framework the development of a regional profit allocation formula will be discussed.

This overview does not go into the details of the rather technical, but delicate issue of the introduction process of a regionalised system. Indeed, the idea is not to have a regional corporate income tax level put on top of the existing tax, but to insert it in the presently applied tax system. Transition scenarios have been dealt with in the study, but may at some point have to be further detailed in light of a possible policy choice in favour of one of the models.

2. REGIONALISATION – 3 MODELS

Regionalisation of the corporate income tax can be achieved by using one of the following models.

2.1. The split rate model:

This model can be referred to as the “Swiss model” since it is used in its purest form in Switzerland².

In this model a basic federal corporate income tax rate is maintained, for instance 15 or 25% depending on the degree to which regionalisation is decided. The regions have the possibility (not the obligation) to provide for their own regional rate, that is to be added to the basic federal rate in order to determine the effective total tax charge. If a region provides for a 10% and the federal government for 15%, then the total rate is simply 25% etc...

Obviously, in view of applying the separate Brussels, Walloon and Flemish rates, the taxable income of any company with economic activities in more than one region would need to be split up over the regions. In order to avoid transfer pricing issues at the intra-Belgian level, a profit split formula is being proposed, similar to what is done in Switzerland, Germany, and Italy, and not entirely unlike what is being proposed at the EU level in the area of the global European tax base.

This model is conceptually relatively simple. It fits reasonably well with the Belgian federal state set up where large part of the economic policy related powers are vested with the regions, since it clearly takes into account the corporate income tax rate as an important economic policy tool.

Logic would require that the revenue generated by the federal rate goes to the federal government and that the revenue generated by the regional rate goes to the region. As a result, changes in the corporate income tax revenue level are split over the federal government and the region. To the extent these changes result from the economic activity levels and the interest rate level³, such impact is logical. To the extent however that revenue changes result from changes in the rules to determine taxable income (which would have remained a federal power), some protection mechanism against taxable base erosion needs to be introduced for the regions. This protection mechanism could take the form, for instance, of the required regional government approval for any new federal tax measure the calculated budget impact of which would exceed a certain threshold.

² The German Gewerbesteuer (and add-on to the German federal income tax rate to be decided by the Länder) obviously contains many similarities with this model.

³ It is important to note, not only that interest increases lead to increased funding costs for companies (and hence reduced taxable income), but that the introduction of the notional interest deduction has further increased the impact of interest rate changes on corporate income tax revenue.

2.2. The discount model:

This is the model that was/is on the table in the framework of the negotiations in view of the formation of the new Belgian Government.

The discount model is a very simple model that allows the regions to introduce up to a maximum number of percent-points of rebate or discount on the general federal income tax rate. Any reduction in corporate income tax revenue resulting from the application of a discount introduced by a certain region, is directly deducted from the financial means attributed to that region. In short, granting the discount is tantamount to a budget outlay decided by the regional authorities which takes the form of a reduction of the corporate income tax charge.

Again, the application of this model requires that a profit split be operated, on the basis of a simple formula, in the same manner as in case of the split rate model.

The insertion of this approach in the Financieringswet should not be a really difficult matter. Essentially, a region is “spending its budget” under the form of conceding tax breaks to companies.

2.3. Taxable basis-model:

Basically this approach would enable the regions to introduce specific tax deductions that can be considered as being an integrated part of the economic policy of the region.

In order to technically maintain a single taxable basis for the whole of Belgium, and to enable companies to continue to file one tax return and receive one integrated tax assessment, the study has developed the concept where such tax deductions get treated for tax compliance purposes as a tax credit (equal to the amount of the theoretic deduction times the tax rate applicable in the region).

It is to be expected that such regional measures would essentially relate to investment linked or employment linked deductions or exemptions, but also the regulation regarding special amortizations or professional expenses,... One delicate point may be that in such a model, the other regions and the federal government could, as a rule, contest regional measures to the extent these would not fit within the scope of the economic policy powers of the regions⁴.

Specific corporate income tax features that are based on EU harmonisation, or that are related to corporate restructurings etc. should not be open for regional measures. As such, the entire

⁴ A similar procedure was launched when the Flemish Government first attempted to use its present power to grant discounts on the personal income tax levy.

system of the dividend received deduction, tax treatment of mergers and liquidations etc, should remain federal.

Whether the notional interest deduction could be regionalised, remains to be seen. Since such deduction is based on the net asset value of the company, and hence is closely attached to the liabilities side of the balance sheet of a company, regionalising this deduction may make less sense.

Technically, this model will require that the automatic link between the personal income tax deductions relating to professional income, and the rules relating to the taxable income for corporate income tax purposes, should be abolished.

3 MEETING THE EU REQUIREMENTS

3.1. General framework

A possible regionalisation of the corporate income tax has to be in line with European law and more in particular with the “state aid” or “regional aid” prohibition. Based on previous cases concerning regional aid and the possibility for regions to introduce deviations from existing national or federal rules (for example the Italian case C-66/02 and the Portuguese case C-88/03), and on the European Commission’s policy in its decisions, it becomes possible to determine with a reasonable degree of certainty the reaction of the European Commission on the different regionalisation models.

3.2. Analysis of the Court’s case law

3.2.1. Article 87(1) EC prohibits regionally selective state aid. In order to determine whether a measure is selective, it must be examined whether, within the context of a particular legal system, that measure constitutes an advantage for certain undertakings compared to others which are in a comparable legal and factual situation. The determination of such a reference framework has a particular importance in the case of tax measures, since the very existence of an advantage may be established only when compared with ‘normal’ taxation. The ‘normal’ tax rate is the rate in force in the geographical area constituting the reference framework.

3.2.2. In relation thereto the Court has decided that the reference framework does not necessarily need to be defined within the limits of the concerned member state, so that a measure conferring an advantage in only one part of the national territory is not selective on that ground alone for the purposes of article 87(1) EC.

3.2.3. Further the Court has already pointed out that it is possible that a region enjoys a legal and factual status which makes it sufficiently autonomous in relation to the central government of a member state, so that, by the measures adopted, it is that entity and not the central government which plays a fundamental role in the definition of the political and

economical environment in which undertakings operate. In such a case it is the area in which the region responsible for the measures exercises its powers, and not the country as a whole, that constitutes the relevant context for the assessment of whether a measure adopted by such an regional authority favours certain undertakings compared to others in a comparable legal and factual situation, having regard to the objective pursued by the measure or the concerned legal system.

3.2.4. In order to determine the selectivity of a measure adopted by a region it must be examined whether that measure was adopted by that entity in the exercise of powers sufficiently autonomous vis-à-vis the central power. The Court identifies three situations in this perspective.

a) In a first situation, the central government unilaterally decides that the applicable national tax rate should be reduced within a defined geographic area.

This is without discussion generally prohibited selective regional aid.

b) The second situation corresponds to a model for distribution of tax competences in which all the local authorities at the same level (regions, districts and others) have the autonomous power to decide, within the limit of the powers conferred to them, the tax rate applicable in the territory within their competence.

This situation offers possibilities to set up an EU accepted regionalisation schemes based on exclusive and competing powers for the regions. This is the case of the *symmetric devolution of competences*, discussed below.

c) In the third situation, a regional or local authority adopts, in the exercise of sufficiently autonomous powers in relation to the central power, a tax rate lower than the national rate and which is applicable only to undertakings present in the territory within its competence.

This situation covers in the first place cases where one or some regional authorities get such powers. Such a situation will be examined by the Court more carefully but it is not prima facie forbidden. The Court allows a regulation whereby one or several regional authorities obtain such competences as long as the conditions set out by the Court are met.

This is the case of the *non-symmetric devolution of competences*, also discussed below.

The previous considerations lead to the following conclusions:

3.3. Symmetric devolution of competences

3.3.1. The regionalisation of the corporate income tax should be acceptable at a European level if it leads to a symmetric devolution of competences towards the regions. The Court declares that a distribution of tax competences, where all the local authorities at the same

level (like the three regions in Belgium) within the scope of their competences can determine a *tax rate*, can not be considered as ‘regionally selective’.

3.3.2. As a consequence, a regionalisation which is feasible at European level is one that establishes:

- a regional competence concerning the *tax rate* taking the form of:
 - an exclusive competence for the determination of the tax rate; or
 - a parallel competence with the federal government to determine the tax rate
- a regional competence regarding certain *deductions and exemptions*.

In conclusion, both the split rate as the rate discount models, as well as the taxable basis model, can readily be construed in a manner consistent with the EU requirements, provided symmetrical powers are attributed to each of the regions. It is important to note, that in the Belgian federal framework, such symmetrical power devolution is the only approach that appears to be possible or feasible in any event. In that case, no further special requirements (relating to the degree of autonomy of the regions) need to be complied with.

3.4. Non-symmetric devolution of competences

Whenever a specific region would have the power to introduce deviating tax rates or deviating rules concerning the establishment of taxable income, the EU Court will be much more careful and has established a very clear approach in order to establish whether a certain regime is to be qualified as ‘prohibited regional aid’ or not. Such approach is acceptable from an EU perspective only if it complies with the ‘triple autonomy’ condition.

To consider a decision taken in such circumstances as being adopted in the exercise of sufficiently autonomous powers, such decision:

a) Firstly, must have been taken by a regional authority which has, from a constitutional point of view, a political and administrative status separate from that of the central government. → ***Institutional autonomy***

The regional parliaments in Belgium meet this condition.

b) Secondly, must have been adopted without the central government being able to directly intervene as regards its content. → ***Procedural autonomy***

Also here the presence and working of the Flemish, Brussels and Walloon Parliament offer enough guarantees. The fact that regional Decrees have within the scope of regional powers an equal force as federal laws (and that federal laws can never have an impact in areas that need to be governed by regional decrees) is very important in this respect.

c) Finally, the financial consequences of a reduction of the national tax rate for undertakings in the region must not be offset by aid or subsidies from other regions or central government.
→ *Economic autonomy*

The consequence of this third condition is that any budgetary impact of a regional measure should solely and entirely be supported by the regional budget.

But in addition, it would be necessary that there is a complete absence of any direct or indirect federal government support to the budget of the region. Because “money is fungible”, any support given by the federal authorities to the region could be seen as indirectly helping to finance the budget cost of a tax reduction.

It is to be expected that the EU Commission may be taking a very demanding view with respect to this requirement. If a potential regional deficit or debt were to receive the guarantee of the federal government, the existence of a sufficient degree of economic autonomy might be questioned. As a result, it is to be expected that a sufficient degree of economic autonomy might be very difficult to reach in practice.

3.5. Conclusion

The regionalisation models are in accordance with European law as they include a *strict symmetric allocation of competences* towards the regions.

4. MINIMIZING THE COMPLIANCE COST AND AVOIDING COMPANY MIGRATION: THE PROFIT SPLIT FORMULA

The regionalisation of the corporate income tax would grant an additional economic policy tool to the regions, that they can use in a manner that reflects potential or actual differences in view between how an economic policy should be conducted. Reference can be made to Flemish government studies that would indicate the greater effectiveness of tax rate cuts as opposed to the granting of subsidies.

Such enhanced policy making possibility should not come at the expense of certain regions, and should not come at too high a cost to the Belgian companies.

4.1. It is obvious that granting the corporate tax rate tool to the regions should not come at the expense of specific regions. In that respect the position of the Brussels region is somewhat particular. A relevant number of larger companies have their effective seat in Brussels, and have in addition major investments in plants, factories and equipment (and labour) in the Walloon or Flemish region.

If the regional tax measures were to be applied on the basis of where the actual seat of the company is located, this would have a double negative consequence:

- first of all, the impact of any Brussels region measure would be disproportionate. It would be quasi impossible for the Brussels region to grant the slightest tax reduction, if such reduction would be applicable to the full (Belgian) taxable income of these large companies who have their seat in Brussels.

- in addition, it is to be noted that within Belgium, a company can change its seat relatively easily and at no particular tax cost. Hence, making the application of regional measures dependent on the localisation of the seat of a company would lead to a considerable risk that the seat of many Belgian companies would be moved to the region with the lowest tax rate. Again this would make the budget cost of a tax reduction difficult to bear for that specific region. In addition, this would imply that the budget of such region would carry the cost also of investments made in other regions.

As a result, the only approach that is feasible, is to ignore the place of where the seat of a company is located, and to look at where the actual economic activity of the company takes place.

Wherever a company has its seat, the Flemish rules should be applicable to the part of its profit that can reasonably be attributed to the Flemish region, etc... This element is key to developing a workable approach.

4.2. The compliance cost to companies should be minimized. As a result, it should be avoided that the companies are requested to operate a detailed profit split between the three regions (which profit would involve interest charge allocation, and hence allocation of net equity etc.).

The apportionment of Belgian profit over the three regions on the basis of a relatively simple profit split formula, has been developed in the framework of the study as an essential part of both the split rate model and the rate discount model.

The Swiss system of a split rate corporate income tax, the German system of the Gewerbesteuer introduced by the Länder and the Italian system of regional rebates on the business operations tax (the 'IRAP': L'imposita regionale sulle attività produttive), are also based on the application of a relatively simple profit split formula. The formula proposed below takes into account the lessons and experience gained in these countries applying such a formula.

4.3. It is clear to more than 80% of the companies, who are economically active in one region only, the profit split is not an issue as their entire income will be located in (and have to be attributed to) only one region.

4.4. The basis for a formula should no doubt be a combination of employment levels and investment in real estate and other fixed assets. Such combination can most adequately reflect

the level of economic activity in a given region, without being open for purely tax driven manipulation.

The employment level should be used in the formula through the total salary cost of a company in a given region. To that effect, the place out of which an employee is effectively working (which is in most cases specified in his employment contract) can be used as attachment factor. The salary cost of employees that can not be specifically attached to one region will have to be split in proportion to the salary cost of the employees that can be allocated.

The real estate investment level can readily be ascertained on the basis of the “kadastraal inkomen” of the investments held in each region.

The other fixed assets will have to be listed, and as a rule their physical location should be easy to establish. Again, a proportional rule should apply to those assets that can not be readily localised.

One useful formula would be the following:

Region A income = x% of Belgian income

$$\begin{aligned} X = & \quad \frac{1}{2} \text{ of region A salary cost/ Belgian salary cost} \\ & + \frac{1}{4} \text{ of region A kadastr. inkomen/ Belgian kadastraal inkomen} \\ & + \frac{1}{4} \text{ of region A fixed assets/ Belgian fixed assets)} \end{aligned}$$

It is to be noted that to the extent the formula would allocate a larger part of the income to a region, the budget cost of a regional rate reduction will become more important. Hence the regions do not necessarily have a motive to try to have a formula that would from the outset maximize their region’s share in the taxable income of the “multi-regional” companies.

An additional feature might be to allow certain companies to actually proceed with a regional split of their turnover. This should only be allowed if based on the nature of the product or service, such income split can be readily determined without many transfer pricing or transaction allocation issues. In that case this turnover split would be taken into account for $\frac{1}{4}$ in the formula (which would cause the salary cost factor to be reduced to $\frac{1}{4}$ as well).

It should not be excluded to allow certain sectors of industry to negotiate their own sector wide applicable profit allocation formula. This may for example be useful for the banking and insurance sector.

5. INSERTION IN THE FINANCIERINGSWET

5.1. As mentioned above, the insertion of a rate discount model into the text and the functioning of the Financieringswet does not cause particular issues. Indeed, the revenue reductions caused at the federal level resulting from the regional discount (easily calculated as the discount percentage times the aggregate of the region's profits to which the rate reduction has been applied), will be deducted from the financing entitlement ("dotatie") of the region under the Financieringswet.

A transitional period will need to be worked out because the companies will start taking into account the rate reduction in the tax prepayments in the course of the first year where these are applicable.

5.2. Similar considerations would apply with respect to a tax base model.

5.3. A split rate model would require a more comprehensive change to the Financieringswet. Logic would imply that the regional financing entitlement would be reduced with an amount equal to the rate difference between the existing federal income tax rate before introduction of the split rate, and the new federal rate after the introduction of the regime, and to multiply this rate differential with the aggregate tax basis to be allocated to a specific region. It will then be up to the region to fully compensate this amount by introducing a regional rate equal to such difference (leading to no reduction at all in the total rate), or to introduce a lower rate and hence support a budget cost.

In this case, a "dry run" year should probably be provided for, allowing the authorities to gain sufficient information prior to the actual application of the system, in order to be able to initiate a reasonably correct impact on the regional financing from the first year (the year where the tax prepayments are being affected).

Also, in this case it should be determined to what extent the impact on the regional budget would be stabilised, and remain a function of the first year correction (amended over time on the basis of parameters). The more logical approach would be however to accept that all increases and decreases in corporate income tax revenue, resulting from whichever cause, fully impact the regional budget.

Such changes are essentially caused by the economic activity levels and by the interest rate level.

It would be reasonable to provide a mechanism whereby the regions would have the possibility to question changes in the rules relating to the tax base, decided at the federal level, that are expected to have a budget impact exceeding a certain threshold. It should indeed be avoided that the federal level be able to either materially reduce the taxable income, or on the other hand cause considerable tax increases by changing the manner in which the taxable income is being determined.

Attachment:

Een eenvoudige regionalisering vennootschapsbelasting:

Kortingen op de vennootschapsbelasting

Deze notitie bevat een korte schets van een eenvoudig en minimalistisch model van regionalisering van bevoegdheden op het vlak van de vennootschapsbelasting. Dit model blijkt het verlenen van een relevant beleidsinstrument voor de gewesten te combineren met een grote werkbaarheid en een Europees rechtelijke haalbaarheid.

Deze schets is gebaseerd op de bevindingen van de ruimere studie, verrichting in het kader van het Steunpunt beleidsrelevant onderzoek 2007 – 2011: Fiscaliteit en begroting.

Een correcte inschatting van de aan het schema ten grondslag liggende overwegingen, vereist consultatie van de ruimere studie.

1. Schets van een kortingen-model

De gewesten verkrijgen een beleidsbevoegdheid in zake de vennootschapsbelasting:

- zij verkrijgen de bevoegdheid kortingen toe te staan op de federale vennootschapsbelasting;
- waarbij de budgettaire kostprijs van deze kortingen volledig en rechtstreeks in mindering komt van de dotatie die op grond van de financieringswet aan de gewesten toekomt.

De impact van deze bevoegdheid bestaat er in dat de gewesten in staat worden gesteld:

- ofwel aanwezige budgettaire overschotten;
- ofwel vrijgekomen budgettaire ruimte door vermindering of afschaffing van andere uitgaven (aanpassing subsidieregelingen, ..)

te “besteden” onder de vorm van verminderde dotatie-ontvangsten, voor een bedrag precies gelijk aan de minderontvangst ten gevolge van de toegestane regionale korting.

2. Vaststelling gewestelijke belastbare winst

De kortingen zijn uitsluitend van toepassing op de belastbare winst van de vennootschappen die specifiek in het betreffende gewest wordt behaald.

In een Belgisch kader kan een kortingen-stelsel niet gelden voor de hele winst van vennootschappen die (toevallig) hun maatschappelijke zetel hebben in het gewest. Dit zou immers een dubbel ongewenst effect hebben:

- geen Vlaamse (Waalse enz) korting voor de vele vennootschappen met zetel in Brussel en winstgevende bedrijfsvestigingen in Vlaanderen (Wallonië);
- willekeurige zetelverplaatsingen naar het gewest met de hoogste korting, onafgezien van de plaats waar de winstgevende bedrijfsvoering plaatsvindt.

Bijgevolg moet de Belgische winst van de vennootschap worden opgesplitst over de verschillende gewesten.

Voor meer dan 80% van de vennootschappen stelt dit geen enkel probleem: deze hebben één of meer vestigingen uitsluitend in één van de gewesten.

Voor vennootschappen met vestigingen in meer dan één gewest is een eenvoudige winstopsplitsing vereist, die niet mag leiden tot verzwaarde administratieve en fiscale verplichtingen voor de vennootschap.

Om vast te stellen of een vennootschap een vestiging heeft in een regio, hanteert men niet het internaal fiscale begrip van de “vaste inrichting”. Integendeel, van zodra de vennootschap voor één van de factoren die in de formule vermeld staat, een regionale aanknopng heeft, wordt zij geacht economisch relevant in de regio aanwezig te zijn en wordt de formule toegepast.

De Belgische winst wordt opgesplitst met toepassing van één globale formule: het deel van de Belgische winst dat aan de Vlaamse (Waalse enz) activiteit wordt toegerekend wordt vastgesteld op grond van een gewogen gemiddelde dat uitgaat [voor 1/2^e] van de Vlaamse loonkost t.o.v. de totale tewerkstelling in België, [voor 1/4^e] van het totale Vlaamse kadastrale inkomen t.o.v. het totale Belgische kadastrale inkomen, [voor 1/4^e] van de boekwaarde van de in Vlaanderen gelegen of gebruikte materiële vaste activa (andere dan onroerende goederen en outillering met een kadastraal inkomen) t.o.v. het Belgische totaal van deze materiële vaste activa.

Elke vennootschap met vestigingen in meer dan 1 gewest heeft daarbij de keuze om als 4^e element aan de formule te laten toevoegen (waarbij de weging dan telkens [1/4^e] wordt) de aanwijsbaar binnen elk gewest gerealiseerde omzet.

Een verdere precisering van de formule is evenwel aan de orde, waarbij men oog kan hebben voor de werkzaamheden ter zake op Europees vlak bij de uitwerking van het

stelsel van de “Common Consolidated Tax Base”. Ook kan men de vraag nader bekijken over voor bepaalde sectoren, bijvoorbeeld banken en verzekeringen, de mogelijkheid moet bestaan om een sectorieel onderhandelde afwijkende formule te hanteren.

Aldus is de bijkomende fiscale verplichting van de vennootschap beperkt tot de opgave van drie (desgevallend 4) bijkomende elementen aan de belastingaangifte, die echter als informatie dadelijk beschikbaar zijn binnen de onderneming.

Deze opsplitsing van de belastbare basis geschiedt jaarlijks, ook indien er een fiscaal verlies geldt voor het betreffende jaar. Deze opsplitsing geschiedt nadat eventuele overgedragen verliezen, investeringsaftrek of aftrek voor risicokapitaal uit de periode vóór de invoering van de kortingen werden in mindering gebracht.

3. De korting

De geregionaliseerde bevoegdheid impliceert dat elk gewest de mogelijkheid heeft een aantal percent-punten korting (steeds gehele percenten) in te voeren op het tarief van de federale vennootschapsbelasting, [met een maximum van [5%-punt]].

De computer van de belastingdiensten berekent de totaal verschuldigde theoretische vennootschapsbelasting, en vervolgens de totale werkelijk verschuldigde vennootschapsbelasting mits opdeling van het inkomen volgens de formule en toepassing van het tarief met de kortingen. Elke daadwerkelijke vermindering aan te betalen vennootschapsbelasting, of vermeerdering aan door de overheid terug te betalen voorafbetalingen of voorheffingen, wordt dadelijk en rechtstreeks toegerekend op de dotatie door de federale overheid aan het gewest verschuldigd.

4. De toerekening op de dotatie

.Binnen de financieringswet kan de nodige aanpassing worden ingebouwd opdat deze volledige en uitsluitende toerekening op de eigen middelen van het gewest gewaarborgd zou worden. In dat geval blijkt de specifieke toebedeling van de federale opbrengst van de vennootschapsbelasting geen absolute vereiste te moeten zijn.

Ook lijkt een dergelijke beperktere ingreep wat betreft de tariefbevoegdheid, niet te vereisen dat er regionaal toezicht zou komen op de manier waarop de federale overheid haar bevoegdheden inzake de belastbare grondslag invult (omdat deze ingrepen voor het grootste gedeelte alsnog impact hebben op de federale fiscale ontvangsten).

5. Europees rechtelijke analyse

Een kortingen-model opgebouwd volgens deze lijnen, vormt volgens de analyse van het Europese Hof van Justitie (arrest in zaak C-88/03), een model van symmetrische devolutie van de regionale belastingbevoegdheid dat geen aanleiding geeft tot selectieve regionale steun.

Deze analyse zou naar alle waarschijnlijkheid in de toekomst door de Europese Commissie worden gedeeld.

De Europees rechtelijke dimensie staat bijgevolg de bespreking en uitwerking van een dergelijke benadering niet in de weg.