

Corporate Tax Alert

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6 August 2013

Compliance with CJEU judgments (*Aberdeen/Commission v. Belgium/Tate & Lyle*): withholding tax on Belgian source dividends becomes final tax for Belgian regulated investment companies

The CJEU found the Belgian withholding tax (WHT) regime to go against the fundamental freedoms in two recent judgments: *Tate & Lyle* (C-384/11) and *Commission v Belgium* (C-387/11). Previous Corporate **Tax Alerts** provide more information about these two cases.

The Belgian legislator has finally adjusted (some of) the discriminatory provisions in the Belgium Income Tax Code. A recent bill, which has been adopted by Parliament and was published in the Belgian Official Journal on 1 August 2013, states that Belgian regulated investment companies will no longer be allowed to obtain a credit and/or a refund of withholding tax paid on dividends received. Following this legislative change, resident and non-resident investment companies will be treated equally and Belgian tax legislation will become compliant with the *Commission v. Belgium* case judgment.

As an exception to the general rule of eliminating credit/refund of withholding tax on Belgian source dividends for Belgian regulated investment companies, sub-funds of Belgian regulated investment companies, the shareholding of which is only composed of Belgian pension funds (OFP), will continue to benefit from a withholding tax credit/refund.

As a result of this change, non-resident companies will no longer be able to file reclaims for WHT relating to assessment year 2014 on the basis of the *Commission v Belgium* case. It should be noted that **reclaims for Belgian withholding tax paid as of 1 January 2009 are still possible until 31 December 2013**, as these dividends fall within the applicable 5 year statute of limitation applied by the Belgian Tax Authorities. For dividends paid during 2012, a reclaim can be filed until 31 December 2016.

As stated in previous **tax alerts**, valid arguments can be developed to defend a ten year statute of limitation period.

Withholding tax reclaims which have been filed **before the circulars issued by the Belgian tax authorities (Corporate Tax Alerts of 19 March 2013 and 12 July 2013)** should be completed with the required information and/or documents to increase their chances of success.

Withholding tax **reclaims on the basis of the Tate & Lyle case can still be submitted** for dividends received in 2013, as Belgian legislation has not been adjusted (yet).

Contact

Any questions concerning the items in this publication? Please contact your usual tax consultant at our Deloitte

office in Belgium or:

- Wim Eynatten, weynatten@deloitte.com, +32 2 600 67 59
- Brecht Sohier, bsohier@deloitte.com, +32 2 600 67 60
- Stéphane Jourdain, sjourdain@deloitte.com, +32 2 600 66 80

For general inquiries contact:

- **bedeloittetax@deloitte.com**, + 32 2 600 60 00

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