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by Ruth De Baere and Marc Quaghebeur

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In 2006 Belgium's most significant tax developments involved coordination centers, the capital risk deduction, dividend taxation, pension funds, expatriate taxation, stock options, tax treaties, VAT, and a tax amnesty.

It was an exciting year for international tax lawyers. Since the European Commission attacked the tax regime for coordination centers under the European state aid rules tax, Belgium has been looking for ways to make the country more attractive to foreign investors. (For prior coverage, see *Tax Notes Int'l*, July 10, 2006, p. 105.)

Coordination Centers

The European Court of Justice has partly annulled the commission's decision requiring Belgium to close down its coordination centers, and it has annulled the EU Council decision condemning Belgium for forbidden state aid to some coordination centers.

A Place for Investors

As of January 1, the capital duty on contributions to the share capital of Belgian companies was abolished, and the capital risk deduction (the notional interest deduction) came into force. (For prior coverage, see *Tax Notes Int'l*, Jan. 9, 2006, p. 13.) That means that Belgian companies and Belgian branches can set off against their taxable profits a percentage of their equity. That percentage is 3.442 percent (plus half a percentage point for small and mid-size enterprises). The percentage is determined based on the interest rate paid on 10-year linear bonds issued by the Belgian state during the past year; for 2007 the percentage will be closer to 4 percent. The deduction is calculated based on the company's share capital and retained earnings, with a few corrections to avoid double tax exemptions (for example, on dividends) and abuses.

Dividend Taxation

In 2007 the benefit of the EU parent-subsidiary directive (90/435/EEC) will be extended to parent companies established in a double tax treaty partner state. The withholding tax will be 0 percent if they hold 15 percent (10 percent in 2009) in the share capital (or voting rights) of the Belgian subsidiary for 12 months.

The ECJ has decided in *Kerckhaert-Morres* (C-513/04) that Belgium does not have to give taxpayers a credit for inbound dividends to set off the withholding tax levied by France. (For prior coverage, see *Tax Notes Int'l*, Dec. 4, 2006, p. 746.)

Pension Funds

Belgium has introduced a specific legal status for pension funds. Pension funds will be taxed on a lump sum basis, based on their disallowed expenses and any abnormal or gratuitous advantages received. Pension funds will have the benefit of Belgium's 86 double tax treaties.

'Tax on Tax' for Expatriates

Employers that offer their expatriates a guaranteed net income usually pay the tax for their employees in the following year upon receipt of the tax assessment. That payment constitutes taxable income for the expatriate. However, a problem arises when the tax is paid in the year following the expatriate's departure from Belgium; that is, in a year in which he was present in Belgium for not more than the 183 days, as referred to in article 15 of the OECD model treaty. The case law until now was in favor of the taxpayer. For the first time, the question was put to a court of appeal, and it decided in favor of the tax authorities. The Court of Appeal in Liege has decided that the tax paid by a U.S. employer for one of its expatriates in the year following his departure from Belgium is taxable income on behalf of the employee. Additional cases are pending before other courts of appeal.

Stock Options

Although most other countries tax options at exercise, since 1999 Belgium has taxed options at the time of grant. (For prior coverage, see *Tax Notes Int'l*, Sept. 12, 2005, p. 1013.) The Belgian Constitutional Court has decided that the fact that every employee must pay income tax upfront, regardless of whether he will be able to exercise the option, is not discriminatory. That decision is bad news for all employees who lost money as a result of the closing of some Belgian companies.

Treaty Developments

In 2006 Belgium's income tax treaties with Gabon and the Republic of China became applicable. Also, the tax treaty with Azerbaijan came into force on August 12, 2006; its actual application will start from 2007. Belgium has also signed treaties with Macao, Morocco, San Marino, and Seychelles.

Belgium signed a new income tax treaty with the United States on November 27, 2006. (For prior coverage, see *Tax Notes Int'l*, Dec. 4, 2006, p. 733.) Withholding tax on dividends will be zero rated for a U.S. parent holding 10 percent of the voting rights and for a Belgian parent holding 80 percent. Interest will also be zero rated. Resident employees paying into the pension funds of the other state will be entitled to tax deductions.

The Belgian tax authorities have published practice notes in which they explain their interpretation of key articles of the OECD model treaty, including article 15 (employment income), article 18 (allocation of the right of taxation over private pension income), and most recently article 23 (exemption of foreign income and the "subject to tax" clause). As a result of these tax authority guidelines, the tax inspectors are more closely investigating the reality of the salary splits.

VAT

Inspired by ECJ case law, the government has implemented a new antiavoidance rule that defines abusive practices as being transactions that are carried out to give the VAT payer a tax advantage that is contrary to the purpose of the VAT laws. In that case, the VAT payer will have to reimburse the input VAT recovered. Belgium will introduce a system of VAT consolidation as of 2007. Separate legal entities that are closely connected financially, economically, and organizationally will be able to file one VAT return for all enterprises of the same group.

Tax Amnesty

A new permanent tax amnesty was introduced to allow individuals and companies to regularize their undeclared income. The effect of that regularization procedure is wider than in 2004; it offers protection against criminal prosecution as well. The tax rate is the rate of the tax evaded at the time. This tax amnesty has not proved successful yet, as it has netted only approximately €5 million. ◆

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