

# COUNTRY DIGEST

## Ruling Committee and Tax Administration Strengthen Ties

After months of uncertainty regarding the body's future, Belgium has reappointed the members of its Ruling Committee (the authority for advance rulings) subject to a protocol strengthening cooperation between the committee and the Central Tax Administration.

### The Belgian Ruling Practice

Taxpayers can obtain a binding ruling from the Belgian Ruling Committee regarding all federal taxes (and some regional taxes) relating to a specific project. Most importantly, the ruling provides legal certainty. The Ruling Committee cannot grant any tax exemptions or reductions, and it does not have any authority to rule on tax rates and tax increases. Generally speaking, a taxpayer can request a ruling on any tax issue unless the situation or transaction is identical to one the taxpayer has already implemented. And more specifically for income tax purposes, a ruling cannot be granted if the essential elements of the situation or transaction involve a tax haven blacklisted by the OECD or if the situation or transaction has no economic substance in Belgium.

The tax authorities are bound by a ruling. They can, however, set aside the ruling if the taxpayer had not correctly described the facts or does not abide with the conditions set in the ruling, or if the ruling conflicts with a tax treaty or domestic or European law. Finally, the effect of the ruling can be limited if the law changes subsequently. A ruling is generally valid for five years, but it is renewable. Rulings are published on a no-names basis.

The system was reorganized in 2005, and a new autonomous department was set up within the Ministry of Finance to allow a more efficient handling of cases. The Ruling Committee became hugely successful; it has an impressive track record for delivering speedy advance rulings on various tax issues. (For prior coverage, see *Doc 2006-24026* or *2007 WTD 9-11*.) In 2009 it delivered 600 rulings, and it is on track to better that performance in 2010. Equally important is that

the Ruling Committee handles more and more pre-filing applications; these are applications where the taxpayer tries to find out if an application has a chance of a successful ruling.

### Uncertainty

In recent months, tax advisers feared for the future of the Ruling Committee.

Because members of the College of Directors are appointed for five years, they had to be reappointed in 2010. One of the members who was not reappointed challenged the appointment of the three Dutch-speaking members of the college for lack of reasoned motivation; the Council of State canceled the appointment.

Within the government, the Socialist Party blocked the reappointment. It questioned whether a caretaker government can make that decision, but, more importantly, it objected to some of the rulings that grant tax favors that lean toward organized tax evasion.

At the same time, the Ruling Committee reportedly clashed with the Special Tax Inspection, a unit that combats large organized tax fraud irrespective of the tax involved. Its inspectors believe companies obtain a ruling to stop the Special Tax Inspection from investigating them. In particular, they fear abuses of the risk capital deduction (also called the notional interest deduction). (For prior coverage, see *Doc 2008-8201* or *2008 WTD 74-9*.)

The Special Tax Inspection started an investigation of a company despite the ruling it had obtained. The Ruling Committee objected, holding that such an investigation would tarnish its reputation and jeopardize the legal certainty of its rulings. The Ruling Committee insisted on a new agreement with the other services of the tax ministry so that it could offer taxpayers legal certainty regarding its rulings.

The Ruling Committee is an independent department within the Ministry of Finance, and it is keen to keep its independence. Other departments fear this means it can grant rulings that have a huge budgetary impact. This fear seems ungrounded. A ruling that confirmed that a hybrid instrument with multiple equity features was treated as debt for tax purposes was

not repeated. (For prior coverage of the ruling, see *Doc 2007-21646* or *2007 WTD 186-2*.)

The delay in reappointing the three remaining members of the college kept the future of the ruling committee uncertain, which hurt Belgium's investment climate, with potential investors reportedly delaying or abandoning their investment plans.

### Protocol

In December the government decided that even if it was a caretaker government, the reappointment of the college members was sufficiently urgent. However, the reappointment was made subject to a new protocol between the Ruling Committee and the Central Tax Administration.

Under the protocol signed the week of December 13, the Ruling Committee will improve its communication with other services. Because a lack of communication caused misunderstandings, in the future, the committee will consult with the Central Tax Administration before issuing its rulings. Finance Minister Didier Reynders says this will not jeopardize the independence of the committee because it does not have to follow the suggestions of the Central Tax Administration.

Also, the Central Tax Administration can make recommendations to change the law if a ruling has too large a budgetary impact, particularly if a bank or insurance company applies for a ruling on the tax effect of a new financial product. Thus, the Central Tax Administration will have an impact on the ruling policy. Even if the Ruling Committee is not bound by the suggestions of the administration, a subsequent change in the law would quickly render the ruling obsolete. A change in the law would remain a political question, but it would effectively limit the effect of a ruling. If the Ruling Committee wants to uphold its reputation, it will want to avoid having its rulings shot down.

### Comments

Foreign investors planning investments in Belgium should not be too concerned about the effect of the protocol. In fact, it strengthens the legal certainty of the rulings. However, the additional consultation may delay the delivery of rulings. ◆

◆ *Marc Quaghebeur, Vandendijk & Partners*