



FSI tax alert Belgium

Catch all-clause: Tax authorities' clarification on withholding tax obligation



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The Belgian tax authorities have issued a notice in the Belgian Official Gazette ([NL](#) | [FR](#)) containing practicalities with regard to the withholding tax obligation in light of the catch-all clause (Article 228, § 3 of the Belgian income tax code).

The catch-all clause was introduced in Belgian tax legislation to ensure effective taxation of income that is paid or attributed to a Belgian tax non-resident, where it was not possible before its introduction (as it was not within the scope of Article 228, § 1 and 2 of the Belgian income tax code). The catch-all clause entered into force as of 1 March 2013.

The following conditions need to be fulfilled:

- The income is considered as taxable in the Belgian income tax code provisions related to personal income tax, corporate income tax and legal entity tax;
- The income needs to be borne by a Belgian resident (individual or legal entity), by a public body (State, Regions, etc.) or by a Belgian non-resident's (Belgian) establishment;
- The power of taxation needs to be attributed to Belgium based on the applicable double tax treaty, or the Belgian non-resident cannot prove that the income is taxed in its residence state (when no double tax treaty is applicable).

The tax authorities' notice addresses the following topics:

- Who is the debtor of the withholding tax?
- Profits and proceeds that are within the catch-all clause's scope;
- The determination of the withholding tax amount (see below);
- How to prove that the income is taxed in the residence state (when no double tax treaty is applicable);
- The consequences for the income beneficiary.

Scope of the catch-all clause

The catch-all clause as mentioned in the Belgian income tax code has a broad scope, which leads to uncertainty within Belgian companies as this clause and the subsequent tax has an effect on their competitiveness.

In a discussion, the Belgian Minister of Finance has acknowledged these concerns. This has led to the recent notice, which in turn defines the scope to a list of profits and proceeds **resulting from a delivery of services**.

The Belgian legislature has not yet amended Article 228, § 3 of the Belgian income tax code due to

Determination of the withholding tax amount:

- Withholding rate of 33%;
- A lump sum cost deduction of 50% is applied;
- No withholding tax needs to be withheld on the first EUR 38,000. This threshold needs to be assessed separately for each beneficiary per year by each debtor.
- In treaty situations, the applicable withholding tax rate may be limited depending on the provisions of the applicable double tax treaty.

Example:

A Belgian company pays the following amounts for services rendered by a Brazilian company.

27 May 2014: EUR 15,000
26 June 2014: EUR 10,000
24 October 2014: EUR 17,000
20 November 2014: EUR 10,000

The EUR 38,000 threshold is only exceeded as of the third payment. In respect of this third payment withholding tax needs to be withheld on an amount of EUR 4,000 and amounts to EUR 660 (i.e. EUR 4,000 x 50% x 33%).

The provisions of the Belgian – Brazilian double tax treaty need to be taken into account as well. According to this treaty, the withholding tax needs to be limited to 10% of the paid amount. This means that the withholding tax on the fourth payment will be limited to EUR 1,000 (i.e. EUR 10,000 x 10) instead of EUR 1,650 (i.e. 10,000 x 50% x 33%).

Impacted taxpayers should review their position regarding compliance with the catch-all clause based on this clarification and can claim back withholding tax that was unduly withheld.

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