



## Decree Extends Withholding Tax Exemption to Foreign Banks

by Marc Quaghebeur

In a royal decree issued July 3, Belgium has granted foreign banks the same exemption from withholding tax as Belgian banks. It is of particular interest to British, French, and U.S. banks, as they now can recover tax that has been withheld during the past two years.

When a Belgian company takes out a loan with a Belgian bank, the bank does not have to withhold tax at source. Until now, however, that exemption did not apply to foreign banks, unless they could rely on the provisions of a tax treaty (as was the case for Germany, Luxembourg, the Netherlands, Norway, Sweden, and Switzerland).

That situation put British, French, and U.S. banks at a disadvantage when they were competing with a Belgian bank or with banks from one of the other aforementioned countries, as they had to include withholding tax when computing their interest rates.

In a royal decree of May 16, 2003, the Belgian government updated the income tax rules to bring them into line with modifications to the financial legislation. At that time, the exemption was extended to listed companies and Belgian coordination centers. While investigating the new tax status set up by the Belgian government to counter claims that its tax regime for coordination centers constituted

illegal state aid,<sup>1</sup> the European Commission asked Belgium to change its legislation with retroactive effect.

The royal decree of July 3, 2005, exempts all interest paid to financial institutions established in a member state of the European Union or the European Economic Area, or in a country with which Belgium has signed a double tax treaty. The exemption has retroactive effect from June 5, 2003.

Foreign banks now can claim a refund of the tax that has been withheld at source on any interest paid or granted to them for the past two years. However, to do that, they must file a formal appeal, and they have only three months to do so.

A spokesman for the Belgian Ministry of Finance said he does not expect many foreign banks to actually claim refunds of the withholding tax because in most cases, their loans probably would have been too expensive for Belgian companies. However, it seems that for some projects, Belgian companies had no alternative but to accept a loan from a British bank. ♦

♦ *Marc Quaghebeur, Vandendijk & Partners, Brussels*

<sup>1</sup>Commission Decision 2005/378/EC of September 8, 2004, Official Journal, L 125, May 18, 2005, p. 10.