

Belgium – Exemption from withholding tax on movable income (excl. dividends) to EEA investment companies

Operational Tax News

The Belgian government has adopted a decree to broaden the scope of the withholding tax (“WHT”) exemption for movable income (excluding Belgian source dividends), paid or attributed to certain Belgian investment companies, to similar investment companies located in the European Economic Area (“EEA”) (new article 116 of the Income Tax Code - “ITC”).

The aim of this measure was to address the infringement procedure initiated by the European Commission in 2008 and later in 2013. Indeed, the Commission considered that the two below measures could constitute a breach of the free movement of capital and/or the freedom to provide services:

- The exemption from WHT regarding movable income (excluding Belgian source dividends) was limited to Belgian investment companies.

As a result of the decree, the WHT exemption is now also applicable to open-ended (both UCITS and AIFs) and closed-ended investment companies located in the EEA (having made a public offering in Belgium or not), as well as to certain private investment companies located in the EEA (similar to a Belgian Privak/Pricaf or a VBS/SIC);

- With respect to interest-bearing securities, the exemption was furthermore limited to registered instruments held in a securities account with a qualifying financial institution in Belgium.

As a result of the decree, the WHT exemption is now also applicable in case of securities account held in the EEA.

With respect to WHT on Belgian source dividends paid or attributed to foreign investment companies, please note that Belgium was already condemned in the past. The Belgian legislator, influenced by budgetary factors, reacted by abolishing the tax credit in the hands of Belgian investment companies as of tax year 2014.

Entry into force

The royal decree of 27 September 2015 will be applicable to income paid or attributed as of 1 December 2015.

Impact for the industry

The royal decree's impact will probably be limited. In practice, foreign (investment) companies could already generally apply WHT exemptions for interest income on Belgian bonds, so that the above-mentioned extension of the WHT exemption for investment companies (which has a broader scope than interest on bonds) will have no effect in such a case.

It should be also noted that Article 116 ITC will still not provide for an exemption from WHT for movable income for Belgian or foreign institutional investment companies.

Additional documentation

Please find the following web-link for more details:

- [Tax Alert dated 5 October 2015 \(Deloitte Belgium\)](#)

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