Belgium: 2010 Year in Review

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By and

2010 was another election year in Belgium. After three years of discussion and stalemates, Prime Minister Yves Leterme was unable to push through the state reform he had promised. His government fell again, and new elections were held June 13. The big winners were the Flemish pro-separatism party N-VA and the Walloon Socialist Party. Negotiations on the next government's policy keep delaying the major state reform that is expected. Both language groups find themselves in a standoff, with no prospect of a solution soon. If a decision is reached on state reform, chances are it will include giving the regions power to levy the personal income tax or the company income tax.

In the meantime, there have been few legislative changes proposed by Leterme's caretaker government.

Income Tax

Tax laws became greener for company cars in 2010. The value of the fringe benefit is not calculated on the horsepower of the car anymore, but on the carbon dioxide emissions, and employers are entitled to a larger deduction for cars with lower carbon dioxide emissions. Income tax reductions are being offered to encourage the use of electric cars.

Tax-free allowances paid to an employee do not qualify as salary and are not subject to social security levies or tax if they reimburse the employee for charges that should be borne by the employer. This has always been controversial, and until 2009 the social security authorities had to prove that an allowance was excessive. As of 2010, employers must prove that the allowance is no more than the reimbursement of actual expenses incurred by the employee on behalf of the employer.

When Belgian residents receive investment income on their bank account, tax is withheld at source. That withholding tax (25 percent for dividends, 15 percent for interest) is the final tax. When residents receive the income outside Belgium on a foreign bank account, no Belgian withholding tax is deducted and the income must be reported on a tax return. The tax rates are the same, but on investment income, a municipality surcharge between 5 and 9 percent of the tax is added. On July 1, in *Dijkman v. Belgische Staat* (C-233/09), the European Court of Justice held that the surcharge infringes the free movement of capital. (For the judgment, see *Doc 2010-14612* or *2010 WTD 127-11*.)

On October 19 the tax authorities issued a practice note confirming that they will abide by the ECJ judgment for investment income from other European Economic Area member states. Tax forms and software will be changed, but taxpayers must take the initiative to claim back the tax.

The notional interest deduction is an effective way of reducing the company income tax rate for high-equity companies. The percentage of the deduction is linked to the interest rate paid by the Belgian

Treasury on 10-year linear bonds. For the 2011 and 2012 assessment years (normally the 2010 and 2011 tax years), the rate is capped at 3.8 percent (4.3 percent for small enterprises).

Procedure

As of 2010, Belgian companies and permanent establishments must report all direct and indirect payments over €100,000 made to persons located in tax havens. (See *Tax Notes Int'l*, May 24, 2010, p. 632, *Doc 2010-10538*, or *2010 WTD 94-6*.) Unreported payments are disallowed for tax purposes, and reported payments are allowed only if they are genuine transactions and not artificial tax avoidance schemes. The reporting obligation applies to all payments made to tax havens as soon as the total of those payments reaches €100,000 during a tax year. It is unclear whether the reporting obligation applies only to expenses or to all types of payments (including the repayment of the principal of a loan, which is by nature nondeductible). This is important for determining when the threshold for the reporting obligation is exceeded.

In 2007 Belgium set up a unit allowing taxpayers to submit files for mediation. Three years later, the mediation unit is fully operational. It is hoped that it will become as successful as the Ruling Committee, which has an impressive track record for delivering speedy advance rulings on various tax issues. In 2009 it delivered 600 rulings, and it is well on track to repeat that performance in 2010. The Ruling Committee has, however, just weathered a storm. It came under attack from a government party that questioned its rulings that were too lenient. The future of the Ruling Committee has been secured, but it must consult with the Central Tax Administration before issuing a ruling. (For prior coverage, see *Doc 2010-27046* or *2010 WTD 244-3*.)

The Ruling Committee in 2010 drew attention with three rulings in which it ventured into the area of trusts. While the rulings are specific to their facts, they give an indication of the committee's view of trusts and the applicable tax rules. The committee is breaking no new ground. It distinguishes between irrevocably discretionary trusts and trusts that are not entirely discretionary, but it takes a strict view of what is discretionary. (For prior coverage of the rulings, see *Tax Notes Int'l*, May 24, 2010, p. 661, *Doc 2010-9790*, or *2010 WTD 88-6*.)

EU Savings Directive

2010 was also the year when Belgium switched from the withholding tax option to the automatic information exchange system under the EU savings directive and changed its bank secrecy rules accordingly. (For prior coverage, see *Tax Notes Int'l*, May 3, 2010, p. 395, *Doc 2010-8198*, or *2010 WTD 84-12*.)

VAT

In 2010 Belgium implemented the VAT Package 2010. Several practice notes were issued on the new VAT legislation[1] and the new electronic VAT refund procedure for foreign EU taxpayers.[2] The refund procedure has been delayed, and in line with other EU member states, Belgium has postponed the deadline for submitting refund requests for 2009 expenses to March 2011. (For prior coverage, see *Tax Notes Int'l*, Oct. 25, 2010, p. 228, *Doc 2010-22730*, or *2010 WTD 203-4*.)

When buying a new building together with land, a 21 percent VAT is due on the value of the building, and a 12.5 percent stamp duty (10 percent in Flanders) is due on the value of the land. In line with the ECJ judgment in *Breitsohl* (C-400/98), VAT will be due on both the building and the land, starting January 1, 2011. Sales that were agreed on in 2010 but not formalized before a notary will continue to be taxed separately. (For the ECJ judgment in *Breitsohl*, see *Doc 2000-24135* or *2000 WTD 196-28*.)

International Conventions

Belgium's income tax treaties with Rwanda and Chile entered into force in 2010. Belgium also signed a convention with Macedonia and protocols with Congo, the Czech Republic, Germany, Greece, Japan, Malta, Rwanda, and South Korea. Belgium has accelerated negotiations with more than 80 countries to sign new income tax treaties or protocols that contain a provision for the exchange of information in compliance with the international standard.

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FOOTNOTES

[1] AFZ nos. 3/2009 and 19/2009.

[2] AFZ no. 20/2009.

END OF FOOTNOTES