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News Analysis: Tax Amnesty Falls Short Of Expectations

by Marc Quaghebeur

With just three months to go to the end of the year, Belgian Finance Minister Didier Reynders has lowered his expectations about the outcome of Belgium's tax amnesty. When the tax amnesty was introduced in January, he anticipated a windfall of about €850 million, but as of July, the amounts regularized totaled just over €204 million.

The Tax Amnesty

The Belgian Parliament on December 31, 2003, adopted a law allowing Belgian resident individuals and nonresidents subject to Belgian income tax to regularize the undeclared, or untaxed, assets they held before June 1, 2003. (For prior coverage, see *Tax Notes Int'l*, Jan. 12, 2004, p. 115.)

Throughout 2004, taxpayers can file an anonymous tax return with a Belgian financial institution, pay a tax of 6 percent or 9 percent on their undeclared savings, and be released of any tax liability and any prosecution related to those undeclared savings.

The first official figures, released in July, showed only 759 regularizations. Most of those taxpayers filed their tax returns with a Belgium-based bank or financial institution; the insurance companies did not report any regularizations. And only 13 taxpayers were willing to relinquish their anonymity and file a tax return with Belgian tax authorities, which allowed them to leave their savings abroad. In total, the amounts regularized totaled just over €204 million, an average of €270,000 per taxpayer.

The one-time tax of 9 percent of the value of the undeclared funds or securities must be paid when the tax return is filed. However, the taxpayer can opt for a payment of 6 percent by investing those funds or securities in real property, shares in a private company, stocks, bonds, and other debt instruments and participation rights in collective investment funds, term and savings accounts, a new life insurance contract, or a capitalization contract with an insurance company.

Most taxpayers appear to be discouraged from opting for that solution by the obligation to keep the investments for a period of three years and to provide a guarantee for an additional 6 percent. Eighty-two percent of the taxpayers opted for a single contribution of 9 percent.

In the first six months of 2004, the tax amnesty brought a net return of €17,535,708 for the Belgian treasury, less than 2 percent of the anticipated return of €850 million. The government had expected most taxpayers to regularize their savings before the second half of the year, and the number of regularizations appears to have increased in July and August. Some banks reported an increase of about 25 percent, while ING Belgium recorded twice as many amnesty returns for the period.

Nevertheless, the target of €850 million is still far away. Even Reynders is finally accepting that the tax amnesty is not going to be a success. In a recent interview, he said he was hoping for €200 million to €300 million by the end of October, and a lot more by the end of the year.

Too Many Uncertainties

Most taxpayers were advised to wait and see how several uncertainties would be resolved. The tax amnesty needed not only to be approved by the federal

parliament but also approved by the parliaments of the three regions, because they have fiscal authority for the inheritance tax and registration tax.

That was a problem in the Flemish parliament, where the green party, Groen, opposed the bill. After the regional elections of June 13, the Christian Democrat party, CD&V, also refused to support the tax amnesty bill in the Flemish parliament. While its leader was trying to form a coalition with the socialist and liberal parties, he offered a compromise: Flemish taxpayers would not get a formal tax amnesty, but would receive an informal promise that no investigation would be started if they filed a tax amnesty return.

The lack of Flemish tax amnesty legislation does not invalidate the entire tax amnesty program, but it means that taxpayers who are trying to regularize the proceeds from an untaxed inheritance or donation cannot expect a formal release from liability to the inheritance or registration tax, interest, and penalties.

At the end of May, CD&V also started a procedure before the *Cour d'Arbitrage* (Constitutional Court). It argued that the federal parliament had exceeded its powers and trespassed on the competence of the regional parliaments. More important, however, is its argument that the principle of equality has been violated. While the global tax burden for all taxpayers is very high, a small number now have a chance to pay tax at a beneficial rate of 6 percent. However, CD&V is asking merely for a suspension of the tax amnesty law; it does not want to go so far as to ask for revocation. Because the procedure was not filed until May, it is unlikely that the *Cour d'Arbitrage* will render its decision before the end of the year.

The Luxembourg Association of Banks and Bankers had also argued that the bill discriminates against financial firms from other EU member states, because they cannot offer their clients the same anonymous tax amnesty treatment. The association filed a complaint with the European Commission, claiming an infringement of the principles of free movement of capital and the freedom to provide services (under articles 56 and 49, respectively, of the EC Treaty). (For prior coverage, see *Tax Notes Int'l*, Feb. 9, 2004, p. 502.)

Although EU Commissioner Frits Bolkestein had warned Belgium that he would not approve the tax amnesty without a thorough investigation, it appears that the investigation is not making much progress. It is rumored that French authorities are considering a tax amnesty to take the pressure off of Belgium. And since the current European Commission is at the end of its term, it is unlikely that there will be any objections.

Finally, the *Conseil d'Etat* (Council of State) one of the country's highest courts, suspended part of a royal decree implementing the tax amnesty legislation for taxpayers who opted for the 6 percent contribution, arguing that the procedure for setting up a guarantee could not be enacted by royal decree. That procedure will be formalized in a new law that will be pushed through the Belgian Parliament when it reconvenes in October after its annual recess.

The law itself is not an example of good legislative work. The text that was finally adopted is the result of compromises, and that shows. Although the idea is very simple, the text of the law was unclear and complex. To answer many of the questions raised by the banks, Reynders published a list of frequently asked questions in February. He tried to give a uniform explanation that was consistent with the basic philosophy of the tax amnesty.

However, some of the answers are quite far-reaching and contrary to the text of the law. One answer worth noting was the confirmation that the beneficiary of a trust can regularize bank accounts held by a trustee if the accounts are held entirely and exclusively for the beneficiary.

The list of frequently asked questions left many questions unanswered, though, and those questions were addressed in a second list issued on June 15.

Reynders now says there will be a second tax amnesty advertising campaign in October (after an initial campaign in March), but it is unlikely that it will woo many taxpayers.

Conclusion

The tax amnesty did have much in its favor. It was timed to coincide with the EU savings tax directive, which generally will enter into force on July 1, 2005. From that point on, Belgian taxpayers will no longer be able to hide savings from tax inspectors. Tax inspectors will receive information from most other EU member states about the interest collected by taxpayers. And member states that will not pass on that information will withhold tax at a rate of 15 percent on the interest earned by nonresidents on their savings. (That rate will increase to 20 percent in 2008, and to 35 percent in 2011.)

That message was reinforced by the announcement that the government would ban all bearer securities as of 2007 or 2008. The decision about the ban was deferred until the budget negotiations, but the issue now seems to have been overlooked. The fact that Reynders is not in favor of the ban does not help.

A severe penalty has been tagged on to the tax amnesty. All tax defrauders who do not take the opportunity offered will face a penalty of 100 percent of the tax defrauded. While Reynders had announced that voluntary regularizations with a small penalty are a thing of the past, it appears that the tax law

still authorizes tax authorities to agree to those regularizations and to reduce the penalties.

Many taxpayers realize that the risk of getting caught is minimal. And the mixed messages sent by the tax amnesty law and Reynders do not convey the message that tax dodgers will be found out in the end. Nevertheless, many taxpayers appear to be giving up on their bearer securities in favor of security accounts. The three major banks — ING, Fortis, and KBC — have opened more than 100,000 new security accounts in the past year. Because the withholding tax is the final tax for most Belgian taxpayers, many prefer their Belgian bank to withhold a 15 percent tax and to keep their investments more or less invisible in security accounts.

Furthermore, many taxpayers are organizing their own tax amnesty without paying the regularization tax. Belgian banks reported that once the amnesty was announced, taxpayers began repatriating their savings surreptitiously and investing in long-term insurance bonds and open-ended investment companies (known as SICAV funds), both of which are tax-exempt. ✦

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