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Application of Belgian 'TIS' amended

On August 1, 2013 a new law was published in the Belgian Gazette, which amends the current taxation of a deemed interest component, included in capital gains on shares of certain investment funds realized by Belgian residents as laid down in article 19bis of the Belgian Income Tax Code (Belgian 'TIS').

Prior to this new law, taxation of a deemed interest component (taxed at 25%) included in realized capital gains on shares of funds only occurred on the occasion that the following conditions were simultaneously met:

1. the capital gain was realized at the moment of (i) transfer for consideration (i.e. any ordinary sale), (ii) the repurchase of own shares/units by the fund or (iii) the (partial) liquidation of the fund;
2. the fund has invested at least 25% of its assets directly or indirectly in qualifying debt claims;
3. the fund benefits from a European passport (Directive 2009/65) or is established outside of the European Economic Area;
4. the by-laws of the fund do not provide for a yearly distribution of all its net income;

The new law amends article 19bis of the Belgian Income Tax Code in such a way that it is no longer necessary that the fund has to benefit from a European passport in order to come in scope of the taxation of a deemed interest component.

Therefore, as of July 1, 2013, all funds, directly or indirectly investing 25% of their assets in qualifying debt claims and for which the by-laws do not provide for the distribution of the net income, will be in scope of the new Belgian TIS.

Next to the enlargement of the scope of the Belgian TIS, the new law also provides some specifics with respect to the calculation of the Belgian TIS for funds not benefiting from a European passport:

1. the deemed interest component should be calculated taking into account the net asset value of the fund per July 1, 2008;
2. the Belgian TIS will be deemed equal to an amount calculated by applying a 3% interest rate on the investment value of the qualifying debt claims held from July 1, 2008 to July 1, 2013 for funds located in the European Economic Area, not benefitting from a European passport, who are not able to calculate the Belgian TIS;
3. the calculation of the Belgian TIS can take into account the interest income that has been distributed (lowering the Belgian TIS).

Contact

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