

March 2010



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and/or a copy of the survey:

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Majority SMEs weathered the economic crisis well

According to a pan-European KPMG survey

A comprehensive pan-European survey of SMEs by KPMG International indicates that the majority of firms appear to have weathered the economic crisis well, with just over half (51%) saying that their company was as strong at the end of 2009 as it was at the end of 2008. Only 31% indicated that their business was weaker as a result of the recession.

In addition, confidence amongst European businesses is remarkably buoyant with approximately three quarters (74%) forecasting that their prospects for 2010 are either good or very good. Consequently, many are now looking towards growth plans, including more than half who plan to develop new products and services, and over a third who are looking to tap into foreign markets.

Somewhat unsurprisingly, businesses reported that the main challenges they have faced in the wake of the global recession were decreased turnover (47%) and the loss of key customers and suppliers (33%). Almost two thirds of executives consequently turned to rigorous cost reduction programs and internal reorganization strategies in order

to mitigate the effects of the downturn on their business.

Belgian SMEs

The responses of the Belgian SMEs for the most part reflect the average result. The Belgian companies seem nonetheless to be fairly optimistic about their capacity to benefit from an international rebound. A summary of the results:

- A very pronounced slow-down of exports (56% in Belgium, as compared to 43% on average) and a significant loss of key customers or suppliers (40% as compared to 33% on average);
- The difficulty in accessing finance: 32% of answers as compared to an average of 29%;
- Belgian companies have set out priority projects for the next two years concerning internal reorganization and optimization (65%) and investments in innovation (56%). They also express the intention to tap new international markets (39% as compared to 36% on average);
- 50% responded that the actions taken by the government have been effective in reducing the effects of the

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crisis, as compared to 55% on average;

- Less optimism on recovery from the crisis in the course of 2010 (38% as compared to 44% on average) but expecting recovery instead to be in 2011 (49% as compared to 40%);
- 28% are considering hiring new employees, as compared to 22% on average; 53% state that they wish to

maintain the current workforce, against an average of 62%; 19% plan to reduce the current workforce, as compared to 16% on average.

The European Mid-Market Survey was conducted by Opinion Way amongst 3200 SMEs in eight countries (Germany, France, the UK, Spain, Italy, Belgium, Denmark and Ireland).

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Non-recurrent results-based bonuses and indexation

Tolerance by the National Social Security Office (NSSO) and the tax administration

To avoid a decrease in the amounts listed in the Belgian Income Tax Code as a result of a fall in the consumer price index, a new legal provision states that indexed amounts cannot be lower than those of the preceding year. The majority of the amounts mentioned in the notice issued on automatic indexation for income tax in the 2011 assessment year are therefore identical to those used for the 2010 assessment year.

There is, however, an exception to this rule for non-recurrent results-based bonuses, which benefit from a favourable fiscal and social regime introduced by a law of December 2007 and by the Collective Labour Agreement no. 90 dated December 20, 2007 (for more information on this tax regime, see the February 2008 issue of the Belgian Newsletter).

As regards the maximum amount of non-recurrent results-based bonuses, a negative indexation consequently continues, in principle, to apply.

For the 2011 assessment year, the maximum amount is set at EUR 2.299.

However, the Belgian National Social Security Office (NSSO) and the tax administration have decided to take a more flexible approach:

- The management committee of the NSSO decided for 2010 to accept the higher ceiling of 2009 (EUR 2.314) where the objectives were largely achieved on the basis of activities performed in 2009;
- The tax administration adopted this position and specified, in preliminary remarks to the notice issued on automatic indexation, that the Belgian administration of corporate taxes and revenues (AFER/AOIF) may, by way of derogation, follow the lead of the NSSO management committee in accepting for 2010 the higher ceiling of 2009 (EUR 2.314) where the objectives were largely achieved on the basis of activities performed in 2009.





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Global demographic change

Impact on the public sector

We are in the midst of huge demographic change. As people live longer, and national fertility rates decline, the task of supporting a growing group of retired citizens will increasingly rest with a falling proportion of working-age people.

The public sector will feel this change particularly acutely. The economic recession has only added to the challenge, with expected funding cuts likely to put even more pressure on public sector organizations to do more with fewer resources. To help assess the impact of an ageing population upon public services, KPMG International asked Ipsos MORI to carry out a study of 800 public sector employees.

Ageing of the workforce

It appears from the survey that only 37% believe its senior management is serious about this issue and is taking active steps to address the ageing of the workforce and its implications. If such an approach persists, the sector may struggle to attract new talent, retain key workers and make essential organizational changes, which could ultimately threaten the quality of its services.

Despite these problems, working in the public sector seems to have retained its appeal for a large number of those surveyed. A majority claim that their organization provides flexible working arrangements and supports professional development – both important issues in engaging the workforce. 70% feel that their particular organization is good at recruiting candidates from a diverse background.

Competitive job market

The job market is likely to remain highly competitive. Therefore public sector organizations should carefully consider how to attract the best of the younger generation. The retirement of older workers is a pressing problem, as they possess important knowledge and skills that can't be replaced quickly. The good news is that measures to pass knowledge from experienced to less experienced employees were rated effective by 65%. However, there is also some concern that knowledge sharing may be too informal, which could mean that vital experience and learning is lost.

Therefore it is good to see so much effort being put into modernizing work practices at a time when budgets are under severe pressure. Anticipated funding cuts only hasten the need to improve efficiency, whether it's through better performance, organizational re-design or outsourcing of certain activities. Many public sector leaders realize that this is a timely opportunity to create a leaner and more efficient organization focused on results.



Mergers and demergers

Simplification of reporting requirements

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After the introduction as from January 1, 2009¹ of a number of exemptions from the reporting requirement on the part of statutory or company auditors or by independent accountants following a contribution in kind (see the May 2009 issue of the Belgian Newsletter), a few further simplifications have recently been introduced relating to the requirement to have an independent expert's report drawn up in the case of mergers and (partial) demergers.

Articles 53 to 57 of the Law of December 30, 2009 governing various provisions concerning Justice (II)² amend the Companies Code in respect of the reporting requirement on the part of the statutory auditor, the appointed company auditor or the independent accountant, pursuant to the European Directive on this matter³. As from January 25, 2010, no report or statement on a merger or demerger proposal is required if all the shareholders and holders of other securities conferring the right to vote of each of the companies involved in the merger or demerger have so agreed.

The option to waive the requirement for an independent expert's report on the (partial) demerger proposal already existed for (partial) demergers, based on Articles 734 and 749 of the Companies Code⁴, but it has now also been extended to mergers.

We would like to point out that in the event of a (partial) demerger, a report

must still be drawn up by an independent expert in the framework of the capital increase by way of a contribution in kind in the recipient company, except in certain specific cases where there is a clear reference point for valuing the contribution in kind (for further details, see the May 2009 issue of the Belgian Newsletter). No additional legislative changes have, for now, been introduced concerning this reporting requirement in respect of contributions in kind.

However, another European directive⁵ allows for Member States to abolish the requirement for an independent expert's report on contributions in kind in the case of a demerger, provided an expert's report was drawn up on the demerger proposal. However, this directive has not yet been transposed into Belgian law.



¹ Royal Decree amending the Companies Code pursuant to Directive 2006/68/EC of the European Parliament and the Council amending Council Directive 77/91/EEC as regards the formation of public limited liability companies and the maintenance and alteration of their capital (Belgian Official Gazette, October 30, 2008).

² Belgian Official Gazette, January 15, 2010.

³ Directive 2007/63/EC of the European Parliament and the Council of November 13, 2007 amending Council Directives 78/855/EEC and 82/891/EEC as regards the requirement of an independent expert's report on the occasion of merger or division of public limited liability companies.

⁴ As regards (partial) demergers, the Belgian legislator has once more, for reasons unknown to us, implemented the option to waive such formality (cf. the amended Articles 731 and 746 of the Companies code).

⁵ Directive 2009/109/EC of the European Parliament and of the Council of September 16, 2009 amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC and Directive 2005/56/EC as regards reporting and documentation requirements in the case of mergers and divisions (this directive must be transposed at the latest by June 30, 2011).

Abnormal or gratuitous benefits

Belgian tax rules are a justified restriction on freedom of establishment

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On January 21, 2010, the Court of Justice of the European Union (CJEU) ruled on the compatibility of Belgian tax rules regarding abnormal or gratuitous benefits (Article 26 of the Income Tax Code 1992) (CJEU, C-311/08, SGI, January 21, 2010).

Article 26 of the Income Tax Code 1992 provides that where a Belgian company grants an abnormal or gratuitous benefit to a non-resident related company, this benefit is considered taxable income in respect of the Belgian enterprise. Where the recipient of the advantage is a Belgian taxpayer, the same rule applies, unless the advantage is used to determine the taxable income of that recipient.

Although this exception creates a difference in tax treatment, the CJEU deems that the Belgian rules constitute a restriction on the freedom of

establishment. However, given the need to ensure a balanced allocation of the power to tax between Member States and the need to prevent tax avoidance, the CJEU held that this restriction is justified.

As for the question of determining whether the rules in question do not go beyond what is necessary to attain the objective of combating tax avoidance, the CJEU refers, in its judgment, to a number of elements: Is the taxpayer given an opportunity, without being subject to undue administrative constraints, to provide evidence of any commercial justification for the transaction in question? Is the corrective tax measure confined to the part which exceeds what would have been agreed if the companies were not related companies? But it leaves to national courts the task of verifying this.





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SAS 70 to be superseded

KPMG white paper provides an overview of the key provisions

For over 40 years, Statement on Auditing Standards No. 70 (SAS 70) and its predecessors have been the U.S. standard for reporting on controls at service organizations. In the post-Sarbanes-Oxley era, SAS 70 has evolved into a de facto global standard. The International Auditing and Assurance Standards Board (IAASB) and the Auditing Standards Board (ASB) in the United States have undertaken to develop new standards for reporting on controls at a service organization with a truly global constituency in mind.

Under the approach adopted by the IAASB and the ASB, SAS 70 will be replaced by a new assurance standard that will guide service auditors in the conduct of an examination of, and the resultant reporting on, controls at a service organization. As an assurance standard, the core framework for the service auditor will be based on

ISAE 3000. The new assurance standard will require that management present an assertion regarding the subject matter of the report – in this case, the fairness of presentation of the controls, their suitability of design and the effectiveness of their operation.

Likewise, the standard specifies the criteria that the service auditor must use to assess whether management's assertion is fairly presented in all material respects. The new standard also includes a new service auditor's report, based on the assurance standards, but significantly modified to reflect the history of SAS 70.

KPMG has prepared a white paper 'The new SAS 70' providing an overview of the key provisions of the new standard and addressing some frequently asked questions.



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Revenue Assurance functions of the telecommunications industry

Survey by KPMG Information, Communications & Entertainment (ICE)

With changing economic conditions worldwide and an evolving technological environment, the complexity of the telecommunications industry and challenges for growth are under scrutiny. The industry is witnessing changing business models, dynamic growth strategies, and continuous innovation in products and services. As a result, various functions within organizations

are changing their objectives and operations, and Revenue Assurance (RA) is one of them.

Historically seen as a way to add to both the top and bottom-line of a company by plugging revenue leaks and identifying quick wins (enhancement and savings), Revenue Assurance has often been considered as merely a tactical

response. Now, telecom executives and shareholders are taking a closer look at how this function should be playing a more strategic role.

In order to evaluate the evolving role of Revenue Assurance, KPMG's Information, Communications & Entertainment (ICE) practice conducted an online global survey, called Global Revenue Assurance Survey 2009. The survey takes an in-depth look at how Revenue Assurance is positioned in telecom operators worldwide and assesses their concerns and expectations for the future. A summary of the results:

- RA functions across the globe face challenges of unavailability of information with respect to revenue

leakages, lack of the requisite skill set amongst RA personnel, analysis of a smaller sample of chargeable events and non-quantification of all RA observations;

- While revenue leakages remain the top priority of RA functions across the globe, there is a shared willingness to expand the scope of RA to include revenue enhancement and cost savings measures;
- RA functions need to invest in the right skill sets (internally or externally) and in the right tools and methodology.

Further, the survey includes some leading practices followed by RA functions across the globe that could help organizations develop a road map for their RA function.

Trends — Trends/Tendances Gazelles 2010

KPMG in Belgium is one of the main sponsors

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This year the weeklies 'Trends' and 'Trends/Tendances' for the ninth time in a row are looking for the 'Trends Gazelles'; fast-growing companies that positively affect the business climate in their region and symbolize competitive entrepreneurship. Fast-growing companies contribute significantly to the economic dynamism of a region in terms of employment, innovation, competitiveness and creative entrepreneurship.

KPMG in Belgium is one of the main sponsors of Trends — Trends/Tendances Gazelles 2010, by which we aim to promote mutual cross-pollination between these rapidly growing companies and, ultimately, help create an optimal breeding ground for entrepreneurship.

The award ceremonies will be held separately for each province.

For more information, go to www.trendsgazellen.be or www.trendsgazelles.be



KPMG Ghent office move!

Excellent road connection via E40 and E17 from
March 15, 2010

From Monday, March 15, 2010 the KPMG network's Ghent office is moving to the Axxes Business Park in Merelbeke. This state-of-the-art and energy-friendly building complex is situated at the junction of the E40 and E17, near the slip roads. KPMG will occupy the 4th floor of the H-part of the complex, at this address:

**Axxes Business Park
Guldensporenpark 80 (H)
B-9820 Merelbeke**

All telephone numbers remain unchanged.

From the new office we will be able to serve you even better in the future, thanks to, among other things, the excellent location, the modern facilities and parking spaces reserved for clients near the entrance.

We are looking forward to welcoming you in our new office!

Agenda

Trends Gazelles – Awards event
March 24, 2010 – Liège
For more information go to
www.trendsgazelles.be

Trends Gazellen – Awards event
March 31, 2010 – Genk
For more information go to
www.trendsgazellen.be

Bizidee Phase 2 – Awards event
March 2, 2010 – Anvers
For more information go to
www.bizidee.be

Seminaire 'Managing Cost and Cash in a Changing World'
March 30, 2010 – Bruxelles
For more information go to
www.kpmg.be

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Belgian Newsletter – Reply form – March 2010



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- Wishes to receive a copy of the pan-European KPMG International SME survey (electronic version)
- Wishes to receive a copy of KPMG International's study 'Rising to the challenge' (electronic version)
- Wishes to receive a copy of KPMG International's white paper 'The new SAS 70' (electronic version)
- Wishes to receive a copy of KPMG International's study 'Global Revenue Assurance Survey 2009' (electronic version)
- Wishes to receive the electronic version of the Belgian Newsletter in the future
- Would like an extra copy of the Belgian Newsletter to be sent to the following person (Name - Company - Address - E-mail address):
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.....
- Wishes to receive the electronic publication 'e-Tax Flash' (which draws your attention on important Belgian tax topics that may affect your daily business decisions)
- Wishes to receive the electronic publication 'Euro Tax Flash' (that pays closer attention to the consequences of European Court of Justice case law)
- Wishes to receive the electronic publication 'Legal e-Flash' (which informs you on the latest, most important developments in legislation and jurisprudence in all areas of the law which concern your company)
- Wishes to receive the electronic publication 'TaxNewsFlash - Transfer Pricing' (which informs you on the most recent developments worldwide in respect of transfer pricing)

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