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Laga Newsflash
End of double taxation on French-source dividends for private investors

During recent years, the Belgian government has been increasing taxes on private investments and the income they generate. The default tax rate for dividend income has increased from 25 to 30%. The scope of the stock exchange tax has been broadened, the rates and maximum amounts of the stock exchange tax were increased several times. More recently, the government announced the introduction of a new tax on securities accounts of individuals residing in Belgium (see the newsflash on the Budget 2018 agreement).

The foreign sourced dividends received by private investors will generally be subject to double taxation in Belgium. The dividends received are subject to withholding tax in the source state (usually at the treaty rate of 15%). In Belgium, the dividends received are also subject to a 30% withholding tax (after deducting foreign taxes paid).

Recently however, through its 16 June 2017 decision, the Belgian Supreme Court put an end to the long-standing tax obstacle of double taxation on French sourced dividends paid to Belgian tax residents. As a result, Belgian private investors will see the tax burden on their French-source dividends decrease from 40.5% to 27.5%.

Background

The Belgium-France tax treaty provides in Article 19.A.1. that *« […] The tax due in Belgium on the income, after deduction of French tax […] will be reduced on the one hand, by the movable prepayment levied at the normal rate and, on the other by the lump-sum amount of foreign tax which may be deducted under the conditions laid down in Belgian law;*

however, that lump-sum amount may not be less than 15% of the amount of the income after deduction of the French tax ».

However, Belgium abolished its domestic law foreign tax credit for private individuals in 1998 and the Belgian tax administration systematically refuses to grant a foreign tax credit on the basis of this treaty provision.

Supreme Court Judgment

In the case at hand, the taxpayers had received French-source dividends of around EUR 3M. In accordance with the Belgium-France tax treaty, these dividends were subject to French withholding tax at the rate of 15% and subsequently a 25% Belgian tax withholding (would currently be 30%) was processed on the net amount.

The taxpayer claimed that the treaty prevails over domestic law, entailing that he should get a 15% foreign tax credit to avoid double taxation, regardless of the foreign tax credit mechanism being abolished in Belgian legislation.

Contrary to previous case law, the Supreme Court agreed with the taxpayer's request, invoking the supremacy of the international treaties, concluded by Belgium, over Belgian domestic legislation. The case has been referred to the Antwerp Court of Appeal.

Impact (anno 2017)

As a result, Belgian private investors will see the tax burden on their French-source dividends drop from 40.5% to 27.5%.

Mechanism applied by the tax authorities		**Mechanism confirmed by the Supreme Court**	
Gross Dividend	EUR 1,000	Dividend	EUR 1.000
FR WHT *(15%)*	EUR 150	FR WHT *(15%)*	EUR 150
BE Taxes	EUR 255	BE Taxes	EUR 127.5
(30% x EUR 850)		*[(30%-12,75%(*)) x EUR 1000]*	
Net dividend	EUR 595	Net dividend	EUR 722.5
+ EUR 127,5			

(*) Minimum 15% of net border income (15% x EUR 850)

The impact of the Supreme Court's decision is not limited to private investors, but could also benefit to entities subject to legal entities tax in Belgium (such as Belgian private foundations and non-profit organisations such as "*VZW/ASBL*").

In Greenille by Laga's view, the Supreme Court's decision also applies to Italian-source and Israeli-source dividends.

Possibility to recover overpaid taxes?

Belgian taxpayers could consider filing a request for an *ex officio* tax relief to claim back the overpaid taxes for up to 5

years as of the 1 January in the year in which the tax was levied. The Laga tax controversy team can provide the necessary services to recover overpaid taxes.

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