



Corporate tax alert Belgium

CJEU rules Belgian stock exchange tax is not contrary to EU law

The Court of Justice of the European Union (CJEU) issued its decision on 30 January 2020 in a case (C-725/18) referred by the Belgian Constitutional Court in 2018, concluding that 2017 amendments to Belgium's stock exchange tax (taxe sur les opérations de bourse/Beurstaks, or TOB) are not contrary to EU law.

Background

Belgium has imposed the TOB since 2007 on transactions (e.g., purchases and sales of shares, employee stock options, other financial instruments, etc.) taking place in Belgium that involve Belgian or foreign funds. For 2020, the tax is payable at rates ranging from 0.12% to 1.32%, depending on the type of instrument. Initially, the tax was due only when the transaction was executed by a Belgian professional intermediary, enabling investors to avoid payment of the TOB by using foreign intermediaries.

Following a legislative change applicable as from 1 January 2017, the scope of the TOB was extended to include transactions executed by Belgian residents through professional financial intermediaries established outside Belgium. In such cases, the Belgian resident issuing the instruction to carry out the transaction is liable to pay the TOB (and file the required TOB returns), since Belgium cannot enforce obligations arising under Belgian tax law against foreign intermediaries. An exception may apply where the Belgian resident can prove that

the tax already has been paid by the foreign intermediary, or by a fiscal representative of the intermediary in Belgium.

The taxpayer in the case at hand argued that the amendments to the legislation discourage Belgian issuers from using foreign intermediaries because doing so entails increased risk, is more expensive, and creates additional administrative obligations.

The Belgian Constitutional Court referred the matter to the CJEU for a preliminary ruling on the compatibility of the legislative change with EU law.

Decision of the CJEU

The CJEU examined the compatibility of the measure with the freedom to provide services under article 56 of the Treaty on the Functioning of the EU (TFEU) and found that the situations of a Belgian resident using a Belgian intermediary and a Belgian resident using a foreign intermediary are comparable. In addition, the tax treatment in both situations is identical. However, where a foreign intermediary is used, the Belgian resident incurs a tax liability and has additional compliance obligations. The revised Belgian rules, therefore, introduce a difference in treatment in comparable situations.

According to the CJEU, the difference in treatment is justified to ensure fiscal supervision, to facilitate collection of the tax, and to combat tax evasion, which in the court's view are all connected in the case at hand. The CJEU also decided that the legislative changes were proportionate to the objective since Belgian residents can be relieved from their obligations by proving, amongst others, that the tax already has been paid, and by allowing the foreign intermediary to appoint a fiscal representative in Belgium. The CJEU concluded that the measure does not go beyond what is necessary to achieve these objectives, and it is not contrary to article 56 of the TFEU.

Comments

The decision establishes that the amendments to the TOB are in line with EU law. The CJEU appears to have deemed this to be a straightforward case as it delivered its ruling without an Advocate General's opinion. Contrary to other cases that involved the appointment of a fiscal representative, the court did not find that this possibility violated EU law, likely because it was viewed as an option for the taxpayer and not a requirement.

The case has been referred back to the Belgian Constitutional Court for the latter to issue its decision. The Constitutional Court is expected to follow the CJEU's decision.

Contacts

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