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GES NewsFlash

Belgium - New tax measures for personal income

August 4, 2011

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Several new tax measures have recently been approved or clarified in various domains of personal income taxation.

You will find below some of the most important measures which have been introduced over the last months.

1) Exemption from tax return filing obligation in Belgium

On 25 March 2011, an administrative commentary was published, explaining in detail which categories of taxpayers can be exempt from filing Belgian personal income tax returns.

These taxpayers have no filing obligation but automatically receive a (simplified) proposition of taxation (including a provisional tax computation) for their approval.

Under the current rules, two categories of taxpayers can be exempt from filing tax returns:

1. Taxpayers who do not have to file a tax return and who do not receive a proposition of taxation from the tax authorities (for taxpayers with income not exceeding the tax-free amount);
2. Taxpayers who do not have to file a tax return and who receive a proposition of taxation from the tax authorities (for taxpayers only having limited real estate or certain pension related income).

On 30 March 2011, a Royal decree extending both categories of taxpayers has been published in the Belgian Official Journal.

Based on this Royal Decree, taxpayers have no tax filing obligation if they did not receive any other income or did not have any expenses during the previous fiscal year, apart from listed income and expense items such as pension income, unemployment or invalidity income, service voucher expenses, withholding taxes, etc.

When the taxable income does not exceed the tax-free amount, the tax authorities will still not issue a proposition of taxation.

However, the exemption from filing a tax return is not applicable in the following cases:

- Foreign or exempt income needs to be reported
- Foreign bank accounts need to be reported
- The taxpayer has a residence abroad
- Part two of the income tax returns needs to be completed (i.e. miscellaneous

income, movable income, income from self-employed activities, etc)

The new measure applies from fiscal year 2011 (i.e. income year 2010).

Deloitte's view

Fewer Belgian taxpayers will have a tax return filing obligation. This will result in a lower administrative burden for the tax authorities and for the concerned individuals. However, the situations to which this filing exemption applies are rather limited.

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2) Part year residence

A Royal decree of 22 December 2010 ended the discussion regarding the interpretation of the taxable period for non-resident taxpayers arriving or leaving Belgium throughout the calendar year.

It is now made clear that the tax reference year is the full calendar year, even if the individual is not present in Belgium during this period.

This has several implications on:

- the type of income tax return to be filed (standard assessment year or special assessment),
- the deadline for the authorities to issue the tax bill and for the taxpayer to file a claim against the taxation,
- the tax filing position of the taxpayer (with or without having maintained a residence in Belgium during the whole taxable period).

A non-resident arriving in Belgium or leaving Belgium in the course of the year is not considered as having a residence in Belgium. The only way to benefit from personal tax deductions and credits in those situations is the application of the 75%-rule (i.e. if 75% of your worldwide income is taxable in Belgium) which also has to be assessed on a full calendar year basis.

When the residence status of a taxpayer changes from non-resident to resident in the course of a calendar year, the period of stay in Belgium as a non-resident has to be considered separately from the stay in Belgium as a resident.

This change in legislation enters into force as of fiscal year 2011.

Deloitte's view

This change in legislation will have a considerable impact on Belgian non-resident taxpayers who are not present in Belgium during a full calendar year. This means that personal deductions and tax credits will no longer be granted for taxpayers who are not present in Belgium during the full year and with whom the 75%-rule is not met. As such, the tax computation estimates which have been made for income years 2010 and 2011 may no longer be accurate in view of this new legislation.

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3) Tax deductions for non-residents

Under the current legislation, tax deductions for alimony payments (granted to a Belgian resident taxpayer) and gifts (towards Belgian institutions) are foreseen for all non-resident taxpayers.

Non-residents with a residence in Belgium or those qualifying for the 75%-rule are entitled to apply other personal deductions as well (e.g. for domestic servants, for repayment of loans). Alimony payments paid by a non-resident to another non-resident are not tax deductible.

Based on the bill regarding miscellaneous measures which was recently adopted in Parliament, alimony payments paid by non-residents to Belgian residents and gifts made by non-residents will now only be deductible if the non-residents have a residence in Belgium or if they qualify for the 75%-rule. Alimony payments by a non-resident to another non-resident remain non-deductible.

This new measure applies from 1 January 2010.

However, it should be noted that nationals from certain countries with which Belgium has concluded a tax treaty, providing an equal treatment clause, may benefit from a limited application of the personal deductions and reductions.

4) Partial relief of banking secrecy

In principle, the tax authorities cannot request information on taxpayers from financial institutions in order to impose taxation upon them.

However, the bill regarding miscellaneous measures allows the tax authorities to request information from financial institutions if there is any indication of tax fraud, or the tax authorities suspect that not all income is declared in the income tax return.

However, the tax authorities must follow a specific procedure. As such, they must first request the information from the taxpayer himself before they may contact the financial institution.

Note that the banks and similar institutions must cooperate with the tax authorities once they have received such a request from the latter. This also applies when the request for information comes from foreign tax authorities.

This new measure will enter into force from 1 July 2011.

Deloitte's view

This measure shows that the Belgian banking secrecy is gradually disappearing. It is mainly inspired by the aim of the Belgian government to align its legislation with the OECD directives regarding the uncooperative jurisdictions.

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5) Communal taxes on foreign movable income

On 1 July 2010, the European Court of Justice issued a judgment related to the compatibility of additional communal taxes on foreign-source movable income with the free movement of capital (old Art. 56 EC-Treaty, now Art. 63 Treaty on the Functioning of the European Union).

This judgment triggered an amendment of the Belgian tax legislation which has been proposed in the bill regarding miscellaneous provisions.

Current Belgian legislation

A final Belgian withholding tax without additional communal taxes applies when a Belgian resident receives:

- Belgian-source movable income (e.g. interests and dividends);
- Foreign-source movable income through a Belgian intermediary.

In these cases, there is no obligation to report this income in the Belgian tax return (Art. 313 ITC).

However, when a Belgian resident receives foreign-source income without the intervention of a Belgian intermediary, no Belgian withholding tax is applied and the income must be reported in the tax return. In this case, the income is subject to the fixed rate (which is the same as the withholding tax rate), but also to the additional communal tax.

Modification of the Belgian tax law base on the ECJ decision

As the European Court of Justice found the levy of additional communal taxes on foreign (EEA) dividends to be incompatible with the EU free movement of capital and payments, the bill regarding miscellaneous measures abolishes communal taxes on movable income received from within the EEA.

This applies from income year 2010.

Deloitte's view

With this amendment, the Belgian government aims to comply with the decision of the European Court of Justice in the Dijkman case. However, a doctrine states that this abolishment of additional communal taxes should also be extended to movable income from third (non-EEA) countries.

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People to contact

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