Belgium | Deloitte Tax | 28 July 2014

# Individual tax alert
## Belgium


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# Additional tax credit for foreign source income

The increases to the tax-free allowance (e.g. for dependent children) are attributed to the spouse earning the highest income. If this spouse earns income that is exempt from taxation in Belgium, the tax benefit is lost as it is attributed to income that is exempt in any case.

In response to the recent case law of the European Court of Justice and the Constitutional Court (NL | FR) on this matter, the Belgian tax authorities have amended their Circular Letter of 12 March 2008 (Ci.RH.331/575.420 (AOIF 8/2008)) (NL | FR) with regard to the additional tax credit for foreign source income (that can be claimed on top of the normal tax credit). According to the Circular Letter of 1 July 2014 (Ci.RH.331/633.468 (AAFisc 27/2014) (NL | FR) any unused part of the tax credit and additional tax credit for foreign source income can be transferred from one spouse to another if there is no Belgian tax due to set the credit off against.

The additional tax credit for foreign source income can be attributed if:

- The taxpayer has earned income in another EEA country which is exempt from taxation in Belgium;
- The personal and family situation of the taxpayer has not been taken into account in the aforementioned state to determine the taxes on the income that is exempt in Belgium;
- The taxpayer cannot fully obtain the tax benefits in Belgium taking into account his personal and family situation;
- The Belgian and foreign taxes on the exempt income are higher than the taxes that would have been due in case the income was fully derived from a Belgian source and thus taxable in Belgium.

As regards the second bullet, the new circular letter mentions that the additional tax credit for foreign source income cannot be applied in case the income is derived from Luxembourg, France and the Netherlands. In these countries, a (pro rata) benefit for the personal and family situation is obtained.

**Example:**

| | **Spouse 1** | **Spouse 2** |
|---|---|---|
| Actual Belgian tax due | EUR 0.00 | EUR 15,000.00 |
| Actual foreign tax due | EUR 35,000.00 | EUR 0.00 |
| **Total tax due** | **EUR 50,000.00** | |

| | | |
|---|---|---|
| Belgian tax due in case the income would have been earned in Belgium | EUR 32,500.00 | EUR 15,000.00 |
| **Total tax due** | **EUR 47,500.00** | |

| | |
|---|---|
| Additional tax credit | EUR 2,500 (i.e. EUR 50,000 less EUR 47,500) |

**Attribution before the new Circular Letter:**
Proportional attribution between the spouses based on the normal tax credit for foreign source income. As spouse 2 does not benefit from the normal tax credit, the additional tax credit is fully attributed to spouse 1, as he does not have any Belgian tax due, the additional tax credit is lost. In other words, the overall tax due amounts to EUR 50,000.00 (i.e. EUR 35,000.00 + EUR 15,000.00).

**Attribution after the new Circular Letter:**
Any unused additional tax credit can be transferred to the other spouse.
In other words, the overall tax due is lowered to EUR 47,500.00 (i.e. EUR 35,000.00 + EUR 15,000.00 **less EUR 2,500.00**)

**A few practical considerations:**

- The Belgian tax authorities will take the new Circular letter into account for pending tax claims and court cases.
- A formal tax claim can be filed within 6 months following the receipt of the Belgian tax assessment note.
- An *ex officio* tax relief can be filed within 5 years as of 1 January of the year in which the tax assessment note was issued unless a formal tax claim has been filed in the past and a final decision by the Belgian tax authorities has been issued.

  This means that in case the Belgian tax assessment note for income year 2009 (tax year 2010) was issued in 2010, an *ex officio* tax relief can be filed until 31 December 2014.

## Contacts

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


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