# Belgian Ministry of Finance Organizes Information Round on Advantageous Tax Regimes

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The Finance Committee of the Belgian Parliament has approved a draft bill that would implement a major corporate income tax reform. The bill, which the panel okayed on 13 November, must now be submitted for a vote in plenary session.

To secure the vote of representatives of the environmental parties Agalev and Ecolo, the bill has been linked with legislation on "ecotaxes" (taxes on disposable packing) and "ecoboni" (reductions in VAT and excise duties on drinks in recyclable packing).

While the Parliament is preparing to vote on the draft corporate income tax reform measure, the administration of the Ministry of Finance is looking at its practical implementation.

One of the draft bill's principal measures would strengthen the so-called minimum taxation condition of the participation exemption for dividends received by a Belgian company.

A Belgian holding company can only claim the participation exemption if its subsidiary is subject to a corporate income tax equivalent to the Belgian corporate income tax and if it is not resident in a country that has an ordinary corporate income tax regime that is substantially more advantageous than the Belgian corporate income tax.

In its commentary on the Income Tax Code (Commentary on the Income Tax Code 199/34 and 199/35), the tax authorities had listed:

- notorious tax havens, such as Andorra, Anguilla, the Bahamas, Bahrain, Bermuda, Campione, the Cayman Islands, Ciskei, Grenada, Nauru, St. Pierre et Miquelon, Sark, Tonga, Turks and Caicos Islands, and Vanuatu; and
- specific types of companies in certain countries, such as:
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    - - International Business Companies in Antigua, Barbados, the British Virgin Islands, or Jamaica;
    - - exempt companies in Aruba, Gibraltar, and the Isle of Man;
    - - holding companies in Liechtenstein and Luxembourg;
    - - shipping companies based in Cyprus and Malta; and
    - - companies in countries that do not tax foreign-source income: the Cook Islands, Costa Rica, Djibouti, Hong Kong, the Isle of Man, Malaysia, Nevis, Oman, Panama, and Singapore.

That list, however, dates back to 1991 and has only been adapted once to exclude Taiwan.

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The second criterion was quite vague, and in practice, the burden of proof was left with the tax authorities. This criterion will be clarified, and the ordinary corporate income tax regime will be deemed to be substantially more advantageous than the Belgian corporate income tax, in countries where:

- the ordinary nominal tax rate levied on the profits of the company is less than 15 percent; or
- the actual tax burden under the ordinary corporate income tax rules is less than 15 percent.

The draft bill has incorporated the observations of the Conseil d'Etat and takes into account taxes due to local authorities, as well as the tax levied by central tax authorities. Moreover, the new provision also looks at the effective tax burden, which can be affected by a country's tax consolidation rules, carryback rules, and other factors.

To ensure legal certainty, a royal decree will list the countries that have a substantially more advantageous corporate income tax regime than Belgium. This option was preferred over the original plan to allow the tax authorities and taxpayers to rebut the presumption by showing that if Belgian corporate tax would be due on those profits, the effective tax rate would be less than 15 percent. That does not necessarily mean that taxpayers cannot rebut the presumption anymore, but it will become more difficult.

The tax authorities have started preparing this list and published a first draft on 19 November. The following countries were listed: Afghanistan, Alderney, American Samoa, Aruba, Belize, Bosnia and Herzegovina, the British Virgin Islands, Burundi, Cape Verde, Central African Republic, Comoro Islands, Cook Islands, Cuba, Democratic People's Republic of Korea, Dominica, Equatorial Guinea, Estonia, Gibraltar, Grenada, Guernsey, Guinea-Bissau, Haiti, Herm, Iran, Iraq, Jersey, Kiribati, Laos, Liberia, Liechtenstein, Macao, Maldives, the Isle of Man, the Marshall Islands, Mayotte, Micronesia, Monaco, Montserrat, Namibia, the Netherlands Antilles, Niue, Oman, Panama, St. Christopher and Nevis, St. Lucia, St. Pierre et Miquelon, St. Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, the Seychelles, Somalia, Switzerland, Trinidad and Tobago, Tuvalu, Uzbekistan, and the U.S. Virgin Islands.

Belgium's Ministry of Finance adds that it has included countries for which it has not found sufficient information, and it called on interested parties to comment on the list before 9 December.

Multinational companies that have an interest in any of these countries may wish to submit their observations as evidence that the ordinary corporate income tax regime is not substantially more advantageous than the Belgian corporate income tax by reference of the 15 percent tax.

The list raises two comments. First, the fact that the tax havens of Andorra, Anguilla, the Bahamas, Bahrain, Bermuda, Campione, the Cayman Islands, Ciskei, Grenada, Nauru, Sark, Tonga, Turks and Caicos Islands, Vanuatu, and the special tax regimes of Antigua, Costa Rica, Cyprus, Djibouti, Hong Kong, Jamaica, Malaysia, Malta, Singapore, and the United Arab Emirates are not included in the list does not mean that subsidiaries in those countries qualify for the participation exemption. They continue to be excluded under the first criterion, as those countries do not have a corporate income tax or apply special tax regimes.

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Finally, a new provision in the draft bill is that the ordinary tax provisions in other EU member states are not deemed to be substantially more advantageous. This exception is wider than the mere application of the Parent Subsidiary Directive. In that respect, it is surprising that two countries are included in the list. Estonia is a candidate for accession to the European Union in 2004. Liechtenstein may not be a EU member state, but Liechtenstein subsidiaries may find protection under the agreement on the European Economic Area, in particular the provisions relating to the free movement of persons and services.

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