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Capital Gains, Bank Secrecy Rules Updated

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COUNTRY DIGEST

Capital Gains, Bank Secrecy Rules Updated

The Belgian State Gazette on November 10 published the law of November 7, 2011, which updates rules relating to the taxation of capital gains on fixed assets, bank secrecy, and wage withholding tax.

Capital Gains on Fixed Assets

In response to an April 6 reasoned opinion of the European Commission, the law amends the tax regime for capital gains on fixed assets. (For a European Commission release, see *Doc 2011-7305* or *2011 WTD 67-9*.)

Under the Belgian income tax law, the taxation of capital gains on fixed assets such as buildings, equipment, or machinery is deferred insofar as the sales price is reinvested in assets used in Belgium. This is incompatible with the EU principle regarding the freedom of establishment, the freedom to provide services, and the free movement of capital.

The law of November 7 provides that effective from the 2012 assessment year, a reinvestment in assets located in a member state of the European Economic Area will also qualify for the deferred taxation.

Bank Secrecy

The law of April 14, 2011, gave the tax authorities two new means to obtain information from banks about their clients' accounts. (For a related OECD release, see *Doc 2011-11908* or *2011 WTD 107-22*.) They can request bank information if they find indications of tax fraud or if signs of greater wealth than disclosed prompt them to determine the client's tax base. The law requires authorities to comply with strict procedures and notify the taxpayer of their intention to request the information from the bank. According to the law, the notification must specify the indications of tax fraud. This created a problem in cases in which there was no indication of tax fraud.

Therefore, the law of November 7 clarifies the text so that the tax authorities do not have to specify indications of tax fraud but must disclose the information that led them to believe the client has more wealth than disclosed.

Also, article 333(1) of the Income Tax Code (ITC) will be extended to clarify that the taxpayer need not be notified of information requests from foreign administrations. This amendment is based on the fact that the foreign tax legislation must determine whether a notification is required. These modifications will become effective on December 1.

Building Contractors

The new law removes the requirement that building contractors register with the Ministry of Finance to obtain public work contracts (articles 400 to 402 ITC). In its decision in *Bâtiments et Ponts Construction SA, WISAG Produktionsservice GmbH, formerly ThyssenKrupp Industrieservice GmbH v. Berlaymont 2000 SA* (C-74/09, July 15, 2010), the European Court of Justice held that this registration requirement was incompatible with the freedom to provide services.

Wage Withholding Tax

The law amends some rules for the wage withholding tax introduced by the law of June 19, 2001 (Belgian State Gazette of June 28, 2011). That law provided for a full exemption of indemnities in lieu of notice that are paid out by the employment office and a partial exemption for indemnities paid by the employer, after January 1, 2012. That law also introduced a work bonus — that is, a tax credit for low-income earners.

The new law also adjusts the wage withholding tax in relation to the tax increase for temporary unemployment payments from 10.09 percent to 18.75 percent. Both measures apply with retroactive effect from April 1, 2011. ◆

♦ *Marc Quaghebeur, partner, De Broeck Van Laere & Partners, Brussels*