

Belgian Diamond Regime to Begin in 2017

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Belgium's controversial diamond regime, which the European Commission announced was in line with state aid rules, will enter into force for tax year 2017.

Belgium's July 24, 2015, program law introduced a special tax regime for diamond traders, in which they will pay tax on 0.55 percent of their turnover rather than on the actual profits from their diamond trading activities. (Prior coverage [\[1\]](#).) However, because it might be perceived as state aid, the diamond regime was introduced subject to a decision by the commission confirming that it does not constitute forbidden state aid. On July 29 the commission announced in a release [\[2\]](#) that this tax regime, however favorable, was in line with EU state aid rules. (Prior coverage [\[3\]](#).)

Background


Diamonds account for 15 percent of Belgian exports outside the European Union. To secure Antwerp's position as a world diamond center, Belgium has taken a number of measures to guarantee the transparency of the diamond trade, in particular to combat fraud and money laundering as well as the trade in conflict diamonds. Import and export are heavily regulated. Diamond traders must register with the Ministry of Economic Affairs' License Department before they can apply for import and export licenses. Import and export returns are monitored regarding value, weight, classification, and documented origin of the diamonds. The taxation of diamond traders has always been controversial. The import and export of loose diamonds are exempt from import duties and taxes, and the sale of loose diamonds by registered traders is VAT exempt (article 42, section 4 of the VAT Code). Given the importance of the sector in Antwerp, there were rumors that the sector was spared in tax audits. There has always been a concern that the sector was susceptible to fraud, given the nature of the product.

The profit of wholesale diamond traders depends largely on the value of the inventory of diamonds registered in their accounts. However, at that level, rough and polished diamonds are bought and sold as commodities, and quantities of diamonds are expressed in carats rather than as individual diamonds. Also, the valuation of diamonds requires considerable expertise, and cutting and polishing a rough diamond gives the stone a different aspect and value that is impossible to link to the original rough stone.

The tax authorities are naturally suspicious of those generalizations, which make it difficult for them to assess and correct the value of diamond inventories through tax audits. In the

mid-1990s, the authorities announced they would disregard accounts that did not keep inventories that counted individual diamonds rather than carats.

That message did not sit well with diamond traders who could not comply with those demands. Audits resulted in higher taxes, and even prosecutions for tax evasion and tax fraud, until a compromise was found in the tax plan for the diamond sector, which introduced a specific inspection technique that complied with the Belgian tax code. As of 1999, a minimum standard was agreed: If the wholesale trader's gross profit margin and net taxable profit did not meet the minimum standard, he would be taxed on the minimum standard.

Moreover, in 2006, then-Prime Minister Guy Verhofstadt signed a protocol with the Diamond High Council of Belgium giving diamond traders a one-time opportunity to regularize their undeclared stocks in diamonds that they had built up since World War II. (Prior coverage )

However, that did not solve the problems regarding valuation of the stones or the follow-up difficulties. Increasing numbers of diamond traders were reported to be leaving Antwerp for more attractive diamond centers such as Dubai, Hong Kong, Mumbai, and Tel Aviv. Negotiations between the government and the Antwerp World Diamond Centre resulted in the diamond regime.

The Diamond Regime

The diamond regime is a preferential but compulsory tax regime for individual diamond-trading companies, including Belgian permanent establishments of foreign companies, that are registered as such in Belgium, while its scope is restricted to the turnover they generated from genuine and habitual diamond trade. This definition excludes commercial agents dealing in diamonds and any other companies in the diamond industry that do not sell diamonds out of an inventory for their own account, such as service providers (brokers, forwarders, diamond laboratories, and so forth).

The tax regime is, however, not compulsory for companies that exploit diamond mines or mine alluvial diamonds or affiliated companies that act as sales offices for those diamonds. Nevertheless, they may opt for the diamond regime instead of the normal corporate tax regime. The option is valid for three successive years.

The diamond regime is limited to the trade in loose, unset, and cleaved diamonds; rough diamonds; industrial diamonds; boart; synthetic diamonds; and diamond powder.

Registered traders will pay normal income tax on their taxable income, but that taxable income will be calculated based on the basis of a lump sum margin of 0.55 percent of the turnover instead of on the actual profit margin realized. This margin is calculated on the total sales generated from the diamond trade, possibly after a commercial transformation, such as sawing, cutting, polishing, or engraving.

For companies, taxable income from the diamond trade implies that at least one director or manager is paid a minimum remuneration depending on the turnover of the company. If the

company does not have a remuneration corresponding to its level of turnover, the difference between the minimum remuneration and the actual remuneration is added to the 0.55 percent margin.

Turnover generated by other activities, such as services provided, is taxed separately; the other activities are not in the scope of the diamond regime. In that case, the diamond trader has to keep separate accounts for the activities not covered by the regime.

Although, in principle, Belgian companies must keep their accounts in euros, diamond traders that habitually trade in U.S. dollars may apply for an authorization to keep accounts in U.S. dollars under supervision of a chartered accountant. If they do so, they must draw up their financial statements in euros and convert the accounts at the average conversion rate for the tax year.

Companies subject to the diamond regime are excluded from the risk capital deduction (or notional interest deduction) and cannot deduct losses carried forward or take the excess risk capital deduction.

If the tax authorities have concrete indications that the turnover was realized by something other than genuine and habitual diamond transactions, the taxpayer will be excluded from the diamond regime.

The regime has been accepted by the diamond sector as it increases legal certainty, creates a stable business climate, and makes it significantly easier to calculate the taxable profit and to predict the total taxes due. In particular, as the value of the stock is taken out of the equation for tax purposes, the removal of the value of the diamond stock from the equation for tax purposes eliminates complex and burdensome discussions regarding the valuation of the stocks during audits. Variations in the value of the inventory are neutral from a tax perspective. Moreover, the diamond regime will give diamond-trading companies a stronger capital base and easier access to banking services.

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