Unwelcome privileges

Before an international organisation lands in Belgium, it signs a so-called "headquarters agreement". That agreement lays down rules to ensure that the organisation and its officials operate in full independence of its host State. In particular, it ensures that the organisation does not pay tax in Belgium. And the officials working for the organisation will be exempt from tax in Belgium as well, though they pay some tax to the organisation itself.

Belgium is the host to 56 international organisations and some 50,000 officials. What this tax privilege means for officials living in Belgium depends on the headquarters agreement.

Tax exemption for earnings from the institution

Usually, Belgium grants the official an exemption from tax on the earnings which the international organisation pays. But he must pay tax in Belgium on other earnings, on the property he owns in Belgium and on the income of his investments.

For interest and dividends, the tax is usually withheld at source at a rate of 15 % or 25 % respectively. And that withholding tax usually is the final tax. The official does not need to declare the interest and dividends in a tax return.

For property, the tax usually is the annual real estate tax on the cadastral revenue. Because many officials receive a special identity card, they are not registered with the commune, and don’t get a tax return. Even if they did, all they would have to declare is their cadastral revenue and the first € 5,660 are tax-exempt anyway. But they need to file a tax return if they receive other earnings or investment income without withholding tax. And their spouse needs to file a separate tax return in any event.

In recent headquarters agreements, Belgium added a provision to the effect that it could take account of these exempt earnings to calculate the tax due on any other income. This is called “exemption with progression” in the tax lingo. It means that if the official has other income that is taxable in Belgium, this could be taxed at the hypothetical tax rate that would apply on his total income, including the tax-exempt earnings from his organisation. In other words, if the official earns more than € 36,210, he would have to pay 40 % on any euro that is liable to tax in Belgium. Fortunately, the Belgium Supreme Court has put a stop to this. Because Belgium does not have a domestic tax provision that allows the taxman to apply the exemption with progression method in the case of a headquarters agreement, the taxman simply cannot take account of the exempted earnings.

Officials of the European Union

For officials of the Institutions of the European Union and of the European University Institute, the privileges go much further. Not only are their earnings exempt from tax on in Belgium or in the country where they work. They are also deemed to have maintained their domicile in the Member State where they were domiciled when recruited into the service of the Community. As long as the official is working for the European Communities, his country of recruitment will be his domicile for income tax, wealth tax and inheritance tax.

That sounds good, but is it ?

Belgium does not have a **wealth tax**. So, if a Belgian were to work and live in France as a EU official, he would not be liable to the 'impôt sur la fortune'. But a French official – or an Italian recruited from France – may still be liable to this French wealth tax if he lives in Belgium. That is if he owns assets worth more than € 720,000.

Inheritance tax is another issue. If a Glaswegian official living in Belgium maintains his domicile in Scotland. If he dies in service, his heirs will have to pay inheritance tax in Scotland. Even if he cut off all his links with Glasgow years before. If he purchased a house in Belgium, though, they will have to file an inheritance tax return in Belgium. And usually, there is no efficient way of avoiding double taxation.

Then there is the **income tax**. A Swedish official living in Belgium will not pay tax on her earnings, be it in Belgium or in Sweden. She does not pay tax in Belgium on her investment income either, but she has to pay tax in Sweden. Her bank manager in Brussels will treat her as a non-resident and will not withhold tax on interest, but in Sweden she will have to declare the interest and pay 30 % tax. And that is twice as much as in Belgium.

Finally, Belgium is famous for its absence (at least in principle) of **capital gains tax**, contrary to most other European countries. If a Belgian official sells his Interbrew shares and makes a huge capital gain, he is not liable to tax. But if his German colleague makes a profit on his Becks shares, he may well have to pay capital gains tax.

Capital gains on a property in Belgium is a separate issue altogether. When an EU official sells his house in Belgium, he should check the provisions of the double taxation agreement between Belgium and his State of recruitment. This agreement usually states that a capital gain can be taxed in Belgium, but that does not mean and that his home State has to exempt this capital gain. Some states give an exemption under the exemption, while they reserve the right to use the exempted income to calculate the average tax rate. However, most states give a tax credit against their domestic tax, which means that the official ends paying up the tax at home.

Officials who forgot to file a tax return at home might have got away with it. They often get their comeuppance when they retire. They cannot hide their investments anymore, and the taxman can ask to explain where there savings come from and whether they paid tax. And in many countries the taxman can go back a long time.

January 1 will be a wake up call for many an official. Under the EU Savings Directive, each Member State – and some tax havens – will send his home state a little slip of paper telling how much interest he has received. Interest income from Belgium will not be reported for the next nine years. Instead, Belgium - and Austria and Luxemburg - will withhold tax at source. Unless the official asks his bank to inform the taxman at home, the bank will deduct 15%, at least for the first three years. But that will soon go up to 35%.

The privileges may not be as welcome after all. They exclude officials from the low tax rates on investment income, and even from the tax exemption on capital gains and SICAVs.

Unfortunately, the choice is not theirs.

Marc Quaghebeur
9 June 2004

Some officials may begin to regret not being Belgian residents after all.

In principle,

Their tax file in their country of domicile will be fed with little slips of paper coming from most EU Member State – and from some tax heavens in Europe – summarizing the interest income they receive there. Their taxman will only have to do the sums.

declare this income in their country of recruitment. However, some of them get a nasty surprise when they retire and go back to their country of recruitment. How do they explain the investments they have stashed away during their stay in Brussels, if they have not declared the income ? And in many countries the tax man has a long memory ; he can go back much farther than the measly three years a Belgian tax inspector can look back.

Interest income from Belgium will not be reported. To the contrary. Belgium, as well as Austria and Luxemburg will withhold tax at source. This will be 15% to start with, but going up to 20% and it might even become 35% in a couple of years time.

Now: capital gains tax:

Belgium : this is income tax : U.K. CGT, valt dat onder artikel 14 daarbinnen ?

Toepassing van de dbv's bij cgt

DBVs

Art 14 is niet facultatief

of in Belgium.

simply pass this information.

the past will be relieved that Belgium is not going to inform their national taxman of the interest income they receive in Belgium, but will

What is more, under the European Savings Directive, Belgium would withhold 15% tax, and the

not send the Danish tax authorities a little slip with the information aut

But

And double tax treaties.

Bijv : Fransman en Zweed die hier wonen geen dbv IHT

Zie ook probleem van Bertie's collega's : niet aangeven en dan teruggaan

Quid iemand die teruggaat naar Ierland : hoelang kunnen ze teruggaan.

Naar een ander land gaan ?

Nieuw artikel over spaarrichtlijn en EG ambtenaren ?

death duties and in he application of conventions on the avoidance of double taxation concluded between Member States of the Communities, officials and other servants of the Communities who, solely by reason of the performance of their duties in the service of the Communities, establish their residence in the territory of a Member State other than their country of domicile for tax purposes at the time of entering the service of the Communities, shall be considered, both in the country of their actual residence and in the country of domicile for tax purposes, as having maintained their domicile in the latter country provided that it is a member of the Communities.

This provision also applies to the spouse and the dependent children. They are also deemed to have kept their domicile at home, even if the children are born afterwards.

> to a spouse, to the extent that the latter is not separately engaged in a gainful occupation, and to children dependent on and in the care of the persons referred to in this Article.

Movable property belonging to persons referred to in the preceding paragraph and situated in the territory of the country where they are staying shall be exempt from death duties in that country; such property shall, for the assessment of such duty, be considered as being in the country of domicile for tax purposes, subject to the rights of third countries and to the possible application of provisions of international conventions on double taxation.

Any domicile acquired solely by reason of the performance of duties in the service of other international organizations shall not be taken into consideration in applying the provisions of this Article

Today, nobody would question that an official of one of the institutions of the European Communities is exempt from income tax in Belgium.

But what is this exemption based upon?

It is a principle of international law that, if an international institution is established in a country, its officials cannot be subjected to the local legislation in respect of their work and of their remuneration. But to make this official, the institution signs a convention with the State where it establishes its seat and in that convention they agree on the privileges and the immunity granted to the institution and its officers. One or two of the provisions of that convention deal with the tax situation of the officers.

As for the European Communities, Belgium has signed the [Protocol on the Privileges and Immunities of the European Communities], which deals with the tax status of its officials.

Article 13

> *Officials and other servants of the Communities shall be liable to a tax for the benefit of the Communities on salaries, wages and emoluments paid to them by the Communities, in accordance with the conditions and procedure laid down by the Council, acting on a proposal from the Commission.*
>
> *They shall be exempt from national taxes on salaries, wages and emoluments paid by the Communities.*

Article 14

> *In the application of income tax, wealth tax and death duties and in the application of conventions on the avoidance of double taxation concluded between Member States of the Communities, officials and other servants of the Communities who, solely by reason of the performance of their duties in the service of the Communities, establish their residence in the territory of a Member State other than their country of domicile for tax purposes at the time of entering the service of the Communities, shall be considered, both in the country of their actual residence and in the country of domicile for tax purposes, as having maintained their domicile in the latter country provided that it is a member of the Communities. This provision shall also apply to a spouse, to the extent that the latter is not separately engaged in a gainful occupation, and to children dependent on and in the care of the persons referred to in this Article.*
>
> *Movable property belonging to persons referred to in the preceding paragraph and situated in the territory of the country where they are staying shall be exempt from death duties in that country; such property shall, for the assessment of such duty, be considered as being in the country of domicile for tax purposes, subject to the rights of third countries and to the possible application of provisions of international conventions on double taxation.*
>
> *Any domicile acquired solely by reason of the performance of duties in the service of other international organizations shall not be taken into consideration in applying the provisions of this Article*

This means that officials only pay tax to the Commission and that Belgium must grant officials an exemption from tax on the salaries, wages and emoluments paid by the Communities.

However, in the late fifties this was still very much a new idea.

When faced with the first agents of the European Coal and Steel Community, the predecessor of the European Commission, the Belgian tax authorities were very reluctant to let go of their taxation rights entirely.

Mr Humblet, a Belgian official of the European Coal and Steel Community, single-handedly took on the Belgian tax authorities for the sum of 9.035 BEF (a considerable sum in 1959). They had not taxed Mr Humblet’s tax-exempt income, but they assessed Mrs Humblet in a higher tax bracket, because they took account of Mr Humblet's income.

In those days, the earnings of husband and wife were added up and taxed at the higher income tax rates. The Belgian tax administration took the remuneration of Mr and Mrs Humblet together and calculated that according to their books, the tax rate on the combined incomes would be, say, 55 %. They did not tax Mr Humblet’s income, which had to be exempt, but they charged 55 % on Mrs Humblet’s income. Mr Humblet took offence; he stated that Mrs Humblet should only pay 35 % tax on her income.

In the end, Mr Humblet took the case to Luxembourg, where the European Court of Justice decided that Belgium could not take account of Mr Humblet's ESCS remuneration to calculate the tax due by his wife. If it did so, Belgium would not be granting Mr Humblet an exemption from tax on wages and emoluments paid by the Communities.

A similar battle was fought nearly forty years later by some of officials of Eurocontrol, the international organisation that monitors all air traffic over Europe.

The Belgian Government had learnt an important lesson. It had signed a treaty establishing the seat of Eurocontrol in Brussels. This treaty granted the officials of Eurocontrol a tax exemption similar to that of Commission officials. However, it also provided that Belgium could take account of the tax exempt remuneration and wages to calculate the tax due on any income that the official received that was not tax exempt. This is what tax lawyers call “exemption with progression”. It means that if the official has other income that is taxable in Belgium, this can be taxed at the hypothetical tax rate that would apply on his total income, including the income that is tax exempt.

The Eurocontrol officials put up a fight.

They claimed that, even if Belgium had reserved itself the right to tax the other income at the higher rates, there was no legal basis for doing so in the Belgian law.

‘Nonsense’, cried the taxman, the exemption of progression is laid down in Article 155 of the Income Tax Code. This Article states that income exempted under an international double tax treaty, must be taken into account to calculate the tax rate on any taxable income.

The *Cour de Cassation*, Belgium’s Supreme Court, gave the Tax Authorities a rap on the knuckles in 1997. "You should read Article 155 correctly: it only applies to an exemption with progression under double tax treaties. Even if it contains a tax provision, the Eurocontrol treaty is certainly not a double tax treaty"

That is good news for officials of the many international institutions which Belgium hosts. Their income is really tax-exempt.

However, this also shows that, in tax law, every word and every comma counts. And that is a principle that Belgian tax inspectors and tax lawyers all too often overlook.

Marc Quaghebeur
27 May 2003