



Global Employer Services

Individual tax

End of double taxation on French-source dividends?

The Belgian Supreme Court has put an end to the double taxation on French sourced dividends paid to Belgian tax residents through its recent decision of 16 June 2017. As a result, Belgian private investors will see the tax burden on their French-source dividends decrease from 40.5% to 27.5%.

Background

The treaty for the avoidance of double taxation, concluded between Belgium and France, provides in Article 19.A.1. that « [...] *The tax due in Belgium on the income, after deduction of French tax [...] will be reduced on the one hand, by the movable prepayment levied at the normal rate and, on the other by the lump-sum amount of foreign tax which may be deducted under the conditions laid down in Belgian law; however, that lump-sum amount may not be less than 15% of the amount of the income after deduction of the French tax* ».

However, Belgium abolished the foreign tax credit for private individuals in 1998 and the Belgian tax administration systematically refuses to grant a foreign tax credit on the basis of this treaty provision.

Judgment of the Court

In the case at hand, the taxpayers had received French-source dividends of around 3 million Euros. In accordance with the French–Belgian tax treaty, these dividends were first subject

to French withholding tax at the rate of 15%. Then, a 25% Belgian tax withholding (30% today) was processed on the net amount (after French withholding tax).

The taxpayer claimed that the treaty prevails over national law, entailing that he should get a 15% foreign tax credit to avoid double taxation, regardless of the foreign tax credit mechanism being abolished in Belgian domestic legislation.

Contrary to the case law established so far, the Belgian Supreme Court agrees with the taxpayer's request, invoking the supremacy of the international treaties, concluded by Belgium, over Belgian domestic legislation.

Impact (anno 2017)

As a result, Belgian private investors will see the tax burden on their French-source dividends drop from 40.5% to 27.5%.

| Mechanism applied by the tax authorities | | Mechanism confirmed by the Supreme Court | |
|--|-----------|--|-----------|
| Gross Dividend | EUR 1,000 | Dividend | EUR 1.000 |
| FR WHT (15%) | EUR 150 | FR WHT (15%) | EUR 150 |
| BE Taxes | EUR 255 | BE Taxes | EUR 127.5 |
| (30% x EUR 850) | | [(30%-12,75%(*)) x EUR 1000] | |
| Net dividend | EUR 595 | Net dividend | EUR 722.5 |
| + EUR 127,5 | | | |

(*) Minimum 15% of net border income (15% x EUR 850)

Possibility to recover overpaid taxes?

Belgian taxpayers could consider filing a request for an *ex officio* tax relief to claim back the overpaid taxes for up to 5 years as of the 1 January in the year in which the tax was levied.

Contacts

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