

PRACTITIONERS' CORNER

Belgian Supreme Court Clarifies Tax Year for Nonresidents

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In a May 20 decision, the Belgian Supreme Court clarified the grounds of taxation for nonresidents. The decision has not yet been published.

In Belgian tax law, residence starts when the taxpayer takes up residence and ends when he leaves Belgium to take up residence elsewhere.

The tax year starts on the day the taxpayer takes up residence. If he takes up residence in September 2010, he must file a tax return in 2011 for the year 2010, but only for the period September to December 2010. The tax return is to be filed by June 30, 2011. For tax year 2010 (for income earned between September and December), the year of assessment is 2011.

On the contrary, the tax year ends on the day he leaves Belgium. In practice that will be on the day he hands in his identity card; at that time he is deregistered from the civil register of the town where he was a resident. That registration creates a presumption of residence. If a resident gives up residence on August 31, he must apply for a tax return and file it within three months.

The year of assessment is the year starting on the day following the last day of the tax year. For tax year 2010, the year of assessment is 2011. For a tax year that ends in the middle of a calendar year, the year of assessment starts on the day following the last day of the tax year as well. For the tax year that ends on August 31, 2010, the year of assessment is not 2011, but 2010. To distinguish it from the year of assessment 2010 (relating to 2009), it is called "2010 special." The year of assessment is important because it determines how long the tax authorities can assess the tax; that is, three years from January 1 of the year of assessment. The tax for 2009 income can be assessed during the

three years after January 1, 2010; that is, until the end of 2012. For a tax year ending on August 31, 2010, the year of assessment is 2010 special, and the tax must be assessed before the end of 2012 as well.

The same rules cannot be applied to nonresidents; they are nonresident for the entire year.

If they have Belgian-source income in the last quarter of 2010, the year of assessment is 2011; they must (in principle) file their tax return by June 30, 2011, and the tax must be assessed before the end of 2013 (three years starting on January 1 of the year of assessment 2011).

However, if they have income in January and February 2010, there is no cutoff date for the tax year for residents. The tax authorities maintained that they were nonresident for the entire year and that they could not file a tax return after they stopped earning income in Belgium. They had to wait until the following year before they could receive a tax return. The year of assessment was then always 2011 for 2010 income.

A Norwegian resident had been working in Belgium between January 1, 1992, and December 20, 1992, when he returned to Norway and registered there. The tax authorities assessed his tax in 1995 for year of assessment 1993; he argued that he should have been taxed before the end of 1994 for the year of assessment 1992 special, so the assessment was late.

The tax authorities argued that the simple fact of being a nonresident was sufficient grounds for his liability to income tax. The Supreme Court dismissed that argument and decided that being a nonresident was not sufficient for being liable to income tax as a nonresident. If a nonresident stops acquiring income that is liable to tax in Belgium before December 31, there are no more grounds for taxation. Not being a resident is not sufficient grounds for taxation. ♦