**End of the cross border rule between Belgium and France ?**

In March of this year, the Belgian and French tax authorities started discussions on a new double taxation convention which must replace the old convention that dates back to 1964. An earlier attempt was blocked by the French delegation in 1998.

One of the issues the Belgian tax authorities have put on the agenda is the abolition of the "cross border worker" provision whereby a worker living in the border area in one country, but working across the border in the other country, is only liable to tax in his country of residence. This provision is particularly advantageous for French residents working in Belgium; on average they save about 40 per cent in tax. It is estimated that there are about 25,000 French residents working in Belgium, which is ten times as many as Belgian residents working across the border in France.

Belgium has already done away with this rule for cross border workers in the new convention with the Netherlands which entered into force on 1 January 2003. Belgian residents working in the Netherlands used to pay social security in the Netherlands but income tax in Belgium. Since this year, they pay income tax in the Netherlands as well unless the 183 days rule applies. If they are working less than 183 days in the Netherlands, if their remuneration is not paid by a Dutch employer, or if it is not borne by a Dutch establishment of their employer, they will, nevertheless have to pay tax in Belgium.

In November last year, the Belgian and German Ministers of Finance signed a protocol to the double taxation convention of 11 April 1967. This protocol will repeal the "cross border worker" provision as well once it is ratified by both Federal Parliaments. Remarkably, the convention with Luxembourg which dating from 1970 never had such a provision.

The French tax authorities do not appear to be as keen to do away with the cross border worker rule and the Union of Belgium Enterprises is now admonishing the government: this measure will demotivate French employees working in Belgium, and it is likely to result in a loss of qualified staff, an increase of the salary cost, and ultimately in numerous enterprises crossing the border.

Another issue which Belgium wishes to include in the new convention is the equal treatment of pension rights under complementary pension schemes. The redemption of a capital sum under a private pension scheme is taxed in Belgium at a rate of 16.5 percent[1] France does not tax pension capitals received by its residents ; this encourages many Belgians to retire in France.

France, on the other hand, would like to close an escape route allowing wealthy French individuals to transfer the shares they hold in French companies to a Belgian holding company in order to avoid the capital gains tax.

In spite of the divergences, the Belgian officials have recently expressed the hope that they will come to an agreement before the end of this month. And things can go surprisingly fast then. The convention with the Netherlands was signed and ratified, and had entered into force in a record 19 months.

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[1] 10 percent for the part of the pension built up with the employee's own contributions.

Marc Quaghebeur, 23 June 2003

Belgium, France Look to Wrap Up Tax Treaty Negotiations, Tax Notes Int'l, 30 June 2000, p. 1309.

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