

Concerns: - Transparency tax : Belgian bill announced

I. WHAT IS IT ?

The transparency tax intends to tax the income of low (under 15%) or non-taxed legal entities, or so called off-shore structures, in the chief of a Belgian resident who is the founder, shareholder or the beneficiary of the offshore structure. The targeted structures are divided into two categories, namely the structures without legal personality, such as the trusts (category 1) and the legal entities (category 2). The second category includes entities such as Limited companies, foundations, For this second category, two lists will be published by royal decree, a non-exhaustive list of structures located outside the EEA, and an exhaustive list of structures located within the EEA. For interest and dividends, the applicable Belgian tax rate will be 25% in most cases.

The transparency tax does not prohibit the use of such legal entities.

II. WHO IS CONCERNED ?

The income received by the “offshore” structure will be taxed, on basis of a (legal) fiction, in respect of the founder or the shareholder of the offshore structure, as if he has received this income directly. It is the founder or shareholder of the offshore structure who has to declare this income in his Belgian Personal Income Tax Return.

In case the founder or the shareholder of the offshore structure can prove that he will not receive any income from the offshore structure, but instead that a third-party as a beneficiary will receive the income, it will be taxed in the chief of the beneficiary, to the extent that he is a Belgian resident. If the beneficiary is not a Belgian resident, then this proof can only be delivered if the beneficiary is a resident of a member state of the EEA, or a resident of a state with which Belgium has concluded a double tax treaty, or a convention concerning the automatic exchange of information (bi- or multilateral).

III. EXCEPTIONS

If it is demonstrated that the income received by the offshore structure, is subject to a taxation of at least 15%, the transparency tax will not apply. This proof, however, can only be delivered if the offshore structure in question is a structure of the second category.

IV. OTHER ASPECTS

Finally, at the time of the dissolution of the offshore structure, there are no taxes due on the so called liquidation bonus, *i.e.* the reserves that are present in the offshore structure, if they have already been subject to the transparency tax.

The reserves that are distributed due to the dissolution of the structure, which have not been submitted to the Belgian transparency tax, will be taxed as liquidation boni. This taxation will only be applied to the liquidation of offshore structures of the second category. Please note that this taxation will also be applied to the reserves that were already present in the structure before 2015.

V. COMING INTO FORCE

This new law will be effective for the fiscal year 2016, making all income received by the offshore structure as of January 1, 2015 subject to the transparency tax. Any changes to the statutes of a structure of the second category, with the intention to transform it into a structure of the first category, will not be opposable to the Belgian tax authorities, if the modification took place on or after October 9, 2014.

Furthermore, a new specific anti-abuse measure will be implemented in the Income Tax Code, so that any legal actions undertaken by the offshore structure to avoid this transparent approach will not be opposable to the Belgian tax authorities.

VI. ALTERNATIVE

An alternative for existing offshore structures to avoid the application of this transparency tax in a legal way, consists in having the structure invest its assets in, for example, a unit-linked (branch 23) life insurance, or in tax-free SICAVs. Under current Belgian law, these products are considered as financial products with tax free income, under certain conditions.

VII. STATUS

The bill still has to be approved by the Belgian parliament, which means that it is still susceptible to changes. No rights can be derived from this general memorandum. We are always prepared to examine your situation with regard to the transparency tax.

Vandendijk & Partners

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