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PRACTITIONERS' CORNER

Compensation Treatment in the Belgium-U.S. Income Tax Treaty

by Ruth De Baere and Marc Quaghebeur

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The new income tax treaty and protocol between Belgium and the United States entered into force on January 1, 2008.[1] While the main goal of the treaty is to help the business community (for example, nil rate for dividends and favorable tax regime for pension funds), it is also worthwhile to examine the articles on compensation and deferred compensation from a Belgian perspective.

I. Compensation

A. Employee Compensation

The text of article 14 is now in line with the OECD and U.S. model treaties.[2] Because the old treaty (article 15) deviated from the standard wording, there are some changes to the rules for taxation of compensation relating to cross-border employment between the United States and Belgium. This will not change anything fundamental for U.S. resident employees working in Belgium (or Belgian resident employees working in the United States), except that U.S. resident employees will risk being taxed slightly more in Belgium.

The principle remains that salaries, wages, and other similar remuneration is taxable in the employee's state of residence, unless he works in the other state. The protocol clarifies that parties to the treaty look to ''where the employee is physically present'' to determine whether income is derived from employment in Belgium. That will be the case only for income for work in Belgium. The residence of the employer or payer, where the employment contract is made or where the payment occurs, or the place where the results of the work were exploited are all irrelevant.

A U.S. resident is only liable to Belgian income tax in one (or more) of the following three situations.

1. Employee in Belgium for 183 Days or More

Under the old agreement, this period was calculated as 183 days in the tax year. The new text allows the Belgian tax authorities to take account of 183 days in any period of 12 months starting or ending in the tax year. However, in practice, nothing will change; Belgian domestic law only takes account of 183 days within the tax year. A U.S. resident employee is only taxable in Belgium if he stays in Belgium for a period of more than 183 days in the tax year, unless he falls under situation 2 or 3 noted below. When calculating the threshold of 183 days, Belgium counts all days of physical presence in Belgium, whether for work or pleasure. This includes the days of arrival and departure, weekends, bank holidays, vacation days, and sick days. Only full days outside Belgium may be excluded.

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[1] The treaty and all related documents are available at http://www.ustreas.gov/offices/tax-policy/treaties.shtml.

[2] From a Belgian point of view, the new treaty should be read together with Practice Note AFZ 2005/0652 (AFZ 08/2005) of May 25, 2005, in which the Belgian tax authorities issued their comments on article 15 of the OECD model convention; *available at* http://www.fisconet.fgov.be in Dutch or French.

2. Remuneration Paid by a Belgian Resident Employer

This is a double condition: The employee must have an employer in Belgium, which in accordance with Belgian employment law implies a relationship of subordination. The remuneration must be paid by or on behalf of that employer. That is completely different than under the old treaty, under which the employee could escape taxation in Belgium only if his employer was a U.S. resident or a U.S. permanent establishment. It was irrelevant who paid the remuneration except in situation 3 below.

3. Remuneration Borne by a Belgian PE of the Employer

The old treaty mentioned that compensation should be borne ''as such'' by the PE. This specification (''as such'') has been omitted in the new treaty. This means that, under the new treaty, even if the remuneration is charged back indirectly to the Belgian PE, it is deemed to have been borne in Belgium.

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In the May 25, 2005, practice note, the Belgian tax authorities clarified that even if the remuneration is not actually deducted in computing its profits, the cost will be deemed to be borne by the PE if the remuneration would be allowed as a deduction for tax purposes.

An exception is made for the remuneration paid to a member of the regular complement of a ship or aircraft operated in international traffic; it will always be liable to tax in the employee's state of residence.

In the practice note, the Belgian tax authorities clarify that compensation in the sense of article 14 does not only mean compensation received during the employment but also payments *related* to the employment whether received before (an upfront payment; for example, a sign-on bonus) or after the employment (deferred compensation; for example, severance pay, noncompetition payments, and stock options, but not pensions).

However, the treaty cannot exclude all forms of double taxation. For example, according to Belgian domestic law, stock options are taxable at grant; under U.S. law, stock options are taxable at exercise. Double taxation may arise when the option grant is made in Belgium and the exercise takes place in the United States. U.S. citizens are taxed on their worldwide income regardless of where they are living. The Internal Revenue Code provides unilateral relief of a limited special deduction for foreign earned income and a foreign tax credit. Excess foreign tax credits may be carried for one year and carried forward for a period of 10 years.

B. Compensation for Self-Employed

The old treaty had a specific article (article 14) for self-employed persons and entertainers. In line with both the OECD and the U.S. model agreement, this article was dropped. The income now falls under the provisions concerning company profits (article 7) and PEs (article 5). Self-employed persons who have a fixed basis but relied on the fact that they were in Belgium for less than 183 days per year cannot avoid taxation in Belgium any longer. Having a PE in Belgium will be sufficient to make them liable to tax in Belgium.

C. Directors' Fees

Under article 16 of the old treaty, directors' fees could be taxed in the state of residence of the paying company only if the director's fees were treated as a distribution of profits.[3] This reflected old Belgian legislation that was abandoned in 1987. Since then, directors' fees are generally deductible for the Belgian company paying the fees. Directors' fees received by Belgian resident directors of U.S. companies were, therefore, treated as ''income not expressly mentioned'' and taxed in Belgium while the United States could also tax the income if it was derived from sources within that state (based on the old article 22).

The rules on director's fees are simplified (article 15). Director's fees and other compensation paid by a U.S. company to a Belgian resident may be taxed in the United States. The protocol clarifies that this provision also applies to fees received by the *gerant* or *zaakvoerder* (sole managing director of a Belgian SPRL[4]) of a company, other than a company with share capital, in his capacity as such.

Services other than those as a member of the board of directors or services rendered outside the United States are governed by article 7 (business profits). These services are only taxed in the United States if the director has a PE there. Article 7 also applies to a partner's distributive share of the income of an entity that is treated as fiscally transparent, such as a U.S. partnership.[5]

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[3]From a Belgian perspective, Practice Note AFZ/Intern.IB/2002-0026 (AFZ 26/2002) issued by the Belgian tax authorities on December 17, 2002, clarifies the Belgian interpretation of article 16 of the OECD model convention; *available at* http://www.fisconet.fgov.be in Dutch or French.

[4]Article 3(a) of the protocol.

[5]Article 3(b)(iii) of the protocol.

The protocol also clarifies that remuneration derived by a director for his day-to-day functions of a managerial, technical, commercial, or financial nature is to be treated as an employee's income (article 14). Because Belgian domestic law qualifies the income as director's fees, it is specified that article 14 is to be read by replacing references to the ''company'' by references to the ''employer.''

D. Entertainers and Athletes

Under the old treaty, income received by entertainers and athletes was covered by articles 7, 14, and 15. In line with the latest OECD model convention, the new treaty contains a specific article for this category (article 16).

Income derived by a U.S. resident entertainer (for example, a theater, motion picture, radio, or television artist, or a musician) or athlete from his personal activities in Belgium would normally be exempt in Belgium under the provisions of articles 7 (business profits, for lack of a PE) and 14 (employment income). Nevertheless, this income may be taxed in Belgium if his gross receipts from activities (including expenses being reimbursed to him or borne on his behalf) exceed $20,000 for the tax year in which they are paid.

Under this rule, if a U.S. entertainer does not have a PE in Belgium and performs (as an independent contractor) in Belgium for a total of US $19,000 during a tax year, Belgium would not tax that income. If that entertainer's total compensation was US $21,000, the full amount would be subject to Belgian tax. If the entertainer earned US $19,000 during a tax year in Belgium but that income is attributable to a Belgian PE, Belgium could tax him under the provisions of article 7 (business profits).

A second provision prevents highly paid entertainers and athletes from avoiding tax in the country in which they perform by, for example, routing the compensation for their services through a personal services company (a ''star company'') located in their state of residence that does not have a PE in the source country. When income for the personal activities of a U.S. resident entertainer or athlete accrues to another person (a personal services company), that income may be taxed in Belgium, but only in two situations. Either the contract regarding these services designates the entertainer or athlete (by name or description) or it allows the contract party to designate the individual who is to perform the personal activities.

At the same time, the provision is intended to protect a performer's rights under the treaty when there is a legitimate employer-employee relationship between the performer and the person providing his services.

This article applies only to the income of entertainers and athletes. Other individuals involved in a performance or athletic event, such as producers, directors, technicians, managers, or coaches, remain subject to the provisions of articles 7 (business profits) and 14 (income from employment). Also, except as provided in paragraph 2 of this article, income earned by legal persons is not covered by this article.

The Belgian Administrative Practice Note AFZ/2007-0448-1 (AFZ 12/2007)[6] sets out the new specific tax status for Belgian and non-Belgian athletes who are liable to tax in Belgium.

Non-Belgian athletes coming to play in Belgium for less than 30 days continue to enjoy the favorable tax regime: a withholding tax at a fixed rate of 18 percent, which is also the final tax. If they play in Belgium for more than 30 days, they can, just like Belgian athletes (and their trainers), under some conditions enjoy a reduced tax rate of 33 percent or even 16.5 percent instead of the progressive income tax rates (which go up to 50 percent).

E. Government Functions

Remuneration paid to an individual for services rendered to a country (or political subdivision or local authority) is taxable only in that country. However, Belgium may tax the remuneration paid by the United States to a Belgian resident for services that are rendered in Belgium if the individual is a Belgian national or if he was already resident in Belgium. In other words, only those government officials that come to live in Belgium to work for the U.S government or a political subdivision will be tax exempt in Belgium.

The IRS is of the opinion that this provision also covers independent contractors and employees of independent contractors engaged by governments to perform services for them,[7] but this remains to be clarified with the Belgian tax authorities.

As for government pensions and other similar remuneration for (civilian or military) government service, these are taxable only in the state paying the pension. There is one exception: A Belgian national residing in Belgium will pay tax only in Belgium. Pensions in the form of social security benefits fall under article 17.

F. Students and Trainees

Under the treaty, U.S. students and business trainees are exempt from Belgian income tax on payments coming from outside Belgium for maintenance, education (scholarships), and study if they are visiting Belgium to engage in full-time education or full-time training. For business trainees, the exemption is limited to a period of two years from the date of their arrival in Belgium for their training.

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[6]Circulaire nr. AFZ/2007-0448-1 (AFZ 12/2007) of July 12, 2007; *available at* http://www.fisconet.fgov.be in Dutch or French.

[7]Explanation of proposed income tax treaty between the United States and Belgium scheduled for a hearing before the U.S. Senate Foreign Relations Committee.

Both students and trainees also enjoy a tax exemption limited to US $9,000 (per year)[8] for income for personal services, assuming that they are authorized to work in Belgium.

Trainees are either in Belgium to secure training to practice a profession or professional specialty, or as an employee or under contract with a U.S. resident to acquire technical, professional, or business experience from a third party.

G. Teachers and Researchers

Under article 19 of the new treaty, U.S. resident teachers and researchers who visit Belgium to teach or to carry on research at a school, college, university, or other educational or research institution are entitled to an exemption from Belgian income tax on remuneration for a period of two years starting on the date of arrival. This is a vast extension: Under the old treaty (article 20 and 21), the exemption was limited to university and recognized educational institutions and to professors invited by the Belgian government.

Income from research is only tax exempt in Belgium if it is undertaken in the public interest; if it is primarily for the researcher's private interest, it is not tax exempt.

II. Deferred Compensation

Most countries encourage employees and self-employed persons to build up their pension by giving them tax relief against current income. Effectively, they allow the employee and his employer to defer taxation on compensation until retirement.

In cross-border employment, there are four risks of double taxation:

- A cross-border deferral of compensation is not allowed. Contributions to foreign pension schemes are excluded from these tax deferral schemes. A state does not give a tax credit for pension contributions paid abroad; U.S. nationals working in Belgium could not continue to contribute in their home pension schemes. The alternative is for them to start building up a pension in Belgium for the duration of their posting to Belgium. However, this is counterproductive: Switching schemes can lead to a loss of rights and benefits and having pension arrangements in multiple countries can create practical difficulties.
- Taxation of the investment of pension funds. Pension funds see their investments taxed in the country where they invest and at home.
- Pension entitlements can be hit by taxes again when they are moved from one pension fund to another. Moreover, when the individual leaves the country, some countries levy an exit tax to compensate for the loss of deferred tax.
- There is the traditional double taxation issue, in which the states of residence of both the pension fund and of the pensioner want to charge tax; sometimes the state of employment may want part of the pie as well. The traditional solution is a provision in the double tax treaty providing that pension payments are taxable only in the state of residence.

The United States had recognized this problem some time ago; the 1996 model convention contained a provision (18(6)) to address contributions to a pension plan and earnings accrued to a pension plan. It was only recently that Belgium has taken some measures to alleviate double taxation. In particular, Belgium has complied with Community law on cross-border occupational pensions.

Effective January 1, 2007, Belgium partially lifted the ban on the tax deduction of the employer's contributions paid to a pension institution established outside Belgium. If an employer contributes to a pension institution established in another member state of the European Economic Area,[9] the contributions are tax deductible within the conditions mentioned in article 59 Income Tax Code (ITC) 1992 (in particular the 80 percent rule). The same rule applies to the tax credit an employee is entitled to regarding his personal contributions to a non-Belgian pension institution.

In 2006, when implementing EU Directive 2003/411 (the institutions for occupational retirement provision, or IORP Directive), Belgium adopted a new, transparent, flexible legal framework for the creation of pan-European and international pension funds. Belgian Organizations for Financing Pensions (OFP) enjoy a favorable tax, in that they are only paying tax on items that are not related to pension benefits. An OFP is not liable to capital gains tax, and (Belgian and foreign) dividend income and interest income are not taxed in the hands of an OFP.

Since it is subject to corporate income tax, an OFP will be able to claim the benefits of the double taxation treaties concluded by Belgium (which has one of the most extensive double taxation treaty networks).

Since January 1, 2007, the pension capital or pension reserves can be transferred to another pension fund, insurance company, or pension institution located in another member state of the EEA, without incurring any tax liability (article 364*ter*, paragraph 1 ITC 1992).

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[8]This amount will be adjusted by the competent authorities every five years to take into account changes in the U.S. personal exemption and standard deduction and the Belgian basic allowance (*quotité exemptée belastingvrije som*).

[9]The EEA comprises the 27 member states of the European Union plus Iceland, Liechtenstein, and Norway.

Belgium has taken the opportunity to limit the effect of the so-called exit tax. Article 364*bis* ITC 1992 provides that if a taxpayer leaves Belgium to take up residence abroad, the payment of pension capital is deemed to have been paid out on the day before his departure. The effect of this exit tax is limited to taxpayers taking up residence outside the EEA. However, the Supreme Court has already decided that this provision was overruled by the provisions of the double tax treaties.

A. Pension Buildup

1. U.S. Pension Funds

An employee (or his employer) or a self-employed person working in Belgium can pay contributions to a pension plan in the United States or in a ''comparable third state.'' These are tax deductible or (if they are paid on an employee's behalf) excluded in computing the employee's taxable income. Moreover, any benefits accrued under the pension plan, or contributions made under the pension plan by or on behalf of the individual's employer, during that period will not be treated as part of the employee's taxable income. Belgium will allow the contributions as a deduction against its taxable profits in Belgium.

However, Belgium cannot be forced to give more relief than it grants Belgian residents for a pension plan recognized for tax purposes in Belgium.[10]

There are a few conditions and limitations. Contributions must have been paid by or on behalf of the individual before he comes to work in Belgium, and the competent authority of the other state must have accepted the pension plan. Where the individual resides is irrelevant. This tax benefit is limited to 10 years.

2. Belgian Pension Funds

For a U.S. citizen working and living in Belgium, the treaty deals with contributions to a Belgian pension fund (or a fund in a comparable third state), if the income from that employment is taxable in Belgium and the contribution is borne by a Belgian employer or a Belgian PE of the employer. The contributions to the pension plan during his employment in Belgium that are attributable to the employment will be deductible (or excludable) in computing his taxable income in the United States. Furthermore, any benefits accrued under the pension plan, as well as his employer's contributions during and attributable to the employment, will not be treated as part of his taxable income in computing his U.S. taxable income.

The Belgian pension funds must be approved by the U.S. Treasury. Moreover, when determining whether an individual is eligible to participate in and receive tax benefits under a U.S. pension plan, contributions and accretions under a Belgian pension plan will be assimilated to a generally corresponding U.S. pension plan established in the United States to the extent relief is available to the individual.

This U.S. tax benefit will not exceed the lesser of either the corresponding relief in the United States or the amount of the contributions or benefits that qualify for tax relief in Belgium. Furthermore, for determining whether the individual has exceeded the annual limitation on contributions to an individual retirement account, the United States can take account of the contributions to a Belgian pension fund.

3. Pension Fund Definition

The term ''pension fund'' is defined in article 3 as any person established in a contracting state that is operated principally to administer or provide pension or retirement benefits or to earn income for the benefit of one or more pension arrangements.

The pension fund must be exempt from tax in the United States for its activities. In its technical note, the U.S. Treasury has clarified that the term includes:

- a trust providing pension or retirement benefits under an IRC section 401(a) qualified pension plan, profit sharing or stock bonus plan, including 401(k) plans and group trusts described in Rev. Rul. 81-100 and meeting the conditions of Rev. Rul. 2004-67;
- a trust providing pension or retirement benefits under a section 403(b) plan;
- a trust that is an individual retirement account under section 408, a Roth IRA (408A), or a simple retirement account under section 408(p);
- a trust providing pension or retirement benefits under a simplified employee pension plan under section 408(k);
- a trust described in section 457(g) providing pension or retirement benefits under a section 457(b) plan; and
- the Thrift Savings Fund (section 7701(j)).

For Belgium the pension fund must be organized under Belgian law and regulated by the Banking, Finance, and Insurance Commission (CBFA). In Belgium, however, pension plans are usually organized by insurance companies in the form of group insurance schemes. An unanswered question is whether insurance companies are operated principally to administer or provide pension or retirement benefits, or to earn income for the benefit of one or more pension arrangements.

4. Third-State Pension Funds

Pension funds in a third state may be assimilated to a U.S. or Belgian pension fund if they are established in Switzerland or a member state of the EU, EEA, or North American Free Trade Agreement, provided that

[10]Article 17(10)(b) clarifies that a pension plan is recognized for tax purposes in a state if contributions to the plan would qualify for tax relief in that state.

they grant comparable favorable treatment for contributions to a Belgian or U.S. pension fund and if the country in question has a satisfactory information exchange provision in a double tax treaty or otherwise.

Belgium may have a problem with its double tax treaty with Switzerland because the treaty does not have an adequate information exchange provision.

B. Income Accumulation

The double tax treaty provides that pension funds are entitled to an exemption of withholding tax on dividends they receive from the other state, including for Belgian pension funds dividends paid by a U.S. regulated investment company or a U.S. real estate investment trust if the fund holds a participation of not more than 10 percent in the REIT, subject to the limitation on benefits provision of article 21.

Income earned by a pension fund in one state may not be taxed as income of an individual residing in the other state, unless it is paid out from the pension fund to or for the benefit of that individual.

C. Transfers Between Funds

Transfers between pension funds in the same state cannot be taxed. The treaty provides for the tax-free rollover of pension contributions to qualifying plans in the same contracting state, but not for cross-border transfers.

D. Pension Distributions

The treaty confirms the principle that pensions and similar remuneration in consideration of past employment are taxable only in the state of residence of the beneficiary, except for social security pensions.

The term ''pensions and other similar remuneration'' includes both periodic and single sum payments. Under the old treaty, lump sum payments were not within the scope of article 18, but were treated under the residuary article 22, which allowed the source state to impose a tax as well. The protocol clarifies that the term ''other similar remuneration'' refers to U.S. Tier I railroad retirement benefits.

In the United States the term must encompass qualified plans under section 401(a), individual retirement plans (including those that are part of a simplified employee pension plan that satisfies section 408(k), individual retirement accounts, and section 408(p) accounts), section 403(a) qualified annuity plans, and section 403(b) plans. However, if these U.S. pensions are exempt for U.S residents, Belgium must grant the same exemption; for Belgian pensions that are exempt for Belgian residents, the United States must grant the same exemption.

III. Other Personal Income

A. Social Security

Article 17(2) deals with social security benefits. While private pensions are taxable exclusively in the state of residence of the beneficial owner, payments made under the provisions of the U.S. Social Security or similar legislation to a Belgian resident or to a U.S. citizen will be taxable only in the United States. The reference to U.S. citizens is necessary to ensure that a social security payment by Belgium to a U.S. citizen who is not resident in the United States will not be taxable by the United States.

B. Annuities

An annuity is a stated sum paid periodically at stated times during a specified number of years, paid in return for adequate and full consideration. An annuity for services rendered would be deferred compensation taxable in accordance with article 14 (income from employment) or a pension (article 17).

C. Maintenance Payments

Both alimony (article 17(4)) and child support payments (article 17(5)) are defined as periodic payments made under a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, paid by a resident of one state to a resident of the other.

Article 17(4) deals only with maintenance payments that are taxable to the recipient. If so, they are only taxable in his state of residence. If they are not taxable to the payee, nothing prevents the payments from being taxed in the state of residence of the payer. Article 17(5) clarifies that this is true for periodic payments for child support unless they are taxable in the state of residence of the child, in which case they are covered by article 17(4). What is remarkable is that in the U.S. model, child support is tax exempt in both countries.

D. Other Income

Under article 22 of the old treaty, ''income not expressly mentioned'' is taxable in the state of residence, but the state of source could also tax that income if it is ''derived from sources within that state.'' Article 20 of the new treaty bars the state of source from taxing that income. Examples of types of items of income covered by this catchall provision include noncompetition indemnities, income from gambling, punitive damages, and some types of income from financial transactions.

IV. Relief From Double Taxation

Belgium grants relief from double taxation according to the exemption with progression method for income other than dividends, interest, and royalties. In calculating the amount of tax on the remainder of the income of that resident, Belgium applies the rate of tax that would have been applicable if the income had not been exempted.

The exemption in Belgium, under article 23 of the old treaty, was given to the income that *has been taxed* in the United States. Article 22 of the new treaty mentions that the income that *is taxed* in the United States will be exempt from Belgian taxation. Since both tax treaties do not include a definition of subject to tax, both ''taxed'' terms should be interpreted following Belgian internal law.

In its Explanatory Memorandum to the Senate,[11] the Belgian government explains that the subject to tax provision should be read in the light of the case law of the Belgian Supreme Court of Justice,[12] which means that the income has been subjected to the tax regime that normally applies, even if the income is tax exempt. This interpretation of the ''subject to tax'' clause has already been confirmed more than once by the Belgian tax authorities.[13]

V. U.S. Citizens Residing in Belgium

Article 1(4) of the treaty contains the saving clause found in all U.S. treaties. The United States reserves the right to tax its residents and citizens notwithstanding any provisions of the convention to the contrary.

A. The Saving Clause

If a Belgian resident receives a pension from the United States, the pension cannot be taxed in the United States under article 17. However, if that resident is also a U.S. citizen, the saving clause permits the United States to include the remuneration in his worldwide income and subject it to tax under the normal IRC rules (that is, without regard to section 894(a)).

Under article 1(4), the United States reserves the right to tax former citizens and former long-term residents[14] for a period of 10 years following their loss of status in accordance with IRC section 877. A former citizen or long-term resident of the United States who relinquishes citizenship or terminates long-term residency continues to be liable to tax if either of the following criteria exceed established thresholds: (a) the average annual net income tax of the individual for the period of five tax years ending before the date of the loss of status, or (b) the net worth of the individual as of the date of the loss of status.[15]

B. Exceptions

Article 1(5) lists some exceptions to the saving clause to grant U.S. citizens and residents benefits that do not exist under domestic U.S. tax law. That is the case for the exemptions from source or residence state taxation for some pension distributions (17(1)(b)), social security payments (17(2)), child support (17(5)), the exemption for investment income of U.S. pension funds (article 17 (6) and (9)), and the relief from double taxation (article 22).

Temporary U.S. residents are entitled to the beneficial tax treatment of pension fund contributions (article 17(7)), host country exemptions for government service salaries and pensions (article 18), some income of visiting students and trainees (article 19), and income of diplomatic agents and consular officers (article 27).

C. Relief from Double Taxation

Since U.S. citizens, regardless of residence, are subject to U.S. tax at ordinary progressive rates on their worldwide income, the U.S. tax on the U.S.-source income of a U.S. citizen resident in Belgium may be higher than if he were not a U.S. citizen. The provisions of article 22(4) must ensure that Belgium does not bear the cost of U.S. taxation of its citizens, former citizens, and former long-term residents who are Belgian residents.

For income originating in third countries (as determined under the laws of Belgium) and received by a resident of Belgium, U.S. taxation will not affect taxation in Belgium. For U.S.-source income, Belgium will grant an exemption of income tax as if the U.S. tax paid on the income were the tax due if the resident were not a citizen, former citizen, or former long-term resident of the United States. In practice, this will not make any difference because Belgium calculates the exemption regarding income. When the United States computes the U.S. income tax on these items of income, the United States will grant a credit for the Belgian income tax calculated in that manner. In allowing the credit, the United States will not reduce its tax below the amount that is taken into account in Belgium.

Since the United States grants a credit for what really is U.S.-source income, the income must be resourced to Belgium before the United States can credit the Belgian tax paid. This is why these items of income are deemed to be from Belgian sources to the extent necessary to avoid double taxation under paragraph 4(b), subparagraph 3(c)(iii) of article 25 (mutual agreement procedure). ◆

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[11]Parliamentary documents, Senate, 2006-2007, 3-2344/1, p. 35.

[12]Cass., Sept. 15, 1970, NV Sidro, *Bull. Bel.* Nr. 489, p. 1.679.

[13]Practice Note nr. Ci.R.9.Div./577.956 (AOIF 21/2006) of May 11, 2006, *available at* http://www.fisconet.fgov.be in Dutch or French.

[14]The U.S. defines ''long-term resident'' as an individual (other than a U.S. citizen) who is a lawful permanent resident of the United States in at least 8 of the prior 15 tax years. An individual is not treated as a lawful permanent resident for any tax year if the individual is treated as a resident of a foreign country under the provisions of a tax treaty between the U.S. and the foreign country and the individual does not waive the benefits of the treaty applicable to residents of the foreign country.

[15]Respectively, US $131,000 (in 2006) and €2 million. The first figure is subject to cost-of-living adjustments.