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Individual tax alert
Belgium

Termination payments – Update

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International update

OECD rules & recap

On July 2014, an update of the OECD Model Tax Convention (MTC) was approved. One of the main updates was the inclusion of additional guidelines for the allocation of taxing power on termination payments in an international context.

Previously, comments on article 15 (income from employment) by the OECD MTC included an extensive explanation on pensions or similar payments, but did not include any comments regarding the various range of termination payments. Hence, Belgian national legislators were required to cover this void and published their 25 May 2005 Circular letter, in which a distinction was made between compensatory and non-compensatory termination payments, with each their allocation key.

It is clear that the OECD commentaries introduce a very broad definition of termination payments (i.e. 13 new payments with each their rules for allocation of taxing power – click here). Nevertheless the key driver remains that, for each such payment, it is essential to determine the reason for payment as well as the underlying facts and circumstances of each payment to determine the correct allocation key.

For severance payments (*sensu strictu* also referred as "redundancy payment"), reference is made to where the employment was exercised during the last 12 months of employment.

Belgian & other countries update

The Belgian tax authorities are currently preparing an update to their current circular letter of 25 May 2005 to align it with new commentaries on the OECD MTC. However, as the latter still needs to be drafted and approved by the Central authorities, Deloitte's experts expect a final confirmation in a new circular letter only by the beginning of next year.

Not all countries will follow the new OECD guidelines. Therefore, it is recommended to verify with the countries involved upon termination. For example the Netherlands, Luxembourg and the UK will follow OECD commentaries, but not for all payment types. On the other hand, Germany will not follow the new guidelines and France has yet to make an official statement. Therefore, even with the new guidelines in place, prudence is still required. Deloitte will provide updates in due time.

National update

In Belgium, severance payment is taxed at the average tax rate of the last year preceding the year of payment in which the tax payer had a normal 12 month professional activity. The Belgian tax authorities have always stated that directors are excluded from this exceptional tax rate and that their severance payments are always taxable at progressive rates.

The Constitutional Court (i.e. nr. 127/2015) recently stated that the Belgian tax authorities' interpretation is too strict and infringes the principle of equality. As such, both employees and directors can apply the average tax rate on severance payments, which is not mandatory if the progressive tax rates become more beneficial.

The average tax rate is a tax benefit, which will in most cases result in a lower tax liability on the severance payment. Based on this judgment, employees as well as directors can benefit from this advantage.

Contacts

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