Belgium Publishes List of Tax Havens

Posted on May 17, 2010

Belgium on May 12 published a May 6 royal decree listing the jurisdictions recognized as tax havens in conjunction with the new reporting requirement that entered into force on January 1.

All Belgian companies and permanent establishments of foreign companies must report in their income tax returns all (direct and indirect) payments in excess of €100,000 made to tax havens from January 1, 2010. (For prior coverage, see *Doc 2010-857* or *2010 WTD 10-1*.)

Payments that are not reported are disallowed, and payments that are reported are only allowed as expenses if the taxpayer can justify that the payment was made in the context of an "actual and genuine transaction" with "persons other than artificial tax avoidance schemes."

Belgium defines tax havens as any countries that during the whole tax period during which the relevant payment has been made, have either been qualified by the OECD Global Forum on Transparency and Exchange of Information as countries not having substantially and effectively implemented the OECD exchange of information standard or are listed in a royal decree. The Belgian royal decree lists all countries that either have no corporate income tax or that have a corporate income tax with a nominal rate under 10 percent.

In his report to King Albert II, Finance Minister Didier Reynders explained that the royal decree lists states that do not have a company income tax system -- that is, states where companies are not liable for income tax. The list also makes an inventory of the states where companies are liable for income tax at a nominal rate below 10 percent. In some states or jurisdictions listed, many companies with activities in specific sectors are liable for income tax at a rate under 10 percent despite the common tax system. The reporting obligation applies to payments made, directly or indirectly, to persons established in these states or jurisdictions.

Reynders said that in Guernsey, Jersey, and the Isle of Man, the standard nominal corporate tax rate is 0 percent, while financial institutions (and in some cases, enterprises recognized as being of public utility and real property companies) are subject to a nominal tax rate of 10 percent or 20 percent. In the Maldives, it appears companies are generally not liable for a tax that is similar to the company income tax, he said. Only financial institutions are liable for tax on their net profits under the financial rules. In Bahrain, only oil companies are liable for income tax. In the United Arab Emirates, companies are, in principle, liable for company income tax, but only the financial institutions and the oil companies are actually liable for income tax with a nominal rate of 10 percent or more.

Finally, Monaco is a special case, Reynders said. Companies are only liable for income tax if they carry out specific industrial or commercial activities. Specifically, only the companies that realize at least 25 percent of their turnover in direct or indirect transactions outside Monaco and companies in which such income is from sales or the concession of movable property are liable for tax.

The May 6 royal decree lists:

- Abu Dhabi (a U.A.E. city);
- Ajman (a U.A.E. emirate);
- Andorra;
- Anguilla;
- the Bahamas;
- Bahrain;
- Bermuda;
- the British Virgin Islands;
- the Cayman Islands;
- Dubai (a U.A.E. emirate);
- Micronesia;
- Fujairah (a U.A.E. emirate);
- Guernsey;
- Isle of Man;
- Jersey;
- Jethou (a Channel Island);
- Maldives;
- Moldova;
- Monaco;
- Montenegro;
- Nauru;
- Palau;
- Ras al Khaimah (a U.A.E. emirate);
- St. Bartholomew Island (Guadeloupe);
- Sharjah (a U.A.E. emirate);
- Sark;
- the Turks and Caicos Islands;
- Umm al Qaiwain (a U.A.E. emirate);
- Vanuatu; and
- Wallis and Futuna (a South Pacific French overseas collectivity).

The list is the same as previously announced, with the addition of Sark.

The royal decree applies to payments made from January 1, 2010. The government intends to update the decree every two years.

Marc Quaghebeur, partner, Vandendijk & Partners, Brussels