Deloitte.

Belgium
Belastingconsulenten / Conseils fiscaux

Corporate Tax Alert
News you can count on

27 January 2014

New Belgium-China income tax treaty applicable as of 1 January 2014

On 7 October 2009, a new double tax treaty and protocol on double taxation was signed by Belgium and China. It replaces the Belgium-China income tax treaty of 18 April 1985, as amended in 1996. Finally, with the completion of the notification procedure between both countries and as confirmed today on the site of the Ministry of Finance, the new tax treaty entered into force on 29 December 2013, restating its previous announcement of 20 December 2013 referring to 4 January 2014. As a result, the new treaty applies to income arising as from 1 January 2014 and for income pertaining to fiscal years beginning as from 1 January 2014.

Introduction

This new treaty is basically on par with the income tax treaties of other important trading partners of China (such as Hong Kong or Singapore) and can be viewed as a confirmation of Belgium's favourable position in the Asia Pacific region. Belgium was the first European country to sign an income tax treaty with Hong Kong (in force since 2004) and concluded a new income tax treaty with Singapore (in force since 2008).

The new treaty generally follows the OECD Model Convention and the relevant differences from the 1985 treaty are summarised and briefly discussed below:

- New definition of construction and services permanent establishments ('PE');
- Lower dividend and royalty withholding tax rates;
- New exemption rule for capital gains on shares;
- Changes in the provisions with respect to the elimination of double taxation;

Permanent establishment: broader definition

Construction PE

The income tax treaty now states that a building site, construction, assembly or installation project or the related supervision thereof constitute a PE if such site, project or supervision lasts more than 12 months instead of 6 months according the 1985 tax treaty.

Services PE

The time span for a services PE has been changed from "more than six months within any 12-month period" to "more than 183 days within any 12-month period".

Lower withholding taxes

Dividends

The withholding tax rate is reduced from 10% to 5% for dividends paid by a Chinese company to a Belgian resident company (not a partnership) provided the latter qualifies as the beneficial owner of the dividends and has been holding directly 25% or more of the Chinese company's capital for an uninterrupted period of at least 12 months prior to the payment. In all other cases, the maximum withholding tax remains 10%. Note that the extended Parent-Subsidiary exemption under Belgian domestic law may (subject to certain conditions) provide for a full withholding tax exemption in case of dividend distributions where the Chinese recipient is a company and has or will hold a shareholding of 10% during an uninterrupted period of one year.

Interests

The maximum withholding tax rate for interests remains at 10%.

Royalties

The withholding tax rate for royalties under the new treaty is reduced from 10% to 7% of the gross amount of royalties.

Anti-avoidance rule

The new tax treaty adds a specific anti-avoidance rule in the last paragraph of article 10 (dividends), 11 (interests) and 12 (royalties). This rule prevents the relevant treaty article's application and hence reduced withholding tax rates, if the underlying income generating assets (shares, debts, rights, etc.) are created or assigned with the main purpose or one of the main purposes being to take advantage of the respective treaty articles.

New rules for capital gains

The new treaty retains most of the 1985 treaty provisions but two relevant changes have been made.

Capital gains from the alienation of shares may be taxed in the residency state of the company whose shares are alienated (the "source state") provided the alienator has owned at least 25% of the shares of that company. The new treaty adds a time element to this 25% shareholding assessment by adding "at any time during the 12-month period preceding such alienation, directly or indirectly".

Capital gains on shares cannot be taxed in the source state, however, if there is substantial and regular trade in the shares on a recognised stock exchange and the total of shares alienated during the fiscal year in which the alienation took place, does not exceed 5% of the quoted shares.

Elimination of double taxation

The provisions relative to the elimination of double taxation in Belgium include some important changes. These changes provide amongst others for a broader application of the Belgian participation exemption.

Profits of a Chinese branch

Under the new tax treaty, the Belgian exemption for foreign branch profits does not apply where such profits are derived by a permanent establishment in China which has exclusively or mainly specific passive income activities (e.g. a finance or royalty branch). Note that for regulatory reasons, it would generally not be possible for foreign investors to have finance or royalty branches in China.

Hybrid entities

The new tax treaty provides a relief in situations whereby double taxation could arise as a result of an investment by a Belgian resident in a Chinese transparent entity (e.g. Chinese Business Trust) which is treated as non-transparent for Belgium income tax purposes. Under the treaty provisions, dividends received by a Belgian investor from such entity will be exempt in Belgium, provided the Belgian resident has been taxed in

China on said income (proportionally to his participation in such entity) being treated as dividend under Belgian law.

Dividends of a Chinese company not meeting the subject-to-tax test

Dividends derived from a Chinese resident company which are not exempted from corporate income tax in Belgium, shall nevertheless be exempted from corporate income tax if the Chinese resident company is engaged in "the active conduct of a business in China". In that case, such dividends shall still be exempted under the conditions and within the limits provided for in Belgian law with the exclusion of the "subject-to-tax" condition.

Miscellaneous

The revised article 23 now explicitly states that nothing in the treaty affects the right of each country to apply its domestic laws and measures concerning the prevention of tax evasion and avoidance, whether or not described as such, provided doing so does not give rise to taxation contrary to the treaty.

Contact

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

- Coen Ysebaert, **cysebaert@deloitte.com**, +32 9 393 75 36

For general inquiries contact:

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

Be sure to visit us at our website: **http://www.deloitte.com/be/tax**

Related links

Deloitte Tax News & Publications
Deloitte Academy
Dbriefs Webcasts

Follow the latest Tax news on

Berkenlaan 8b
1831 Diegem
Belgium