



## FSI tax alert Belgium

### Belgian Tax Administration Broadens Tax on Savings Income Scope

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On 8 April 2016, the Belgian Tax Administration issued an addendum ([FR/NL](#)) to the 25 October 2013 Circular Letter Ci.RH.231/629.328 regarding the application of the Belgian Tax on Savings Income (also referred to as the “**Reynders Tax**”). The addendum amends the abovementioned Circular Letter and extends the scope of the Belgian Tax on Savings Income by increasing the amount of investment funds which may fall under the tax.

According to Article 19*bis* of the Belgian Income Tax Code (“**ITC**”), the 27% Belgian Tax on Savings Income is applicable to the interest component embedded in the capital gain (the so-called Taxable Income per Share or “**Belgian TIS**”) realised by a Belgian individual investor upon the transfer against consideration or redemption of units in qualifying investment funds or upon the (partial) liquidation of such funds.

Article 19*bis* ITC refers in this context to units in “*undertaking for collective investment in transferable securities (UCITS)*”. The latter notion is not defined in Belgian (tax) law. Since the Law of 30 July 2013, this notion comprises both funds with or without European passport.

The Circular Letter of 25 October 2013 clarified that the reference to UCITS should be understood as undertakings for collective investment, as defined in Article 3, §1 of the Law of 3 August 2012, i.e. undertakings, Belgian or foreign, having as sole object the collective investment of funds, which invest the funds they collect in one of the asset classes referred to in Article 7, §1, 1° or 2° of the same law, namely in:

- 1) investments in accordance with the conditions of the UCITS IV Directive 2009/65/EC;
- 2) financial instruments and liquidity.

Undertakings for collective investment which invest their assets in classes referred to in Article 7, §1, 3° to 9° of the Law of 2012, fell outside of scope of the Belgian Tax on Savings Income according to the above-mentioned Circular Letter, i.e.:

- 3) Commodities, options and commodity futures;
- 4) Options and futures on financial instruments and market index contracts;
- 5) Real estate;
- 6) High risk capital;
- 7) Debt receivables held by third parties and transferred by agreement, under certain conditions, to an undertaking for collective investment;
- 8) Financial instruments issued by non-listed companies;
- 9) Other investments listed by Royal Decree.

The new addendum of 8 April 2016 revokes the above interpretation and now clarifies that all undertakings for collective investment, regardless of their legal form and of how they are offered to investors, are targeted by the Belgian Tax on Savings Income. Investments by a fund in one of the above asset classes is no longer a criterion which can be used to determine the application of the Belgian Tax on Savings Income. Instead, for all funds, the asset test, which determines whether a fund has invested more than 25% of its assets in qualifying debt receivables, must be used.

This addendum can be criticised. The Tax Administration changed the scope of the Belgian Tax on Savings Income even though the text of Article 19*bis* ITC remains the same. The new administrative position is based on the new European Savings Directive. However, the latter was repealed before it was ever implemented and was replaced by Directive 2014/107/EU of 9 December 2014, which implements the Common Reporting Standard in the EU. The Tax Administration furthermore supports its position by the fact that the Law of 3 August 2012, to which the 2013 Circular Letter referred, was amended by the Law of 19 April 2014. Although this is correct, the Law of 19 April 2014 merely moved the provisions referred to in the 2013 Circular Letter without changing their meaning.

The new position is applicable to transactions taking place as of 1 July 2016. Funds and fund managers should review whether they fall within the enlarged scope of the Belgian TIS and communicate about the Belgian asset test and Belgian TIS to paying agents and investors.

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