

Belgium Acquiesces to EU Commission's Opinion

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Belgian tax authorities on September 11 published an addendum to Practice Note Ci.RH.331/575.420 (AOIF 8/2008) regarding the granting of benefits linked to a taxpayer's personal or family situation.

The addendum was issued in response to a reasoned opinion issued by the European Commission on July 16. (Prior coverage [📄](#)).

The problem is that Belgium granted tax benefits linked to the personal or family situation of a taxpayer solely for income received in Belgium. If the taxpayer also received income originating in another EU member state, Belgium applied a tax rate corresponding to the percentage of the taxpayer's total income that was domestic income. An additional tax reduction was granted only if the taxpayer's personal or family situation had not been considered by the tax authorities of the other state.

The commission found that the Belgian rules might constitute an obstacle to the free movement of persons and capital guaranteed under the Treaty on the Functioning of the European Union and the Agreement on the European Economic Area because Belgium denied the additional reduction if the other member state offers the taxpayer the option of receiving the benefits, even if the taxpayer does not exercise that option.

The commission asked Belgium to adapt its rules on tax benefits linked to the personal or family situation of a taxpayer and gave Belgium two months to report how it would comply with EU law. The addendum to the practice note came just in time.

Practice Note Ci.RH.331/575.420 (AOIF 8/2008) was issued following the decision of the Court of Justice of the European Union in *De Groot* (C-385/00) (2012) [📄](#) regarding the granting of benefits connected to the personal or family situation of a taxpayer. The commission objected to the fact that the practice note provided that the additional reduction cannot be granted "when the taxpayer could opt for a system which gave him the right to the same allowances as those granted to residents of the State in which the income arises, but has chosen a regime which did not involve the grant of these. In this respect, it was not relevant that the regime which he has chosen is not more advantageous for him."

It is that exception that has been dropped in the September 11 addendum.

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